

## Chapter 24

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## ARTICLE I. LIMITED LIABILITY COMPANY ACT

### Sec. 24-1. Short title.

This Act may be cited as "the Salt River Pima-Maricopa Indian Community Limited Liability Company Act" (the Act).

(Code 1981, § 24-1(a); Code 2012, § 24-1(a); Ord. No. SRO-352-10, § 23-2-101, 10-14-2009; Ord. No. SRO-402-2012, § 24-1(a), 5-30-2012)

### Sec. 24-2. Purpose.

The purposes of this Act are to:

- (1) Permit the Community Council, on behalf of the Community and its members, to form or approve the formation of limited liability companies wholly owned by the Community or Community-controlled enterprises, so as to provide for the health, welfare, safety, and economic well-being of the Community and its members and to further exercise the Community's sovereignty; and
- (2) Regulate the formation and operation of limited liability companies.

(Code 1981, § 24-1(b); Code 2012, § 24-1(b); Ord. No. SRO-352-10, § 23-2-101, 10-14-2009; Ord. No. SRO-402-2012, § 24-1(b), 5-30-2012)

### Sec. 24-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Certificate of organization* means the certificate required by section 24-41. The term "certificate of organization" includes the certificate as amended or restated.

*Community* means the Salt River Pima-Maricopa Indian Community, a federally recognized Indian Community.

*Community-controlled enterprise* means any division or subdivision of the Community or any federally chartered corporation, Community-chartered corporation or limited liability company, or other Community-chartered entity, in-

strumentality, or unincorporated enterprise that is wholly owned by the Community or wholly owned by another Community-controlled enterprise.

*Community Council* or *council* means the governing body of the Community.

*Contribution* means any benefit provided by a person to a limited liability company in order to become a member upon formation of the limited liability company, or in the person's capacity as a member and in accordance with the operating agreement or an agreement among the members or between the member and the limited liability company.

*Council secretary* means the person appointed by the Community Council to maintain the records of the Community and perform such other duties as the Community Council may prescribe.

*Distribution* means a transfer of money or other property from a limited liability company to a member or other person on account of a membership interest.

*Effective* means the effective date specified in any ordinance, resolution, or other act of the Community Council, or if no effective date is so specified, the date on which the ordinance, resolution, or other such act is adopted, ratified, or approved by the council.

*General counsel* means the general legal counsel for the Community.

*Limited liability company* or *company* means an entity formed under this Act.

*Manager* means a person that, under the operating agreement of a manager-managed company, is responsible, alone or in concert with others, for managing the company as provided in section 24-105(c).

*Manager-managed company* means a limited liability company that is managed by one or more managers and is designated as manager-managed pursuant to section 24-105(a).

*Member* means the person holding an ownership interest in a limited liability company and acting in the capacity as a member of the limited liability company pursuant to section 24-100.

*Member-managed company* means a limited liability company that is not a manager-managed company.

*Membership interest* means the right to obtain distributions from a limited liability company and such other rights of ownership in the company, as may be accorded by this Act or the operating agreement.

*Operating agreement* means a written statement, declaration, or agreement, whether or not referred to as an operating agreement, governing the affairs of the company and the conduct of its business. The term "operating agreement" includes the agreement as amended or restated.

*Person* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

*Principal office* means the principal executive office of a limited liability company, whether or not the office is located within the reservation.

*Record* means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

*Reservation* means all lands within the exterior boundary of the Community, now existing or hereafter acquired by the Community in fee or trust.

*State* means a state of the United States; a federally recognized Indian tribe, Community, or nation; the District of Columbia; or any territory or insular possession subject to the jurisdiction of the United States.

(Code 1981, § 24-2; Code 2012, § 24-2; Ord. No. SRO-352-10, § 23-2-102, 10-14-2009; Ord. No. SRO-402-2012, § 24-2, 5-30-2012)

**Sec. 24-4. Knowledge; notice.**

- (a) A person knows a fact when the person has:
  - (1) Actual knowledge of it;
  - (2) Received a notification of the fact; or

- (3) Reason to know the fact exists from all of the facts known to the person at the time in question.

- (b) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(Code 1981, § 24-3; Code 2012, § 24-3; Ord. No. SRO-352-10, § 23-2-103, 10-14-2009; Ord. No. SRO-402-2012, § 24-3, 5-30-2012)

**Sec. 24-5. Nature, purpose, and duration of limited liability company.**

- (a) A limited liability company is an entity distinct from its members.

- (b) A limited liability company may have any lawful purpose, regardless of whether for profit.

- (c) A limited liability company has perpetual duration, unless otherwise stated in the company's certificate of organization.

(Code 1981, § 24-4; Code 2012, § 24-4; Ord. No. SRO-352-10, § 23-2-104, 10-14-2009; Ord. No. SRO-402-2012, § 24-4, 5-30-2012)

**Sec. 24-6. Powers; limitations.**

- (a) A limited liability company may conduct or promote business and other activities, for any lawful purpose, subject to any law of the Community governing or regulating such activities, including but not limited to the power to:

- (1) Subject to sections 24-77 and 24-78, sue and be sued, and defend in its name;
- (2) Acquire, lease, license, manage, improve, encumber, dispose of, and otherwise deal in and with real property or tangible or intangible personal property, or any legal or equitable interest in property, wherever located;
- (3) Upon prior approval by or authorization from the Community Council, be a shareholder, member, manager, partner, trustee, or associate of any corporation, limited liability company, partnership, joint venture, trust, or other entity, or acquire,

encumber, or dispose of shares or other interests in or obligations of any other entity or organization;

- (4) Apply for, purchase or acquire by assignment, transfer or otherwise, and exercise, carry out and enjoy any license, power, authority, franchise, concession, right or privilege;
- (5) Enter into and make contracts of every kind and nature with any person;
- (6) Make distributions to the members or the persons entitled thereto, pursuant to section 24-102;
- (7) Borrow and lend money for company purposes, invest and reinvest its funds, and receive, hold, or pledge real property and personal property as security for repayment;
- (8) Its business, carry on its operations, have offices, and exercise the powers granted by this Act, within or without the reservation;
- (9) Appoint officers, employees, and agents of the limited liability company, define their duties, and fix their compensation;
- (10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and other benefits or incentive plans for any or all of its current or former officers, employees and agents;
- (11) Make donations for the public welfare or for charitable, scientific or educational purposes;
- (12) Indemnify a member, manager, employee, officer or agent or any other person; and
- (13) Do any other act, not inconsistent with law, that furthers the business of the limited liability company.

(b) Unless otherwise expressly authorized by resolution of the Community Council, and subject to applicable federal and tribal law and any additional limitations set forth in the certificate of

organization or operating agreement of the limited liability company, a limited liability company shall have no power to:

- (1) Expressly, impliedly, or otherwise through its status or activities, waive the sovereign immunity of the Community or the Community's agents, employees, or officials, or otherwise subject the Community to debts, liabilities, other obligations, or claims arising from contract, tort, statute, regulations, licensing, taxation, or any other source;
- (2) Expressly, impliedly, or otherwise enter into any agreement of any kind on behalf of the Community;
- (3) Pledge the credit of the Community;
- (4) Sell, mortgage, grant a security interest in, or otherwise dispose of or encumber any real or personal property of the Community, except that a limited liability company may be granted the power to encumber real property pursuant to the terms of any written lease agreement between the Community and the company;
- (5) Waive any right of or release any obligation owed to the Community; or
- (6) Waive any other right, privilege or immunity of the Community.

(Code 1981, § 24-5; Code 2012, § 24-5; Ord. No. SRO-352-10, § 23-2-105, 10-14-2009; Ord. No. SRO-402-2012, § 24-5, 5-30-2012)

#### **Sec. 24-7. Governing law.**

The law of the Community governs the internal affairs of a limited liability company and matters relating to the activities of the company.

(Code 1981, § 24-6; Code 2012, § 24-6; Ord. No. SRO-352-10, § 23-2-106, 10-14-2009; Ord. No. SRO-402-2012, § 24-6, 5-30-2012)

#### **Sec. 24-8. Name.**

(a) The name of a limited liability company must contain the words "limited liability company" or "limited company" or the abbreviation

"L.L.C.," "LLC," "L.C." or "LC." "Limited" may be abbreviated as "Ltd." and "company" may be abbreviated as "Co."

(b) The name of a limited liability company must be distinguishable from the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business within the reservation, and must be distinguishable from the name of any Community-controlled enterprise.

(Code 1981, § 24-8; Code 2012, § 24-8; Ord. No. SRO-352-10, § 23-2-108, 10-14-2009; Ord. No. SRO-402-2012, § 24-8, 5-30-2012)

**Sec. 24-9. Operating agreement; scope, function, and limitations.**

(a) Unless otherwise provided in the certificate of organization or the operating agreement, an operating agreement may be adopted, and may be repealed or amended, by:

- (1) The council, by resolution, ordinance, proclamation or otherwise;
- (2) The governing board or an authorized agent or representative of a Community-controlled enterprise, in its capacity as a member of a limited liability company, if such person has been authorized by the Community Council, in the certificate of organization, operating agreement or otherwise, to adopt, repeal, or amend the operating agreement; or
- (3) A manager of a limited liability company, if the manager has been authorized by the Community Council, in the certificate of organization, operating agreement, or otherwise, to adopt, repeal or amend the operating agreement.

(b) An operating agreement may contain any provision that is not otherwise contrary to law that relates to the business of the limited liability company, the conduct of its affairs, its rights, duties or powers and the rights, duties or powers of its members, managers, officers, employees or agents including:

- (1) Whether the management of the limited liability company is vested in one or more managers and, if so, the powers to be exercised by managers;

- (2) With respect to any matter requiring a vote, approval or consent of members or managers, provisions relating to notice of the time, place and purpose of any meeting at which the matter is to be voted on, waiver of notice, action by consent without a meeting, the establishment of a record date, quorum requirements, or any other matter concerning the exercise of any voting or approval rights;
- (3) Obligations to make contributions to, and rights to receive distributions from, the limited liability company;
- (4) Subject to section 24-130, restrictions on the transfer of a membership interest;
- (5) Any matter relating to the exercise of the powers set forth in section 24-6(a), or other powers of the limited liability company.

(c) Except as otherwise provided in subsection (d) of this section, and unless a provision in this Act expressly states that a matter may not be altered by an operating agreement, the operating agreement governs and takes precedence over any differing or contrary provision in this Act.

(d) Unless otherwise provided in the certificate of organization, an operating agreement may not:

- (1) Alter or modify the provisions of sections 24-6(a)(1), 24-77 and 24-78, relating to a limited liability company's capacity to sue and be sued in its own name and the company's privileges and immunities;
- (2) Vary the limitations set forth in section 24-6(b) dealing with limitations of powers with respect to the Community; provided, however, the operating agreement may include additional limitations, restrictions, and conditions;
- (3) Vary the law applicable under section 24-6;
- (4) Vary the limitations set forth in section 24-76, relating to the liability of members and managers;
- (5) Unreasonably restrict the duties and rights stated in section 24-107 relating to the rights of members to information; and

(6) Vary the requirement to wind up a limited liability company's business as specified in section 24-160(a) and (b)(1).  
(Code 1981, § 24-11; Code 2012, § 24-10; Ord. No. SRO-352-10, § 23-2-110, 10-14-2009; Ord. No. SRO-402-2012, § 24-10, 5-30-2012)

**Sec. 24-10. Office and agent for service of process.**

Unless otherwise stated in the certificate or organization, the general counsel is the agent for service of process for each and every limited liability company formed under this Act, and as such, is the agent for service of any process, notice, or demand required or permitted by law to be served on the company.  
(Code 1981, § 24-13; Code 2012, § 24-13; Ord. No. SRO-352-10, § 23-2-113, 10-14-2009; Ord. No. SRO-402-2012, § 24-13, 5-30-2012)

**Sec. 24-11. Service of process.**

Service of any process, notice, or demand on the agent for service of process for a limited liability company may be made by delivering to the agent an original or copy of the process, notice, or demand.  
(Code 1981, § 24-16; Code 2012, § 24-16; Ord. No. SRO-352-10, § 23-2-116, 10-14-2009; Ord. No. SRO-402-2012, § 24-16, 5-30-2012)

**Secs. 24-12—24-40. Reserved.**

**ARTICLE II. FORMATION AND  
CERTIFICATE OF ORGANIZATION**

**Sec. 24-41. Formation of limited liability company; certificate of organization.**

(a) The Community Council may form or approve the formation of a limited liability company by adopting or approving a certificate of organization for the company. A limited liability company is formed as of the date the council adopts or approves the certificate of organization, unless the council specifies some other effective date or some other event or occurrence required for the formation of the company.

(b) A certificate of organization must state:

- (1) The name of the limited liability company, which must comply with section 24-8;
- (2) The name of the member or members; and
- (3) The street and mailing addresses of the initial principal office and the name and street and mailing addresses of the initial agent for service of process of the company.

(c) A certificate or organization may also include any other provision consistent with law, including any provision that may be set forth in an operating agreement.  
(Code 1981, § 24-21; Code 2012, § 24-21; Ord. No. SRO-352-10, § 23-2-201, 10-14-2009; Ord. No. SRO-402-2012, § 24-21, 5-30-2012)

**Sec. 24-42. Amendment or restatement of certificate of organization.**

(a) A certificate of organization may be amended or restated at any time by a resolution of the Community Council.

(b) An amendment to or restatement of a certificate of organization is effective upon approval by the Community Council, unless the Community Council specifies some other effective date.  
(Code 1981, § 24-22; Code 2012, § 24-22; Ord. No. SRO-352-10, § 23-2-202, 10-14-2009; Ord. No. SRO-402-2012, § 24-22, 5-30-2012)

**Sec. 24-43. Certificate of existence.**

(a) Upon written request and payment of any requisite fee, the council secretary may furnish to any person a certificate of existence with respect to a limited liability company if the records of the Community show that the company has been formed under this Act and has not been dissolved or terminated pursuant to this Act.

(b) A certificate of existence must state:

- (1) The company's name;
- (2) That the company was duly formed under the laws of the Community, and the date of formation; and
- (3) Whether the company has been dissolved or terminated.

(c) Subject to any qualification stated in the certificate, a certificate of existence issued by the council secretary is conclusive evidence that the limited liability company is in existence and has been formed under this Act.

(Code 1981, § 24-28; Code 2012, § 24-28; Ord. No. SRO-352-10, § 23-2-208, 10-14-2009; Ord. No. SRO-402-2012, § 24-28, 5-30-2012)

**Secs. 24-44—24-74. Reserved.**

### **ARTICLE III. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY**

**Sec. 24-75. No agency power of member as member.**

A member is not an agent of a limited liability company solely by reason of being a member.

(Code 1981, § 24-31; Code 2012, § 24-31; Ord. No. SRO-352-10, § 23-2-301, 10-14-2009; Ord. No. SRO-402-2012, § 24-31, 5-30-2012)

**Sec. 24-76. Liability of members and managers.**

(a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

- (1) Are solely the debts, obligations, or other liabilities of the limited liability company, subject to sections 24-77 and 24-78; and
- (2) Do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(b) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

(c) A member or manager does not waive its immunity from suit solely by reason of being a member or manager, or by reason of the member acting as a member or manager acting as a manager.

(Code 1981, § 24-34; Code 2012, § 24-34; Ord. No. SRO-352-10, § 23-2-304, 10-14-2009; Ord. No. SRO-402-2012, § 24-34, 5-30-2012)

**Sec. 24-77. Privileges and immunities.**

The following apply to limited liability companies established under this Act:

- (1) The limited liability company is an instrumentality of the Community, created for carrying out the authorities and responsibilities of the Community for economic development and for the benefit and advancement of Community members;
- (2) The limited liability company is entitled to all of the privileges and immunities of the Community, including but not limited to immunities from suit in federal, state and tribal courts and from federal, state, and local taxation or regulation, except as may be otherwise provided in section 24-78; and
- (3) The managers, officers, employees, and agents of the limited liability company, acting in their official capacities as managers, officers, employees, and agents, are entitled to all of the privileges and immunities that may apply to the Community's officers, employees, and agents.

(Code 1981, § 24-35; Code 2012, § 24-35; Ord. No. SRO-352-10, § 23-2-305, 10-14-2009; Ord. No. SRO-402-2012, § 24-35, 5-30-2012)

**Sec. 24-78. Waiver of sovereign immunity.**

(a) A company's immunity from suit may only be waived as follows:

- (1) The Community Council may at any time expressly waive the company's immunity from suit by written waiver, subject to the terms, conditions and limitations set forth in the written waiver.
- (2) The Community Council may adopt or approve a provision in the certificate of organization or operating agreement expressly authorizing a limited liability company, or a Community-controlled enterprise in its capacity as a member or manager of a company, to specifically grant a written limited waiver of the company's immunity from suit, subject to the terms, conditions and limitations set forth in subsection (b) of this section, or any such

terms, conditions and limitations as may be set forth in the certificate of organization or operating agreement authorizing such written waiver of the company's immunity.

(b) The following terms, conditions, and limitations apply to all waivers of sovereign immunity as permitted under subsection (a)(2) of this section:

- (1) The waiver must be in writing and must identify the party or parties for whose benefit the waiver is granted, the transaction or transactions and the claims or classes of claims for which the waiver is granted, the property of the company which may be subject to execution to satisfy any judgment which may be entered in the claim, and shall state whether the company consents to suit in court or to arbitration, mediation, or other alternative dispute resolution mechanism, or some combination thereof, and if consenting to suit in court, identify the court or courts in which suit against the company may be brought, or the requirements and procedures for initiating mediation or arbitration, if applicable.
- (2) Any waiver shall be limited to claims arising from the acts or omissions of the company, its managers, employees, or agents, and shall be construed only to affect the property and income of the company.
- (3) Nothing in this Act, and no waiver of immunity of a limited liability company pursuant to this section, shall be construed as a waiver of the sovereign immunity of the Community or any other Community-controlled enterprise, and no such waiver of a limited liability company shall create any liability on the part of the Community or any other Community-controlled enterprise for the debts and obligations of the company, or shall be construed as a consent to the encumbrance or attachment of any property of the Community or any other Community-controlled enterprise based on any action,

adjudication or other determination of liability of any nature incurred by the company.

- (4) The immunity of a company shall not extend to actions against the company brought by the Community, or by a Community-controlled enterprise in its capacity as a member or manager of a company, pursuant to this Act or the operating agreement.
- (5) Any waiver shall comply with any such additional requirements as may be set forth in the certificate of organization, the operating agreement, or a resolution, ordinance, or other proclamation duly adopted by the Community Council.  
(Code 1981, § 24-36; Code 2012, § 24-36; Ord. No. SRO-352-10, § 23-2-306, 10-14-2009; Ord. No. SRO-402-2012, § 24-36, 5-30-2012)

**Secs. 24-79—24-99. Reserved.**

#### **ARTICLE IV. MEMBERSHIP, CONTRIBUTIONS, DISTRIBUTIONS AND MANAGEMENT**

**Sec. 24-100. Membership; actions by members.**

(a) The membership interest in any limited liability company shall be held by the Community or a Community-controlled enterprise, on behalf of and for the benefit of the Community as a whole. No individual member of the Community shall have any personal ownership interest in any limited liability company, whether by virtue of such person's status as a member of the Community, as an officer of the Community, or otherwise.

(b) Any action which the Community is required or permitted to take as a member of a limited liability company with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken in accordance with a council resolution, unless a different procedure is specified in the company's certificate of organization or operating agreement.

(c) Any action which a Community-controlled enterprise is required or permitted to take as a member or manager of a limited liability company with respect to any vote, approval, consent, appointment, direction, or other matter shall be taken by the governing board of the Community-controlled enterprise in accordance with the procedures set forth in the governing documents or governing law of that enterprise, unless a different procedure is specified in the company's certificate of organization or operating agreement. (Code 1981, § 24-41; Code 2012, § 24-41; Ord. No. SRO-352-10, § 23-2-401, 10-14-2009; Ord. No. SRO-402-2012, § 24-41, 5-30-2012)

**Sec. 24-101. Contributions.**

(a) A person is not required to make a contribution to the limited liability company in order to become a member of the company.

(b) A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed. (Code 1981, § 24-42; Code 2012, § 24-42; Ord. No. SRO-352-10, § 23-2-402, 10-14-2009; Ord. No. SRO-402-2012, § 24-42, 5-30-2012)

**Sec. 24-102. Distributions.**

A limited liability company shall make distributions to the members or the persons entitled thereto as specified in the operating agreement, except that a limited liability company may retain reserves necessary to carry on the company's business in a reasonably prudent manner, subject to further limitations set forth in section 24-103 and in the operating agreement. (Code 1981, § 24-43; Code 2012, § 24-43; Ord. No. SRO-352-10, § 23-2-403, 10-14-2009; Ord. No. SRO-402-2012, § 24-43, 5-30-2012)

**Sec. 24-103. Limitations on distribution.**

(a) A limited liability company may not make a distribution if after the distribution:

- (1) The company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

- (2) The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(Code 1981, § 24-45; Code 2012, § 24-45; Ord. No. SRO-352-10, § 23-2-405, 10-14-2009; Ord. No. SRO-402-2012, § 24-45, 5-30-2012)

**Sec. 24-104. Liability for improper distributions.**

A person that receives a distribution knowing that the distribution to that person was made in violation of section 24-103 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 24-103.

(Code 1981, § 24-46; Code 2012, § 24-46; Ord. No. SRO-352-10, § 23-2-406, 10-14-2009; Ord. No. SRO-402-2012, § 24-46, 5-30-2012)

**Sec. 24-105. Management of limited liability company.**

(a) A limited liability company is a member-managed company unless the certificate of organization or operating agreement expressly provides that the company is or will be "manager-managed" or "managed by managers," or that management is "vested in managers" or includes words of similar import.

(b) In a member-managed company:

- (1) The management and conduct of the company are vested in the members.

- (2) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of the members.
- (3) The operating agreement may be amended only with the consent of the members.
- (c) In a manager-managed company:
  - (1) Except as otherwise expressly provided in this Act or the operating agreement, any matter relating to the activities of the company is decided exclusively by the managers.
  - (2) Unless otherwise provided in the operating agreement, the consent of the members is required to:
    - a. Sell, lease, exchange or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;
    - b. Approve a merger, conversion, or domestication under this Act;
    - c. Undertake any other act outside the ordinary course of the company's activities; and
    - d. Amend the operating agreement.
  - (3) A manager may be chosen at any time by the consent of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.
  - (4) A manager may be any person or group of persons, including an individual or a group of individuals acting as a management board, or a Community-controlled enterprise. A person need not be a member to be a manager.

(d) The dissolution of a limited liability company does not affect the applicability of this section.

(Code 1981, § 24-47; Code 2012, § 24-47; Ord. No. SRO-352-10, § 23-2-407, 10-14-2009; Ord. No. SRO-402-2012, § 24-47, 5-30-2012)

#### **Sec. 24-106. Indemnification and insurance.**

(a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from such status.

(Code 1981, § 24-48; Code 2012, § 24-48; Ord. No. SRO-352-10, § 23-2-408, 10-14-2009; Ord. No. SRO-402-2012, § 24-48, 5-30-2012)

#### **Sec. 24-107. Right of members to information.**

(a) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this Act.

(b) The company shall furnish to each member:

- (1) Without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this Act, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(2) On demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) A member may exercise rights under this section through an authorized officer or agent. Any restriction or condition imposed by the operating agreement or under subsection (d) of this section applies both to the authorized officer or agent and the members.

(d) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

(Code 1981, § 24-50; Code 2012, § 24-50; Ord. No. SRO-352-10, § 23-2-410, 10-14-2009; Ord. No. SRO-402-2012, § 24-50, 5-30-2012)

**Sec. 24-108. Audit.**

In addition to any member inspection rights provided in section 24-107 or the operating agreement, the Community may at any time, by resolution adopted by the Community Council, require that any limited liability company be audited by an independent auditor hired by the Community, who shall have the absolute right to require access to all of the company's records and documents necessary for such an audit.

(Code 1981, § 24-51; Code 2012, § 24-51; Ord. No. SRO-352-10, § 23-2-411, 10-14-2009; Ord. No. SRO-402-2012, § 24-51, 5-30-2012)

**Secs. 24-109—24-129. Reserved.**

**ARTICLE V. TRANSFER OF MEMBERSHIP INTEREST**

**Sec. 24-130. Transfer.**

No membership interest in any limited liability company may be alienated, through sale, trans-

fer, merger, conversion, or otherwise, except as specifically authorized by resolution approved by the council.

(Code 1981, § 24-61; Code 2012, § 24-61; Ord. No. SRO-352-10, § 23-2-501, 10-14-2009; Ord. No. SRO-402-2012, § 24-61, 5-30-2012)

**Secs. 24-131—24-158. Reserved.**

**ARTICLE VI. DISSOLUTION AND WINDING UP**

**Sec. 24-159. Events causing dissolution.**

A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

- (1) An event or circumstance that the operating agreement states causes dissolution;
- (2) The consent of the members; or
- (3) Resolution or other such act of the Community Council.

(Code 1981, § 24-71; Code 2012, § 24-71; Ord. No. SRO-352-10, § 23-2-701, 10-14-2009; Ord. No. SRO-402-2012, § 24-71, 5-30-2012)

**Sec. 24-160. Winding up.**

(a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

- (b) In winding up its activities:
  - (1) A limited liability company shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and
  - (2) A limited liability company may:
    - a. Preserve the company activities and property as a going concern for a reasonable time;
    - b. Prosecute and defend actions and proceedings, whether civil, criminal, or administrative, or settle disputes by mediation or arbitration, provided however that any such action,

proceeding or settlement must be approved in advance by the Community Council;

- c. Transfer the company's property;
- d. Adopt and publish statements of dissolution and termination; and
- e. Perform other acts necessary or appropriate to the winding up.

(Code 1981, § 24-72; Code 2012, § 24-72; Ord. No. SRO-352-10, § 23-2-702, 10-14-2009; Ord. No. SRO-402-2012, § 24-72, 5-30-2012)

**Sec. 24-161. Known claims against dissolved limited liability company.**

(a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice must:

- (1) Specify the information required to be included in a claim;
- (2) Provide a mailing address to which the claim is to be sent;
- (3) State the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
- (4) State that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met and:

- (1) The claim is not received by the specified deadline; or
- (2) In the case of a claim that is timely received but rejected by the company, the claimant does not commence a proceeding to enforce the claim within 90 days after the claimant receives the company's notice of its rejection of the claim.

(Code 1981, § 24-73; Code 2012, § 24-73; Ord. No. SRO-352-10, § 23-2-703, 10-14-2009; Ord. No. SRO-402-2012, § 24-73, 5-30-2012)

**Sec. 24-162. Other claims against dissolved limited liability company.**

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice authorized by subsection (a) of this section must:

- (1) Be published at least once in a newspaper of general circulation in the area in which the dissolved limited liability company's principal office is located;
- (2) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and
- (3) State that a claim against the company is barred unless an action to enforce the claim is commenced within the period of time set forth in the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, unless the claimant commences an action to enforce the claim against the company within the period of time set forth in the notice, the claim of each of the following claimants is barred:

- (1) A claimant that did not receive notice pursuant to section 24-161;
- (2) A claimant whose claim was timely sent to the company but not acted on; and
- (3) A claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

- (1) Against a dissolved limited liability company, to the extent of its undistributed assets; and
- (2) If assets of the company have been distributed after dissolution, against a member to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a

person's total liability for all claims under this section does not exceed the total amount of assets distributed to the person after dissolution.

(Code 1981, § 24-74; Code 2012, § 24-74; Ord. No. SRO-352-10, § 23-2-704, 10-14-2009; Ord. No. SRO-402-2012, § 24-74, 5-30-2012)

**Sec. 24-163. Limitations of claims in dissolution.**

(a) Any and all claims that may be brought against a limited liability company under sections 24-161 and 24-162 are subject to sections 24-77 and 24-78, relating to the privileges and immunities of limited liability companies, and may be further limited by any agreement, Community Council resolution or ordinance, or other governing law or provision applicable under the circumstances.

(b) Any and all claims that may be brought against a member under section 24-162(d)(2) are subject to section 24-76(c), relating to the privilege and immunities of members and managers, and may be further limited by any agreement, Community Council resolution or ordinance, or other governing law or provision applicable under the circumstances, including any basis supporting a claim of immunity from suit.

(Code 1981, § 24-75; Code 2012, § 24-75; Ord. No. SRO-352-10, § 23-2-705, 10-14-2009; Ord. No. SRO-402-2012, § 24-75, 5-30-2012)

**Sec. 24-164. Distribution of assets in winding up limited liability company's activities.**

(a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a) of this section, any surplus must be distributed to the members or other persons entitled thereto as specified in the operating agreement.

(Code 1981, § 24-78; Code 2012, § 24-78; Ord. No. SRO-352-10, § 23-2-708, 10-14-2009; Ord. No. SRO-402-2012, § 24-78, 5-30-2012)

**Secs. 24-165—24-181. Reserved.**

**ARTICLE VII. MERGER, CONVERSION, AND DOMESTICATION**

**Sec. 24-182. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Foreign limited liability company* means an unincorporated entity formed under the law of a jurisdiction other than the Community and denominated by that law as a limited liability company.

*Governing statute* means the statute that governs an organization's internal affairs.

*Organization* means a partnership, limited liability company, business trust, corporation, or any other legal entity or unincorporated association or enterprise.

*Organizational documents* means the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it, including a certificate or articles of organization or incorporation, bylaws, partnership agreement, operating agreement, declaration of trust, or other such documents.

*Surviving organization* means an organization into which one or more other organizations are merged or converted pursuant to this article, regardless whether, in the case of a merger, the organization preexisted the merger or was created by the merger.

(Code 1981, § 24-101; Code 2012, § 24-81; Ord. No. SRO-352-10, § 23-2-1001, 10-14-2009; Ord. No. SRO-402-2012, § 24-81, 5-30-2012)

**Sec. 24-183. Merger.**

The Community Council may cause or authorize a limited liability company to merge with any organization.

(Code 1981, § 24-102; Code 2012, § 24-82; Ord. No. SRO-352-10, § 23-2-1002, 10-14-2009; Ord. No. SRO-402-2012, § 24-82, 5-30-2012)

**Sec. 24-184. Plan of merger.**

The Community Council may adopt or approve a plan of merger setting forth, adopting, or approving the following:

- (1) The name and form of each of the merging organizations;
  - (2) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
  - (3) The terms and conditions of the merger, including the manner and basis for converting the interests in each merging organization into any combination of money, interests in the surviving organization, and other consideration;
  - (4) If the surviving organization is to be created by the merger, the surviving organization's organizational documents; and
  - (5) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.
- (Code 1981, § 24-103; Code 2012, § 24-83; Ord. No. SRO-352-10, § 23-2-1003, 10-14-2009; Ord. No. SRO-402-2012, § 24-83, 5-30-2012)

**Sec. 24-185. Effect of merger.**

Upon a merger:

- (1) The surviving organization continues or comes into existence;
- (2) Each organization that merges into the surviving organization ceases to exist as a separate entity;
- (3) All property owned by each merging organization that ceases to exist vests in the surviving organization;
- (4) All debts, obligations, or other liabilities of each merging organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

- (5) An action or proceeding pending by or against any merging organization that ceases to exist may be continued as if the merger had not occurred;
- (6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each merging organization that ceases to exist vest in the surviving organization;
- (7) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and
- (8) Except as otherwise agreed, if a merging limited liability company ceases to exist, the merger does not dissolve such limited liability company for purposes of this Act. (Code 1981, § 24-105; Code 2012, § 24-85; Ord. No. SRO-352-10, § 23-2-1005, 10-14-2009; Ord. No. SRO-402-2012, § 24-85, 5-30-2012)

**Sec. 24-186. Conversion.**

The Community Council may cause or authorize an organization other than a limited liability company or a foreign limited liability company to convert to a limited liability company, and may cause or authorize a limited liability company to convert to an organization other than a foreign limited liability company. (Code 1981, § 24-106; Code 2012, § 24-86; Ord. No. SRO-352-10, § 23-2-1006, 10-14-2009; Ord. No. SRO-402-2012, § 24-86, 5-30-2012)

**Sec. 24-187. Plan of conversion.**

The council may adopt or approve a plan of conversion setting forth, adopting, or approving the following:

- (1) The name and form of the organization before conversion;
- (2) The name and form of the organization after conversion;
- (3) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) The organizational documents of the converted organization.  
 (Code 1981, § 24-107; Code 2012, § 24-87; Ord. No. SRO-352-10, § 23-2-1007, 10-14-2009; Ord. No. SRO-402-2012, § 24-87, 5-30-2012)

**Sec. 24-188. Effect of conversion.**

Upon a conversion the organization that has been converted is for all purposes the same entity that existed before the conversion:

- (1) All property owned by the converting organization remains vested in the converted organization;
- (2) All debts, obligations, or other liabilities of the converting organization continue as debts, obligations or other liabilities of the converted organization;
- (3) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
- (4) Except as prohibited by law other than this Act, all of the rights, privileges, immunities, powers and purposes of the converting organization remain vested in the converted organization;
- (5) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
- (6) Except as otherwise agreed, the conversion does not dissolve a converting limited liability company for purposes of this Act.  
 (Code 1981, § 24-108; Code 2012, § 24-88; Ord. No. SRO-352-10, § 23-2-1008, 10-14-2009; Ord. No. SRO-402-2012, § 24-88, 5-30-2012)

**Sec. 24-189. Domestication of foreign limited liability company.**

The Community Council may cause or authorize a foreign limited liability company to become a limited liability company.  
 (Code 1981, § 24-109; Code 2012, § 24-89; Ord. No. SRO-352-10, § 23-2-1009, 10-14-2009; Ord. No. SRO-402-2012, § 24-89, 5-30-2012)

**Sec. 24-190. Plan of domestication.**

The council may adopt or approve a plan of domestication setting forth, adopting, or approving the following:

- (1) The name of the domesticating company before domestication and the jurisdiction of its governing statute;
- (2) The name of the domesticated company after domestication;
- (3) The terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and
- (4) The organizational documents of the domesticated company.

(Code 1981, § 24-110; Code 2012, § 24-90; Ord. No. SRO-352-10, § 23-2-1010, 10-14-2009; Ord. No. SRO-402-2012, § 24-90, 5-30-2012)

**Sec. 24-191. Effect of domestication.**

Upon a domestication:

- (1) The domesticated company is for all purposes the company that existed before the domestication;
- (2) All property owned by the domesticating company remains vested in the domesticated company;
- (3) All debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;
- (4) An action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;
- (5) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company; and

- (6) Except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect.

(Code 1981, § 24-112; Code 2012, § 24-92; Ord. No. SRO-352-10, § 23-2-1012, 10-14-2009; Ord. No. SRO-402-2012, § 24-92, 5-30-2012)

**Sec. 24-192. Status of limited liability companies upon merger, conversion, and domestication.**

Any limited liability company that is created or that exists as a result of or following a merger, conversion, or domestication pursuant to this article, is subject to the provisions of this Act, including but not limited to section 24-76, relating to the liability of members and managers, and sections 24-77 and 24-78, relating to the company's privileges and immunities.

(Code 1981, § 24-113; Code 2012, § 24-93; Ord. No. SRO-352-10, § 23-2-1013, 10-14-2009; Ord. No. SRO-402-2012, § 24-93, 5-30-2012)

**Sec. 24-193. Domestication in other jurisdiction.**

The Community Council may authorize a limited liability company to become a foreign limited liability company, provided the applicable governing statute authorizes domestication. The council may adopt or approve a plan of domestication, including such terms and conditions as may be necessary or appropriate to give effect to such domestication.

(Code 1981, § 24-114; Code 2012, § 24-94; Ord. No. SRO-352-10, § 23-2-1014, 10-14-2009; Ord. No. SRO-402-2012, § 24-94, 5-30-2012)