

MUSCOGEE (CREEK) NATION CODE ANNOTATED

TITLE 1. AGRICULTURE CVPOFV-VPUEKV MVTOTKETV

Chapter	Section
1. FARM OPERATIONS.....	1-101
2. FOUR-H PROGRAM BOARD.....	2-101

CHAPTER 1. FARM OPERATIONS

Section
1-101. Authorization of expenditures and sales.

Historical and Statutory Notes

NCA-96-41, §§ 101, 102, provide:
“Section 101. Findings: The National Council finds that:

“A. The bill repealing the Farm Authority Board (NCA 96-03) made no provisions for expenditures for labor and expenses to care for cattle and equipment and to pay for utilities associated with the Farm.

“B. The bank account of the Farm Authority Board was closed and the ending balance was deposited in the MCN Treasury.

“C. The Principal Chief requires authorization from the National Council to expend funds

from the Farm Account for reasonable and necessary costs associated with maintaining the farm cattle and equipment, utilities and labor.

“D. A need exists to establish a revolving Farm fund account within the Treasury for income derived from the sale of cattle, crops and equipment.

“E. The farm must be self-sufficient and not require appropriations.

“Section 102. Purpose:

“To allow the Principal Chief to expend funds from the Farm Accounts for Farm Expenses.”

§ 1-101. Authorization of expenditures and sales

A. The Principal Chief is hereby authorized to expend funds for reasonable and necessary costs associated with maintaining the farm’s cattle, crops and equipment and for utilities, labor and related services; provided that if the National Council has approved a business plan for the Tribal Trade and Commerce Authority to manage agricultural projects on the Nation’s property in accordance with Title 17, § 2-106.D, the Tribal Trade and Commerce Authority shall have all authority delegated to the Principal Chief. The total amount authorized for expenditures shall not exceed the amount remaining in the Farm Account; provided that if the Tribal Trade and Commerce Authority has assumed all agricultural duties, then it shall provide for expenditures through Tribal Trade and Commerce Authority funds.

B. The Principal Chief or Tribal Trade and Commerce Authority, if assigned agricultural duties by the National Council, may authorize the sale of cattle, crops and equipment as required for prudent farm operations.

Title 1, § 1–101

AGRICULTURE

C. The farm shall consist of all property held in trust for the benefit of the Muscogee (Creek) Nation by the United States of America or land held in fee by the Muscogee (Creek) Nation that has been determined by the Principal Chief, through consultation with Realty and the Tribal Planner, as property which is best utilized for agricultural purposes and is best managed by the Nation; provided nothing herein shall interfere with the Principal Chief's authorization to enter into agricultural leases in accordance with Title 28, § 3–101, if the Principal Chief determines it would be more beneficial for the Nation to enter into a third party lease. A list of said property shall be presented to the Tribal Affairs Committee by October 1 of each year and supplemented each time new property is removed or added. The inclusion of property as the farm shall not interfere with any valid lease currently existing.

D. The Nation and its entities shall comply with all applicable federal laws and regulations regarding the use of land in trust, including permits for forest management and grazing permits.

[NCA 96–41, § 103, approved July 5, 1996; amended by NCA 01–66, § 1, approved July 10, 2001; NCA 04–176, § 1, approved Nov. 29, 2004.]

Cross References

Farm Account, see Title 37, § 2–210.

Surplus Tribal property, disposal, see Title 32, § 3–101 et seq.

Library References

Indians ⇄ 152, 210, 216.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

CHAPTER 2. FOUR-H PROGRAM BOARD

Section

2-101. Creation of Board.

2-102. Powers and duties of Board.

§ 2-101. Creation of Board

There is hereby created a Board for the Muscogee (Creek) Nation Four-H Program whose composition shall consist of volunteers from the Indian community. The volunteers shall elect among themselves officers consisting of a President, Vice-President and Secretary/Treasurer.

[NCA 93-137, § 103, approved Nov. 4, 1993.]

§ 2-102. Powers and duties of Board

The 4-H Program Board shall have the following powers and duties:

A. Provide advice, direction and support to the Muscogee (Creek) Nation 4-H Program.

B. Authorize expenditures from the Muscogee (Creek) Nation 4-H Program Account.

C. File a quarterly report with the Muscogee (Creek) National Council.

D. The 4-H Program Board will promulgate rules and regulations to carry out the purposes of this chapter.

[NCA 93-137, § 102, approved Nov. 4, 1993.]

**TITLE 2. ATTORNEYS
AND TRIBAL BAR
VHAKV HAYVLKE HVTVM ETVLWV
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**CHAPTER 1. LEGAL SERVICES AND
ATTORNEY CONTRACTS**

Section
1-101. Powers of Principal Chief.
1-102. Approval by National Council.
1-103. Prohibited representation.

Cross References

Muscogee (Creek) Nation Legal Services Clinic, see Title 35, § 10-101 et seq.

§ 1-101. Powers of Principal Chief

The Principal Chief is authorized to prepare a legal services plan and negotiate attorney contracts as provided by the terms of this chapter.

[NCA 81-19, § 101, approved Feb. 2, 1981.]

Library References

Indians ↻501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-102. Approval by National Council

The contracts shall be subject to the approval or disapproval of the National Council prior to being effective.

[NCA 81-19, § 102, approved Feb. 2, 1981.]

§ 1-103. Prohibited representation

The contracts shall prohibit the attorney from representing any officer or institution of this Tribal Government against any other officer or institution of this Tribal Government.

[NCA 81-19, § 103, approved Feb. 2, 1981.]

TITLE 3. CORPORATIONS

ETELIKETV

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REPEAL

NCA 07-112 repealed former Title 3, Corporations, Chapters 1 and 2, sections 1-100 through 2-102 and adopted revised Title 3, Corporations and Business Entities, codified in Chapters 1 through 4, which was subsequently recodified as Title 3, Chapters 1 and 2 and Title 3A, Chapters 1 and 2.

Historical and Statutory Notes

NCA 07-112, § 1, provides:

“Findings: The National Council finds that:

“A. Article VI, Section 7 of the Muscogee (Creek) Nation Constitution vests the National Council with the power to:

“1) Promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of the citizens of the Muscogee (Creek) Nation.

“B. In furtherance of its Constitutional duty to promote the public welfare and economic advancement of the Mvskoke people, the National Council may exercise its authority to regulate business associations which engage in commercial activities within or with the Muscogee (Creek) Nation.

“C. It is in the best economic interest of the Muscogee (Creek) Nation to prepare for the future of the Nation by creating laws to establish rules, regulations and procedures governing

these business entities which form and/or do business within the Muscogee (Creek) Nation.

“D. The enactment of these acts is an exercise of Tribal sovereignty and will further advance the aims of Tribal self-determination by providing statutory authority for the regulation of common business entities doing business within and with the Muscogee (Creek) Nation.”

Former sections:

Former § 1-101, related to application fee and franchise tax of profit making corporate charters, repealed by NCA 07-112, § 7, was derived from NCA 92-112, § 106.

Former § 2-101, related to the jurisdiction of non-profit corporations, repealed by NCA 07-112, § 7, was derived from NCA 92-191, § 103, subsec. A.

Former § 2-102, related to application fee and franchise tax of non-profit making corporate charters, repealed by NCA 07-112, § 7, was derived from NCA 92-191, § 105.

Cross References

Office of secretary of nation, duties and responsibilities, see Title 16, § 8-103.

CHAPTER 1. MUSCOGEE (CREEK) NATION GENERAL CORPORATION ACT

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CORPORATIONS

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§ 1-1001. Short title

Sections 1-1001 through 1-1143 of this Title shall be known and may be cited as the Muscogee (Creek) Nation General Corporation Act. Section captions are part of the Muscogee (Creek) Nation General Corporation Act. [Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Oklahoma General Business Corporation Act, short title, see 18 Okl.St. Ann. § 1001.

§ 1-1002. Scope of Act

A. The provisions of the Muscogee (Creek) Nation General Corporation Act shall be applicable to every corporation, whether profit or not for profit, stock or nonstock, existing as of the effective date of this act or thereafter formed or qualified to transact business in this Nation, and to all securities thereof, except to the extent that:

1. any such corporation is expressly excluded from the operation of the Oklahoma General Corporation Act or portions thereof; or
2. special provisions concerning any such corporation conflict with the provisions of the Muscogee (Creek) Nation General Corporation Act, in which case such special provisions shall govern.

B. Any conflicts with the provisions of the Muscogee (Creek) Nation General Corporation Act and any tax or unclaimed property laws of this Nation shall be governed by the tax or unclaimed property provisions, including those provisions relating to personal liability of corporate officers and directors.

C. The provisions of the Muscogee (Creek) Nation General Corporation Act concerning qualification of foreign corporations and providing requirements and duties relating to such corporations shall not apply to insurance companies subject to the jurisdiction of the Insurance Commissioner of the State of Oklahoma or to foreign transportation companies subject to the jurisdiction of the Corporation Commission of the State of Oklahoma, existing as of the effective date of this act or thereafter qualified to transact business in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Scope of act, see 18 Okl.St. Ann. § 1002.

§ 1-1003. Reserved

§ 1-1004. Reserved power of Nation to amend or repeal; Muscogee (Creek) Nation General Corporation Act part of corporation's charter or certificate of incorporation

The Muscogee (Creek) Nation General Corporation Act may be amended or repealed at the pleasure of the Legislature, but any amendment or repeal shall not take away or impair any remedy available pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act against any corporation or its officers for any liability which shall have been previously incurred. The Muscogee (Creek) Nation General Corporation Act and any amendments thereto shall be a part of the charter or certificate of incorporation of every corporation except so far as the same are inapplicable and inappropriate to the objects of the corporation. The provisions of this section shall not affect or impair as to any corporation any rights protected or guaranteed by the Constitution of this Nation or of the United States.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Reserved power of Oklahoma to amend or repeal, Oklahoma General Corporation Act part of corporation's charter or certificate of incorporation, see 18 Okl.St. Ann. § 1004.

Library References

Corporations ⌘39.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 77 to 88.

§ 1-1005. Incorporators; how corporation formed; purposes

A. Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile or state of incorporation, may incorporate or organize a corporation pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act by filing with the Secretary of the Nation a certificate of incorporation which shall be executed, acknowledged and filed in accordance with the provisions of this act; provided, however, at least three (3) persons, partnerships, associations, or corporations, or any combination thereof, shall be required to incorporate as a not for profit corporation pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act.

B. A corporation may be incorporated or organized pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this Nation.

C. Corporations for constructing, maintaining and operating public utilities, whether in or outside of this Nation, may be organized pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act, but corporations for constructing, maintaining and operating public utilities within this Nation shall be subject to, in addition to the provisions of the Muscogee (Creek) Nation General Corporation Act, the special provisions and require-

ments of Title 17 of the Muscogee (Creek) Nation Statutes applicable to such corporations.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Incorporators, how corporation formed, purposes, see 18 Okl.St. Ann. § 1005.

Library References

Corporations \S 14, 15, 17.

Westlaw Topic No. 101.

C.J.S. Corporations $\S\S$ 47 to 49, 51, 53 to 56.

§ 1-1006. Certificate of incorporation; contents

A. The certificate of incorporation shall set forth:

1. The name of the corporation which shall contain one of the words “association”, “company”, “corporation”, “club”, “foundation”, “fund”, “incorporated”, “institute”, “society”, “union”, “syndicate”, or “limited” or abbreviations thereof, with or without punctuation, or words or abbreviations thereof, with or without punctuation, of like import of foreign countries or jurisdictions; provided that such abbreviations are written in Roman characters or letters, and which shall be such as to distinguish it upon the records in the Office of the Secretary of the Nation from:

a. names of other corporations organized under the laws of this Nation then existing or which existed at any time during the preceding three (3) years,

b. names of foreign corporations registered in accordance with the laws of this Nation then existing or which existed at any time during the preceding three (3) years,

c. names of then existing limited partnerships whether organized pursuant to the laws of this Nation or registered as foreign limited partnerships in this Nation,

d. trade names or fictitious names filed with the Secretary of the Nation,

e. corporate, limited liability company or limited partnership names reserved with the Secretary of the Nation, or

f. names of then existing limited liability companies whether organized pursuant to the laws of this Nation or registered as foreign limited liability companies in this Nation;

2. The address, including the street, number, city and county, of the corporation’s registered office in this Nation, and the name of the corporation’s registered agent at such address;

3. The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the Muscogee (Creek) Nation General Corporation Act, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any;

4. If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class, and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class. The provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation;

5. The name and mailing address of the incorporator or incorporators;

6. If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

7. If the corporation is not for profit:

- a. that the corporation does not afford pecuniary gain, incidentally or otherwise, to its members as such,
- b. the name and mailing address of each trustee or director,
- c. the number of trustees or directors to be elected at the first meeting, and
- d. in the event the corporation is a church, the street address of the location of the church.

The restriction on affording pecuniary gain to members shall not prevent a not-for-profit corporation operating as a cooperative from rebating excess revenues to patrons who may also be members.

B. In addition to the matters required to be set forth in the certificate of incorporation pursuant to the provisions of subsection A of this section, the certificate of incorporation may also contain any or all of the following matters:

1. Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the shareholders, or any class of the shareholders, or the members of a nonstock corporation, if such provisions are not contrary to the laws of this state. Any provision which is required or permitted by any provision of the Muscogee (Creek) Nation General Corporation Act to be stated in the bylaws may instead be stated in the certificate of incorporation;

2. The following provisions, in substantially the following form: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its shareholders or any class of them, any court of equitable jurisdiction within the Muscogee (Creek) Nation, on the application in a summary way of this

corporation or of any creditor or shareholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 1106 of this Title or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 1100 of this Title, may order a meeting of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing three-fourths (3/4) in value of the creditors or class of creditors, and/or of the shareholders or class of shareholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, and/or on all the shareholders or class of shareholders, of this corporation, as the case may be, and also on this corporation.;

3. Such provisions as may be desired granting to the holders of the stock of the corporation, or the holders of any class or series of a class thereof, the preemptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes or series thereof, or to any securities of the corporation convertible into such stock. No shareholder shall have any preemptive right to subscribe to an additional issue of stock or to any security convertible into such stock unless, and except to the extent that, such right is expressly granted to him in the certificate of incorporation. Preemptive rights, if granted, shall not extend to fractional shares;

4. Provisions requiring, for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by the provisions of this act;

5. A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

6. A provision imposing personal liability for the debts of the corporation on its shareholders or members to a specified extent and upon specified conditions; otherwise, the shareholders or members of a corporation shall not be personally liable for the payment of the corporation's debts, except as they may be liable by reason of their own conduct or acts;

7. A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

a. for any breach of the director's duty of loyalty to the corporation or its shareholders,

b. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,

c. under Section 1-1053 of this Title, or

d. for any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

C. It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by the provisions of this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Change of location of registered office, change of registered agent, see Title 3, § 1–1023.
Compromise or arrangement between corporation and creditors or shareholders, see Title 3, § 1–1117.

Oklahoma Statutes Annotated

Amendment of certificate,

After receipt of payment for stock, nonstock corporations, see 18 Okl.St. Ann. § 1077.

Before receipt of payment for stock, see 18 Okl.St. Ann. § 1076.

Certificate of merger, domestic corporations, see 18 Okl.St. Ann. § 1081 et seq.

Certificate of incorporation, contents, see 18 Okl.St. Ann. § 1006.

Name change, merger of parent and subsidiaries, see 18 Okl.St. Ann. § 1083.

Registered agent,

Appointment of successor, see 18 Okl.St. Ann. § 1025.

Defined, see 18 Okl.St. Ann. § 1022.

Registered office, see 18 Okl.St. Ann. § 1021.

Renewal, revival, extension and restoration of certificate, see 18 Okl.St. Ann. § 1120.

Restatement of certificate, see 18 Okl.St. Ann. § 1080.

Library References

Corporations ⇌18.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56.

§ 1–1007. Execution, acknowledgment, filing and effective date of original certificate of incorporation and other instruments; exception

A. Whenever any provision of the Muscogee (Creek) Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Muscogee (Creek) Nation General Corporation Act, such instrument shall be executed as follows:

1. The certificate of incorporation and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the certificate of incorporation, shall be executed by the incorporator or incorporators;

2. All other instruments shall be executed:

a. by the chair or vice-chair of the board of directors, or by the president, or by a vice-president, and attested by the secretary or an assistant secretary; or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice-president and by the secretary or assistant secretary of a corporation;

b. if it appears from the instrument that there are no such officers, then by a majority of the directors or by those directors designated by the board;

c. if it appears from the instrument that there are no such officers or directors, then by the holders of record, or those designated by the holders of record, of a majority of all outstanding shares of stock; or

d. by the holders of record of all outstanding shares of stock.

B. Whenever any provision of the Muscogee (Creek) Nation General Corporation Act requires any instrument to be acknowledged, that requirement is satisfied by either:

1. The formal acknowledgment by the person or one of the persons signing the instrument that it is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true. The acknowledgment shall be made before a person who is authorized by the law of the place of execution to take acknowledgments of deeds and who shall affix a seal of office, if any, it to the instrument; or

2. The signature, without more, of the person or persons signing the instrument, in which case the signature or signatures shall constitute the affirmation or acknowledgment of the signatory, under penalty of perjury, that the instrument is his or her act and deed or the act and deed of the corporation, as the case may be, and that the facts stated therein are true.

C. Whenever any provision of the Muscogee (Creek) Nation General Corporation Act requires any instrument to be filed in accordance with the provisions of this section or with the provisions of the Muscogee (Creek) Nation General Corporation Act, the requirement means that:

1. Two signed instruments, one of which may be a conformed copy, shall be delivered to the Office of the Secretary of the Nation;

2. All delinquent franchise taxes authorized by law to be collected by the Muscogee (Creek) Nation shall be tendered to the Muscogee (Creek) Nation Tax Commission;

3. All fees authorized by law to be collected by the Secretary of the Nation in connection with the filing of the instrument shall be tendered to the Secretary of the Nation; and

4. Upon delivery of the instrument, and upon tender of the required taxes and fees, the Secretary of the Nation shall certify that the instrument has been filed in the Secretary of State by endorsing upon the signed instrument the word "Filed", and the date of its filing. This endorsement is the "filing date" of the instrument, and is conclusive of the date of its filing in the absence of actual fraud. Upon request, the Secretary of the Nation shall also endorse the hour that the instrument was filed, which endorsement shall be conclusive of the hour of its filing in the absence of actual fraud. The Secretary of the Nation shall thereupon file and index the endorsed instrument.

D. Any instrument filed in accordance with the provisions of subsection C of this section shall be effective upon its filing date. Any instrument may provide that it is not to become effective until a specified time subsequent to the time it is filed, but that date shall not be later than a time on the ninetieth day after the date of its filing. If any instrument filed in accordance with subsection C of this section provides for a future effective date or time and if the transaction is terminated or its terms are amended to change the future effective date or time

prior to the future effective date or time, the instrument shall be terminated or amended by the filing, prior to the future effective date or time set forth in the instrument, of a certificate of termination or amendment of the original instrument, executed in accordance with subsection A of this section, which shall identify the instrument which has been terminated or amended and shall state that the instrument has been terminated or the manner in which it has been amended.

E. If another section of the Muscogee (Creek) Nation General Corporation Act specifically prescribes a manner of executing, acknowledging or filing a specified instrument or a time when an instrument shall become effective which differs from the corresponding provisions of this section, then the provisions of the other section shall govern.

F. Whenever any instrument authorized to be filed with the Secretary of the Nation under any provision of Title 3 of the Muscogee (Creek) Nation Statutes has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, the instrument may be corrected by filing with the Secretary of the Nation certificate of correction of the instrument which shall be executed, acknowledged and filed in accordance with the provisions of this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the corrected instrument shall be effective from the filing date of the corrected instrument.

G. If any instrument authorized to be filed with the Secretary of the Nation pursuant to any provision of this title is filed inaccurately or defectively, or is erroneously executed, sealed, or acknowledged, or is otherwise defective in any respect, the Secretary of the Nation shall have no liability to any person for the preclearance for filing, the acceptance for filing, or the filing and indexing of such instrument.

H. When authorized by the rules of the Secretary of the Nation, any signature on any instrument authorized to be filed with the Secretary of the Nation under any provision of this title may be a facsimile signature, a conformed signature, or an electronically transmitted signature.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger or consolidation, see Title 3, § 1-1131.
Amendment of certificate of incorporation after receipt of payment for stock, see Title 3, § 1-1077.
Change of location of registered office, change of registered agent, see Title 3, § 1-1023.
Classes and series of stock, shareholder rights, see Title 3, § 1-1032.
Conversion of business entity to corporation, see Title 3, § 1-1090.4.
Merger or consolidation of domestic corporations, see Title 3, § 1-1081.
Retirement of stock, see Title 3, § 1-1078.

Oklahoma Statutes Annotated

Bankruptcy proceedings under federal statute; filing of instruments, see 18 Okl.St. Ann. § 1118.

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Title 3, § 1–1008

Board resolutions, stock rights and restrictions, see 18 Okl.St. Ann. § 1032.
Certificate identifying retired stock, see 18 Okl.St. Ann. § 1078.
Certificate of incorporation,
 After stock payments, nonstock corporations, see 18 Okl.St. Ann. § 1077.
 Before stock payments, see 18 Okl.St. Ann. § 1076.
 Extension, restoration, renewal or revival, see 18 Okl.St. Ann. § 1120.
 Restated, see 18 Okl.St. Ann. § 1080.
Dissolution,
 Before beginning business, certificate, see 18 Okl.St. Ann. § 1095.
 Certificate, see 18 Okl.St. Ann. § 1096.
Execution, acknowledgment, filing and effective date of original certificate of incorporation and other instruments, exceptions, see 18 Okl.St. Ann. § 1007.
Filing fees, see 18 Okl.St. Ann. § 1142.
Foreign corporations,
 Qualification to do business, see 18 Okl.St. Ann. § 1130.
 Registered agent, substitution, see 18 Okl.St. Ann. § 1133.
Joint venture corporation, dissolution, petition and certificate, see 18 Okl.St. Ann. § 1094.
Merger or consolidation,
 Agreement, see 18 Okl.St. Ann. §§ 1081, 1084.
 Certificate, domestic and foreign corporations, see 18 Okl.St. Ann. § 1081 et seq.
Officers, titles and duties, see 18 Okl.St. Ann. § 1028.
Registered agent, appointment of successor, see 18 Okl.St. Ann. § 1025.
Trade names,
 Transfer, filing with Secretary of State, see 18 Okl.St. Ann. § 1140.2.
 Withdrawal, filing with Secretary of State, see 18 Okl.St. Ann. § 1140.1.
Voluntary dissolution, revocation, see 18 Okl.St. Ann. § 1119.

Library References

Corporations ☞ 18, 21.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 47 to 49, 56 to 57.

§ 1–1008. Certificate of incorporation; definition

The term “certificate of incorporation”, as used in the Muscogee (Creek) Nation General Corporation Act, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, howsoever designated, which are filed pursuant to the provisions of this act, or any other section of Title 3 of the Muscogee (Creek) Nation Statutes, and which have the effect of amending or supplementing in some respect a corporation’s original certificate of incorporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Restated certificate of incorporation, see Title 3, § 1–1080.

Oklahoma Statutes Annotated

Certificate of incorporation, definition, see 18 Okl.St. Ann. § 1008.
Restated certificate of incorporation, see 18 Okl.St. Ann. § 1080.

Library References

Corporations ☞ 18.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 47 to 49, 56.

§ 1–1009. Certificate of incorporation and other certificates; evidence

A copy of a certificate of incorporation, or of a restated certificate of incorporation, or of any other certificate which has been filed in the Office of the Secretary of the Nation as required by any provision of Title 3 of the Muscogee (Creek) Nation Statutes, when duly certified by the Secretary of the Nation, shall be received in all courts, public offices, and official bodies as prima facie evidence of:

1. Due execution, acknowledgment and filing of the instrument;
2. Observance and performance of all acts and conditions necessary to have been observed and performed precedent to the instrument becoming effective; and
3. Of any other facts required or permitted by law to be stated in the instrument.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Certificate of incorporation and other certificates, evidence, see 18 Okl.St. Ann. § 1009.

Library References

Corporations ⇨32(1), 32(7).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 69 to 71.

§ 1–1010. Commencement of corporate existence

Upon the filing with the Secretary of the Nation of the certificate of incorporation, executed and acknowledged in accordance with the provisions of this act, the incorporator or incorporators who signed the certificate, and his or their successors and assigns, from the date of such filing, shall be and constitute a body corporate by the name set forth in the certificate, subject to the provisions of this act and subject to dissolution or other termination of its existence as provided for in the Muscogee (Creek) Nation General Corporation Act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Commencement of corporate existence, see 18 Okl.St. Ann. § 1010.

Library References

Corporations ⇨22, 31, 35. C.J.S. Corporations §§ 47 to 49, 57, 59, 63 to
Westlaw Topic No. 101. 64, 66.

§ 1–1011. Powers of incorporators

If the persons who are to serve as directors until the first annual meeting of shareholders have not been named in the certificate of incorporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to

perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of directors.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers of incorporators, see 18 Okl.St. Ann. § 1011.

Library References

Corporations ☞30.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 99 to 131.

§ 1-1012. Organization meeting of incorporators or directors named in certificate of incorporation

A. After the filing of the certificate of incorporation, an organization meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the certificate of incorporation, shall be held either within or without this state at the call of a majority of the incorporators or directors, as the case may be, for the purposes of adopting bylaws, electing directors if the meeting is of the incorporators, to serve or hold office until the first annual meeting of shareholders or until their successors are elected and qualify, electing officers if the meeting is of the directors, doing any other or further acts to perfect the organization of the corporation, and transacting such other business as may come before the meeting.

B. The persons calling the meeting shall give to each other incorporator or director, as the case may be, at least two (2) days' written notice thereof by any usual means of communication, which notice shall state the time, place and purposes of the meeting as fixed by the persons calling it. Notice of the meeting need not be given to anyone who attends the meeting or who signs a waiver of notice either before or after the meeting.

C. Any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than one, or the sole incorporator or director where there is only one, signs an instrument which states the action so taken.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Organization meeting of incorporators or directors named in certificate of incorporation, see 18 Okl.St. Ann. § 1012.

Library References

Corporations ☞24, 30, 298.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 47 to 49, 52, 99 to 131, 544, 546 to 551.

§ 1-1013. Bylaws

A. The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors if they were named in the certificate of incorporation, or, before a corporation has received any

payment for any of its stock, by its board of directors. After a corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the shareholders entitled to vote, or, in the case of a nonstock corporation, in its members entitled to vote; provided, however, any corporation, in its certificate of incorporation, may confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body by whatever name designated. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the shareholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.

B. The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its shareholders, directors, officers or employees.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Bylaws, see 18 Okl.St. Ann. § 1013.

Library References

Corporations ⌘53.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 154 to 171.

§ 1–1014. Emergency bylaws and other powers in emergency

A. The board of directors of any corporation may adopt emergency bylaws which, notwithstanding any different provision in the Muscogee (Creek) Nation General Corporation Act, in the certificate of incorporation, or bylaws, shall be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its shareholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of directors or a standing committee thereof cannot readily be convened for action. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

1. A meeting of the board of directors or a committee thereof may be called by an officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

2. The director or directors in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

3. The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time, not longer than reasonably necessary after the termination of the emergency, as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent

required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

B. The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

C. The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so.

D. No officer, director or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.

E. To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency and upon its termination the emergency bylaws shall cease to be operative.

F. Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during such an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

G. To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

H. Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of this act which have been or may be adopted by corporations created pursuant to the provisions of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Emergency bylaws and other powers in emergency, see 18 Okl.St. Ann. § 1014.

Library References

Corporations ⌘53.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 154 to 171.

§ 1-1014.1. Interpretation and enforcement of the certificate of incorporation and bylaws

Any shareholder, member or director may bring an action to interpret, apply or enforce the provisions of the certificate of incorporation or the bylaws of a domestic corporation in the district court.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Interpretation and enforcement of the certificate of incorporation and bylaws, see 18 Okl.St. Ann. § 1014.1.

Title 3, § 1–1014.1

CORPORATIONS

Library References

Corporations ☞18, 53.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56, 154 to
171.

§ 1–1015. General powers

In addition to the powers enumerated in this act, every corporation, its officers, directors and shareholders shall possess and may exercise all the powers and privileges granted by the provisions of the Muscogee (Creek) Nation General Corporation Act or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

General powers, see 18 Okl.St. Ann. § 1015.

Library References

Corporations ☞370 to 386.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 651 to 676, 692.

§ 1–1016. Specific powers

Every corporation created pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act shall have power to:

1. Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;
2. Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitratative or other proceeding, in its corporate name;
3. Have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
4. Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;
5. Appoint or elect such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;
6. Adopt, amend and repeal bylaws;
7. Wind up and dissolve itself in the manner provided for in this act;
8. Conduct its business, carry on its operations, and have offices and exercise its powers within or without this Nation;

9. Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

10. Be an incorporator, promoter or manager of other corporations of any type or kind;

11. Participate with others in any corporation, partnership, limited partnership, joint venture or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others;

12. Transact any lawful business which the corporation's board of directors shall find to be in aid of governmental authority;

13. Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of:

a. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation,

b. a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or

c. a corporation, all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and to make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

14. Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested;

15. Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers, and employees, and for any or all of the directors, officers, and employees of its subsidiaries;

16. Provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring at his death shares of its stock owned by such shareholder; and

17. Renounce in its certificate of incorporation or by action of its board of directors any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified

classes or categories of business opportunities that are presented to the corporation or one or more of its officers, directors or shareholders.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Abuse, misuse, nonuse of powers, revocation or forfeiture of charter, see 18 Okl.St. Ann. § 1104.
Mortgage or pledge of assets, see 18 Okl.St. Ann. § 1093.
Sale, lease or exchange of assets, see 18 Okl.St. Ann. § 1092.
Specific powers, see 18 Okl.St. Ann. § 1016.

Library References

Corporations ⇌370 to 386.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 651 to 676, 692.

§ 1–1017. Powers respecting securities of other corporations or entities

Any corporation organized under the laws of this Nation may guarantee, purchase, take, receive, subscribe for or otherwise acquire; own, hold, use or otherwise employ; sell, lease, exchange, transfer, or otherwise dispose of; mortgage, lend, pledge or otherwise deal in and with, bonds and other obligations of, or shares or other securities or interests in, or issued by, any other domestic or foreign corporation, partnership, association, or individual, or by any government or agency or instrumentality thereof. A corporation while the owner of any such securities may exercise all the rights, powers and privileges of ownership, including the right to vote.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers respecting securities of other corporations or entities, see 18 Okl.St. Ann. § 1017.

Library References

Corporations ⇌377.
Westlaw Topic No. 101.
C.J.S. Corporations § 658.

§ 1–1018. Lack of corporate capacity or power, effect; *ultra vires*

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

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, may set aside and enjoin the performance of such contract, and in so doing, may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of

them which may result from the action of the court in setting aside and enjoining the performance of such contract. Anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized act; or

3. In a proceeding by the Attorney General to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Abuse, misuse, nonuse of powers, revocation or forfeiture of charter, see 18 Okl.St. Ann. § 1104.
Lack of corporate capacity or power, effect, ultra vires, see 18 Okl.St. Ann. § 1018.

Library References

Corporations ⇨385, 387, 446. C.J.S. Corporations §§ 673 to 674, 676, 678.
Westlaw Topic No. 101. C.J.S. Wills § 96.

§ 1-1019. Private foundations; powers and duties

A corporation of this Nation which is a private foundation under the United States internal revenue laws and whose certificate of incorporation does not expressly provide that this section shall not apply to it is required to act or to refrain from acting so as not to subject itself to the taxes imposed by Sections 4941, relating to taxes on self-dealing, 4942, relating to taxes on failure to distribute income, 4943, relating to taxes on excess business holdings, 4944, relating to taxes on investments which jeopardize charitable purpose, or 4945, relating to taxable expenditures, of the Internal Revenue Code of 1954,¹ as amended, or corresponding provisions of any subsequent United States internal revenue law.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

¹ 26 U.S.C.A. §§ 4941 to 4945.

Oklahoma Statutes Annotated

Private foundations,
Governing instrument or articles of incorporation deemed to contain certain provisions, amendments without judicial proceedings, see 60 Okl.St. Ann. §§ 174.1, 174.2.
Powers and duties, see 18 Okl.St. Ann. § 1019.

Library References

Internal Revenue ⇨4063.
Westlaw Topic No. 220.
C.J.S. Internal Revenue § 472.

§ 1-1020. Reserved

§ 1-1021. Registered office in Nation; principal office or place of business; in Nation

A. Every corporation shall have and maintain in this Nation a registered office which may, but need not be, the same as its place of business.

B. Whenever the term “corporation’s principal office or place of business in this Nation” or “principal office or place of business of the corporation in this Nation”, or other term of like import, is or has been used in a corporation’s certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation’s registered office required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations, statement of principal office or place of business, see 18 Okl.St. Ann. § 1130.
Registered office in Oklahoma, principal office or place of business in Oklahoma, see 18 Okl.St. Ann. § 1021.

Library References

Corporations ¶52, 392.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 146 to 149, 679.

§ 1-1022. Registered agent in Nation; resident agent

A. Every domestic corporation shall have and maintain in this Nation a registered agent, which agent may be either

1. The domestic corporation itself;
2. An individual resident of this Nation; or
3. A domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the function of a registered agent.

B. Every foreign corporation transacting business in this Nation shall have and maintain the Secretary of the Nation as its registered agent in this Nation. In addition, such foreign corporation may have and maintain in this Nation a registered agent, which agent may be either:

1. An individual resident of this Nation; or
2. A domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office; which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent. If such additional registered agent is designated, service of process shall be on such agent and not on the Secretary of the Nation.

C. Whenever the term “resident agent” or “resident agent in charge of a corporation’s principal office or place of business in this Nation”, or other term of like import which refers to a corporation’s agent required by statute to be located in this Nation, is or has been used in a corporation’s certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation’s registered agent required by this section. It shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with the provisions of this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations,

Service of summons on corporations, see 12 Okl.St. Ann. § 2004.

Statement of additional registered agent and principal place of business, see 18 Okl.St. Ann. § 1130.

Venue, see 18 Okl.St. Ann. § 471.

Registered agent in Oklahoma, resident agent, see 18 Okl.St. Ann. § 1022.

Library References

Corporations ¶¶ 392, 645.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 679, 987.

§ 1–1023. Change of location of registered office; change of registered agent

Any corporation, by resolution of its board of directors, may change the location of its registered office in this Nation to any other place in this Nation. By like resolution, the registered agent of a corporation may be changed to any other person or corporation, including itself. In either such case, the resolution shall be as detailed in its statement as is required by the provisions of paragraph 2 of subsection A of Section 1–1006 of this Title. Upon the adoption of such a resolution, a certificate certifying the change shall be executed, acknowledged and filed in accordance with the provisions of Section 1–1007 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change of location of registered office, change of registered agent, see 18 Okl.St. Ann. § 1023.

Foreign corporations,

Statement of additional registered agent, see 18 Okl.St. Ann. § 1130.

Statement of change of additional registered agent, see 18 Okl.St. Ann. § 1133.

Library References

Corporations ¶¶ 52, 392.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 146 to 149, 679.

§ 1–1024. Change of address or name of registered agent

A. A registered agent may change the address of the registered office of the corporation or corporations for which he or she is the registered agent to

another address in this Nation by filing with the Secretary of the Nation a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the name of the corporation represented by the registered agent, the new address to which the registered office will be changed at which the registered agent will maintain the registered office for the corporation recited in the certificate.

B. In the event of a change of name of any person or corporation acting as registered agent in this Nation, the registered agent shall file with the Secretary of the Nation a certificate in the name of each affected corporation, executed and acknowledged by the registered agent, setting forth the new name of the registered agent, the name of the registered agent before it was changed, the name of the corporation represented by the registered agent, and the address of the registered office for the corporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change of address or name of registered agent, see 18 Okl.St. Ann. § 1024.

Library References

Corporations ⌘392.
Westlaw Topic No. 101.
C.J.S. Corporations § 679.

§ 1–1025. Resignation of registered agent coupled with appointment of successor

The registered agent of one or more corporations may resign and appoint a successor registered agent by filing in the name of each affected corporation a certificate with the, Secretary of the Nation stating the name and address of the successor agent, in accordance with the provisions of this act. There shall be attached to each such certificate a statement of the affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with this act. Upon such filing, the successor registered agent shall become the registered agent of each corporation which has ratified and approved each substitution and the successor registered agent's address, as stated in each certificate, shall become the address of each such corporation's registered office in this Nation. The Secretary of the Nation shall then issue his certificate that the successor registered agent has become the registered agent of the corporations so ratifying and approving such change, and setting out the names of such corporations.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Resignation of registered agent coupled with appointment of successor, see 18 Okl.St. Ann. § 1025.

Library References

Corporations ⌘392.
Westlaw Topic No. 101.
C.J.S. Corporations § 679.

§ 1-1026. Resignation of registered agent not coupled with appointment of successor

A. The registered agent of one or more corporations may resign without appointing a successor by filing in the name of each affected corporation a certificate of resignation with the Secretary of the Nation; but a resignation shall not become effective until thirty (30) days after each certificate is filed. The certificate shall:

1. Be acknowledged by the registered agent;
2. Contain a statement that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing of the certificate by mailing or delivering the notice to the corporation at its address last known to the registered agent and specify such address therein; and
3. Set forth the date the notice was mailed.

B. 1. After receipt of the notice of the resignation of its registered agent provided for in subsection A of this section, the corporation for which the registered agent was acting may obtain and designate a new registered agent in the same manner as provided for in Section 1-1023 of this Title for a change of registered agent.

2. If a domestic corporation fails to obtain and designate a new registered agent prior to the expiration of the period of thirty (30) days after the filing by the registered agent of the certificate of resignation, the Secretary of the Nation shall be deemed to be the registered agent of such corporation until a new registered agent is designated. The Office of the Secretary of the Nation shall charge the fee prescribed by Section 1-1142 of this Title for acting as registered agent.

C. After the resignation of a registered agent has become effective, if no new registered agent has been obtained and designated in the time and manner required, service of legal process against the corporation for which the resigned registered agent had been acting shall be upon the Secretary of the Nation as provided in the Muscogee (Creek) Nation Statutes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Resignation of registered agent not coupled with appointment of successor, absence of registered agent, see 18 Okl.St. Ann. § 1026.

Library References

Corporations ☞392.
Westlaw Topic No. 101.
C.J.S. Corporations § 679.

§ 1-1027. Board of directors; powers; number; qualifications; terms and quorum; committees; classes of directors; not for profit corporations; reliance upon books; action without meeting; etc.

A. The business and affairs of every corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be managed by or under the direction of a board of directors, except as

may be otherwise provided for in the Muscogee (Creek) Nation General Corporation Act or in the corporation's certificate of incorporation. If any provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by the provisions of the Muscogee (Creek) Nation General Corporation Act shall be exercised or performed to the extent and by the person or persons stated in the certificate of incorporation.

B. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided for in the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. Directors need not be shareholders unless so required by the certificate of incorporation or the bylaws. The certificate of incorporation or bylaws may prescribe other qualifications for directors. Each director shall hold office until a successor is elected and qualified or until his or her earlier resignation or removal. Any director may resign at any time upon written notice to the corporation. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the bylaws require a greater number. Except as provided in subsection G of this section, neither the certificate of incorporation nor the bylaws may provide that a quorum may be less than one-third (1/3) of the total number of directors. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the bylaws shall require a vote of a greater number.

C. The board of directors may designate one or more committees consisting of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the member or members present at a meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority to

1. Approve, adopt, or recommend to the shareholders any action or matter expressly required by the Muscogee (Creek) Nation General Corporation Act to be submitted to shareholders for approval; or

2. Adopt, amend, or repeal any bylaw of the corporation.

D. The directors of any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a

vote of the shareholders, may be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one (1) year thereafter; of the third class two (2) years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for the term, and have voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors. If the certificate of incorporation provides that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in the Muscogee (Creek) Nation General Corporation Act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of the directors.

E. A member of the board of directors, or a member of any committee designated by the board of directors, in the performance of the member's duties, shall be fully protected in relying in good faith upon the records of the corporation and upon information, opinions, reports, or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within the officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation.

F. Unless otherwise restricted by the certificate of incorporation or bylaws:

1. Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee;

2. The board of directors of any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act may hold its meetings, and have an office or offices, outside of this Nation;

3. The board of directors shall have the authority to fix the compensation of directors; and

4. Members of the board of directors of any corporation, or any committee designated by the board, may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear or otherwise communicate with each other. Participation in a meeting pursuant to the provisions of this subsection shall constitute presence in person at the meeting.

G. 1. The certificate of incorporation of any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act which is not authorized to issue capital stock may provide that less than one-third (1/3) of the members of the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the

corporation shall be managed in a manner different from that provided for in this section.

2. Except as may be otherwise provided by the certificate of incorporation, the provisions of this section shall apply to such a corporation, and when so applied, all references to the board of directors, to members thereof, and to shareholders shall be deemed to refer to the governing body of the corporation, the members thereof and the members of the corporation, respectively.

H. 1. Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

a. Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided for in subsection D of this section, shareholders may effect such removal only for cause; or

b. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

2. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Board of directors, powers, number, qualifications, terms and quorum, committees, classes of directors, not for profit corporations, reliance upon books, action without meeting, etc., see 18 Okl.St. Ann. § 1027.

Frauds and offenses in corporation affairs, see 21 Okl.St. Ann. § 1631 et seq.

Knowledge and assent of director, presumptions, see 21 Okl.St. Ann. § 1641 et seq.

Library References

Corporations ⇌ 282, 283, 291, 294, 297, 298, C.J.S. Corporations §§ 518 to 529, 532 to 299, 533, 535 to 536, 539 to 551.

Westlaw Topic No. 101.

§ 1-1028. Officers; titles, duties, selection, term; failure to elect; vacancies

A. Every corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws and as may be necessary to enable it to sign instruments and stock certificates which comply with the provisions of this act. One of the officers shall have the duty to record the proceedings of the meetings of the shareholders and directors in a book to

be kept for that purpose. Any number of offices may be held by the same person unless the certificate of incorporation or bylaws provide otherwise.

B. Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold his office until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation.

C. The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

D. A failure to elect officers shall not dissolve or otherwise affect the corporation.

E. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be filled as the bylaws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Frauds and offenses in corporation affairs, see 21 Okl.St. Ann. § 1631 et seq.
Officers, titles, duties, selection, term, failure to elect, vacancies, see 18 Okl.St. Ann. § 1028.
Summons, service on officer or agent, see 12 Okl.St. Ann. § 2004.

Library References

Corporations ☞284 to 295. C.J.S. Corporations §§ 519 to 520, 530 to 531, 534 to 542, 559 to 560.
Westlaw Topic No. 101.

§ 1–1029. Loans to employees and officers; guaranty of obligations of employees and officers

Any corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this section shall be construed to deny, limit or restrict the powers of guaranty or warranty of any corporation at common law or under any statute.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Loans to employees and officers, guaranty of obligations of employees and officers, see 18 Okl.St. Ann. § 1029.

Library References

Corporations ☞461.
Westlaw Topic No. 101.
C.J.S. Corporations § 776.

§ 1-1030. Interested directors; quorum

A. No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

1. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

2. The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

3. The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the shareholders.

B. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Interested directors, quorum, see 18 Okl.St. Ann. § 1030.

Library References

Corporations \S 316.
Westlaw Topic No. 101.

C.J.S. Corporations $\S\S$ 587, 591, 596 to 599,
613 to 619.

§ 1-1031. Indemnification of officers, directors, employees and agents; insurance

A. A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect

to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

B. A corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection with the defense or settlement of an action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.

C. To the extent that a present or former director, or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsection A or B of this section, or in defense of any claim, issue or matter therein, the person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection therewith.

D. Any indemnification under the provisions of subsection A or B of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because the person has met the applicable standard of conduct set forth in subsection A or B of this section. This determination shall be made, with respect to a person who is a director or officer at the time of the determination:

1. By a majority vote of the directors who are not parties to the action, suit, or proceeding, even though less than a quorum;
2. By a committee of directors designated by a majority vote of directors, even though less than a quorum;
3. If there are no such directors, or if such directors direct, by independent legal counsel in a written opinion; or
4. By the shareholders.

E. Expenses incurred by an officer or director in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it shall ultimately be determined that the person is not entitled to be indemnified by the corporation as authorized by the provisions of this section. Expenses incurred by former directors or officers or other employees and agents may be paid upon the terms and conditions, if any, as the corporation deems appropriate.

F. The indemnification and advancement of expenses provided by or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding an office.

G. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against liability under the provisions of this section.

H. For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation, including any constituent of a constituent, absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees, or agents, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as the person would have with respect to the constituent corporation if its separate existence had continued.

I. For purposes of this section, references to "other enterprises" shall include, but are not limited to, employee benefit plans; references to "fines" shall include, but are not limited to, any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include, but are not limited to, any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services, by the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

J. The indemnification and advancement of expenses provided by or granted pursuant to this section, unless otherwise provided when authorized or ratified, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of the person.

K. The Muscogee (Creek) Nation District Court is vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise. The Court may summarily determine a corporation's obligation to advance expenses including attorney's fees.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Indemnification of officers, directors, employees and agents, insurance, see 18 Okl.St. Ann. § 1031.

Library References

Corporations \Leftrightarrow 308(1).
Westlaw Topic No. 101.

C.J.S. Corporations §§ 577 to 579, 625 to 626, 628, 632.

§ 1-1032. Classes and series of stock; rights, etc.

A. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have voting powers, full or limited, or no voting powers, and designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. Any of the voting powers, designations, preferences, rights, and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of the stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation, provided that the manner in which the facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations, or restrictions of the class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided for in the Muscogee (Creek) Nation General Corporation Act shall apply to all or any such classes of stock. The term "facts", as used in this subsection includes, but is not limited to the occurrence of any event, including a determination or action by any person or body, including the corporation.

B. Any stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of the stock or upon

the happening of a specified event; provided however, immediately following any redemption, the corporation shall have outstanding one or more shares or one or more classes or series of stock, which share, or shares together, shall have full voting powers. Notwithstanding the limitation stated in the foregoing proviso:

1. Reserved

2. Any stock of a corporation which directly or indirectly holds a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise, or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of the license, franchise, or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property, or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with any adjustments, as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section.

C. The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, conditions, and times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which the stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as otherwise provided for in the Muscogee (Creek) Nation General Corporation Act.

D. The holders of the preferred or special stock of any class or of any series thereof shall be entitled to the rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section.

E. Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at the price or prices or at such rate or rates of exchange and with the adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of the stock adopted by the board of directors as provided for in subsection A of this section.

F. If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, prefer-

ences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent the class or series of stock, provided that, except as otherwise provided for in Section 1-1055 of this Title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent the class or series of stock, a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or Section 1-1037, subsection A of Section 1-1055 or subsection A of Section 1-1063 of this Title, or with respect to this section a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of the preferences or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holder of certificates representing stock of the same class and series shall be identical.

G. 1. When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional, or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the certificate of incorporation or any amendment thereto, a certificate of designations setting forth a copy of the resolution or resolutions and the number of shares of stock of the class or series as to which the resolution or resolutions apply shall be executed, acknowledged, and filed, and shall become effective, in accordance with the provisions of Section 1-1007 of this Title. Unless otherwise provided in any resolution or resolutions, the number of shares of stock of any series to which the resolution or resolutions apply may be increased, but not above the total number of authorized shares of the class, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of the shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. Unless otherwise provided in the certificate of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences, and relative, participating, optional, or other rights,

if any, or the qualifications, limitations, or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which states that no shares of the class or series have been issued, sets forth a copy of the resolution or resolutions, and, if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1-1007 of this Title. When no shares of any class or series are outstanding, either because none were issued or because no issued shares of any class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to the class or series, may be executed, acknowledged and filed in accordance with the provisions of Section 1-1007 of this Title and, when the certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all matters set forth in the certificate of designations with respect to the class or series of stock.

2. When any certificate filed pursuant to the provisions of this subsection becomes effective, it shall have the effect of amending the certificate of incorporation; except that neither the filing of the certificate nor the filing of a restated certificate of incorporation pursuant to Section 1-1080 of this Title shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Restriction on transfer of securities, see Title 3, § 1-1055.
Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see Title 3, § 1-1041.

Oklahoma Statutes Annotated

Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
Certificate of incorporation, contents, see 18 Okl.St. Ann. § 1006.
Classes and series of stock, rights, etc., see 18 Okl.St. Ann. § 1032.
Redemption, corporate powers, see 18 Okl.St. Ann. § 1041.

Library References

Corporations ☞ 62, 68, 71, 154. C.J.S. Corporations §§ 173, 180 to 183, 205
Westlaw Topic No. 101. to 220, 245 to 248, 360 to 361, 367 to 370.

§ 1-1033. Issuance of stock, lawful consideration; fully paid stock

A. The consideration for subscriptions to, or the purchase of, the capital stock to be issued by a corporation shall be paid in such form and in such manner as the board of directors shall determine. In the absence of actual fraud in the transaction, the judgment of the directors as to the value of such consideration shall be conclusive. The capital stock so issued shall be deemed to be fully paid and nonassessable stock, if:

1. the entire amount of such consideration has been received by the corporation in the form of cash, services rendered, personal property, real property, leases of real property, or a combination thereof; or

2. not less than the amount of the consideration determined to be capital has been received by the corporation in such form and the corporation has received a binding obligation of the subscriber or purchaser to pay the balance of the subscription or purchase price.

B. The provisions of subsection A of this section shall not be construed to prevent the board of directors from issuing partly paid shares in accordance with the provisions of Section 37¹ of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

¹ Title 3, § 1-1037.

Oklahoma Statutes Annotated

Dividends, payment in shares, see 18 Okl.St. Ann. § 1052.

Issuance of stock, lawful consideration, fully paid stock, see 18 Okl.St. Ann. § 1033.

Transfer of vehicle title to corporation without excise tax, see 68 Okl.St. Ann. § 2105.

Library References

Corporations ⇌88.

Westlaw Topic No. 101.

§ 1-1034. Consideration for stock

A. Shares of stock with par value may be issued for such consideration, having a value not less than the par value thereof, as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

B. Shares of stock without par value may be issued for such consideration as is determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

C. Treasury shares may be disposed of by the corporation for such consideration as may be determined from time to time by the board of directors, or by the shareholders if the certificate of incorporation so provides.

D. If the certificate of incorporation reserves to the shareholders the right to determine the consideration for the issue of any shares, the shareholders, unless the certificate requires a greater vote, shall do so by a vote of a majority of the outstanding stock entitled to vote thereon.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Consideration for stock, see 18 Okl.St. Ann. § 1034.

Dividends, payment in shares, see 18 Okl.St. Ann. § 1052.

Rights and options respecting stock, consideration, see 18 Okl.St. Ann. § 1038.

Library References

Corporations ⇌72, 88.

Westlaw Topic No. 101.

C.J.S. Corporations § 204.

§ 1-1035. Determination of amount of capital; capital, surplus and net assets defined

Any corporation, by resolution of its board of directors, may determine that only a part of the consideration which shall be received by the corporation for

any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined, at the time of issue of any shares of the capital stock of the corporation issued for cash or within sixty (60) days after the issue of any shares of the capital stock of the corporation issued for property other than cash, what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The amount of the consideration so determined to be capital in respect of any shares without par value shall be the stated capital of such shares. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. “Net assets” means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Dividends, payment, see Title 3, § 1–1049.

Oklahoma Statutes Annotated

Determination of amount of capital, capital, surplus and net assets defined, see 18 Okl.St. Ann. § 1035.

Dividends, payment, see 18 Okl.St. Ann. §§ 1049, 1052.

Retirement of stock, see 18 Okl.St. Ann. § 1078.

Library References

Corporations ¶60, 61.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 172, 174 to 179, 186.

§ 1–1036. Fractions of shares

A corporation may, but shall not be required to, issue fractions of a share. If it does not issue fractions of a share, it shall:

1. arrange for the disposition of fractional interests by those entitled thereto; or
2. pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

3. issue scrip or warrants in registered form (either represented by a certificate or be uncertificated) or in bearer form (represented by a certificate) which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the board of directors may impose.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Merger or consolidation of domestic and foreign corporations, service of process, see Title 3, § 1-1082.

Merger or consolidation of domestic corporations, see Title 3, § 1-1081.

Oklahoma Statutes Annotated

Fractions of shares, see 18 Okl.St. Ann. § 1036.

Merger or consolidation,

Domestic and foreign corporations, see 18 Okl.St. Ann. § 1082.

Domestic corporations, see 18 Okl.St. Ann. § 1081.

Library References

Corporations ¶62.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 173, 180 to 183, 205 to 206.

§ 1-1037. Partly paid shares

Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated and the corporation shall comply with applicable provisions of Section 8-209 of Title 33 of the Muscogee (Creek) Nation Statutes. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partly paid shares, see 18 Okl.St. Ann. § 1037.

Uncertificated stock, written notice of rights and restrictions, see 18 Okl.St. Ann. § 1032.

Library References

Corporations Ⓒ88.
Westlaw Topic No. 101.

§ 1-1038. Rights and options respecting stock

Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors. The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided for this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Rights and options respecting stock, see 18 Okl.St. Ann. § 1038.

Library References

Corporations Ⓒ116.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 301 to 308, 310.

§ 1-1039. Stock certificates, uncertificated shares

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Notwithstanding the adoption of any such resolution, shares represented by a certificate shall not become uncertificated shares until such certificate is surrendered to the corporation. Every holder of stock in a corporation shall be entitled to have a certificate signed by, or in the name of, the corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of such corporation certifying and representing the number of shares owned by him in such corporation. Subject

to applicable provisions of the Uniform Commercial Code—Investment Securities,¹ such entitlement shall apply equally to a holder of uncertificated shares, notwithstanding the adoption of a resolution by the board of directors providing for the issuance of uncertificated shares, who makes written request of the corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 33, § 8–101 et seq.

Oklahoma Statutes Annotated

Officers, titles and duties, see 18 Okl.St. Ann. § 1028.

Stock certificates, uncertificated shares, see 18 Okl.St. Ann. § 1039.

Library References

Corporations ¶95.

Westlaw Topic No. 101.

C.J.S. Corporations § 237.

§ 1–1040. Shares of stock; personal property, transfer and taxation

The shares of stock in every corporation shall be deemed personal property and transferable as provided for in the Uniform Commercial Code—Investment Securities.¹ No stock or bonds issued by any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be taxed by this Nation when the same shall be owned by nonresidents of this Nation or by foreign corporations.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 33, § 8–101 et seq.

Oklahoma Statutes Annotated

Bank or trust company stock, see 6 Okl.St. Ann. § 706.

Shares of stock, personal property, transfer and taxation, see 18 Okl.St. Ann. § 1040.

Library References

Corporations ¶65, 111 to 121.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 184, 285 to 296, 301 to 318.

§ 1–1041. Corporation's powers respecting ownership, voting, etc. of its own stock; rights of stock called for redemption

A. Every corporation may purchase, redeem, receive, take, or otherwise acquire, own, hold, sell, lend, exchange, transfer, or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided, however, that no corporation shall:

1. Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when the purchase or redemption would cause any impairment of the capital of the corporation,

except that a corporation may purchase or redeem out of capital any of its own shares which are entitled upon any distribution of its assets, whether by dividend or in liquidation, to a preference over another class or series of its stock, or if no shares entitled to a preference are outstanding, any of its own shares if such shares will be retired upon their acquisition and the capital of the corporation reduced in accordance with the provisions of Sections 1-1078 and 1-1079 of this Title. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption, or the exchange of its shares of stock if at the time such note, debenture, or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired;

2. Purchase, for more than the price at which they may then be redeemed, any of its shares which are redeemable at the option of the corporation; or

3. Redeem any of its shares unless their redemption is authorized by subsection B of Section 1-1032 of this Title and then only in accordance with the provisions of that section and the certificate of incorporation.

B. Nothing in this section shall be construed to limit or affect a corporation's right to resell any of its shares theretofore purchased or redeemed out of surplus and which have not been retired, for consideration fixed by the board of directors or by the shareholders if the certificate of incorporation so provides.

C. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of the other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this section shall be construed as limiting the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

D. Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem those shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of the certificates.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see 18 Okl.St. Ann. § 1041.

Directors' liability, violation of statute, see 18 Okl.St. Ann. § 1053.

Library References

Corporations ¶68, 72.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 204, 245 to 248.

§ 1-1042. Issuance of additional stock; when and by whom

The directors, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to

issue have not been issued, subscribed for, or otherwise committed to be issued, may issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Issuance of additional stock, when and by whom, see 18 Okl.St. Ann. § 1042.

Library References

Corporations Ⓒ69, 158.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 185, 187, 192 to 203,
207 to 216.

§ 1-1043. Liability of shareholder or subscriber for stock not paid in full

A. When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by him the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or to be issued by the corporation.

B. The amounts which shall be payable as provided in subsection A of this section may be recovered as provided for in this act, after a writ of execution against the corporation has been returned unsatisfied.

C. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

D. No person holding shares in any corporation as collateral security shall be personally liable as a shareholder but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a shareholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be liable.

E. No liability under the provisions of this section shall be asserted more than six (6) years after the issuance of the stock or the date of the subscription upon which the assessment is sought.

F. In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under the provisions of this section, any shareholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of shareholder or subscriber for stock not paid in full, see 18 Okl.St. Ann. § 1043.

Library References

Corporations Ⓒ89, 228.

Westlaw Topic No. 101.

Title 3, § 1-1043

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C.J.S. Corporations § 506.

§ 1-1044. Payment for stock not paid in full

The capital stock of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors, from time to time, may demand payment, in respect of each share of stock not fully paid, of such sum of money as the necessities of the business, in the judgment of the board of directors, may require, not exceeding in the whole the balance remaining unpaid on such stock, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be mailed at least thirty (30) days before the time for such payment, to each holder of or subscriber for stock which is not fully paid at his last-known post office address.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Payment for stock not paid in full, see 18 Okl.St. Ann. § 1044.

Library References

Corporations ⌘89.
Westlaw Topic No. 101.

§ 1-1045. Failure to pay for stock; remedies

When any shareholder fails to pay any installment or call upon his stock which may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call or any balance thereof remaining unpaid, from the said shareholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent shareholder as will pay all demands then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement at least one (1) week before the sale, in a newspaper of the county in this state where such corporation's registered office is located, and such notice shall be mailed by the corporation to such delinquent shareholder at his last-known post office address, at least twenty (20) days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, which may be brought within the county where the corporation has its registered office, within one (1) year from the date of the bringing of such action at law, said stock and the amount previously paid in by the delinquent shareholder on the stock shall be forfeited to the corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Electronic notice, see Title 3, § 1-1075.2.

Oklahoma Statutes Annotated

Failure to pay for stock, remedies, see 18 Okl.St. Ann. § 1045.

Library References

Corporations Ⓒ89, 90.
Westlaw Topic No. 101.

§ 1-1046. Revocability of pre-incorporation subscriptions

Unless otherwise provided for by the terms of the subscription, a subscription for stock of a corporation to be formed shall be irrevocable, except with the consent of all other subscribers or the corporation, for a period of six (6) months from its date.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cooperative corporations, subscriptions to stock, see 18 Okl.St. Ann. § 426.
Fraud in subscriptions for stock, see 21 Okl.St. Ann. § 1631.
Liability of subscribers and shareholders, see 18 Okl.St. Ann. § 1043.
Revocability of preincorporation subscriptions, see 18 Okl.St. Ann. § 1046.

Library References

Corporations Ⓒ81, 83.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 274 to 275.

§ 1-1047. Formalities required of stock subscriptions

A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against a subscriber, unless in writing and signed by the subscriber or by his agent.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Formalities required of stock subscriptions, see 18 Okl.St. Ann. § 1047.

Library References

Corporations Ⓒ76.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 252, 255 to 257.

§ 1-1048. Situs of ownership of stock

For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this Nation, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this Nation, whether organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act or otherwise, shall be regarded as in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Situs of ownership of stock, see 18 Okl.St. Ann. § 1048.

Library References

Corporations ☞65.
Westlaw Topic No. 101.
C.J.S. Corporations § 184.

§ 1–1049. Dividends; payment; wasting asset corporations

A. The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock, or to its members if the corporation is a nonstock corporation, either out of its surplus, as defined in and computed in accordance with the provisions of Sections 1–1035 and 1–1079 of this Title, or in case there is no surplus, out of its net profits for the fiscal year in which the dividend is declared or the preceding fiscal year. If the capital of the corporation, computed in accordance with the provisions of Sections 1–1035 and 1–1079 of this Title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of the corporation shall not declare and pay out of the net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Nothing in this subsection shall invalidate or otherwise affect a note, debenture, or other obligation of the corporation paid by it as a dividend on shares of its stock, or any payment made thereon, if at the time the note, debenture, or obligation was delivered by the corporation, the corporation had either surplus or net profits as provided in this subsection from which the dividend could lawfully have been paid.

B. Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets including, but not limited to, a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or engaged primarily in the liquidation of specific assets, may determine the net profits derived from the exploitation of wasting assets or the net proceeds derived from such liquidation without taking into consideration the depletion of such assets resulting from lapse of time, consumption, liquidation or exploitation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dividends, payment, wasting asset corporations, see 18 Okl.St. Ann. § 1049.

Library References

Corporations ☞151 to 157. C.J.S. Corporations §§ 217 to 220, 360 to
Westlaw Topic No. 101. 371.

§ 1–1050. Special purpose reserves

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Special purpose reserves, see 18 Okl.St. Ann. § 1050.

Library References

Corporations Ⓒ151.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 360 to 361, 368.

§ 1–1051. Liability of directors as to dividends or stock redemption

A member of the board of directors, or a member of any committee designated by the board of directors, shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such officer's, employee's, committee's or other person's competence and who have been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of directors as to dividends or stock redemption, see 18 Okl.St. Ann. § 1051.

Library References

Corporations Ⓒ153, 334.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 369, 371, 637.

§ 1–1052. Declaration and payment of dividends

No corporation shall pay dividends except in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock. If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock, the board of directors, by resolution, shall direct that there be designated as capital in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No such designation as capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Allocation of consideration for shares, see 18 Okl.St. Ann. § 1035.
Declaration and payment of dividends, see 18 Okl.St. Ann. § 1052.

Payment of consideration for shares, see 18 Okl.St. Ann. §§ 1033, 1034.
 Required consideration of shares, see 18 Okl.St. Ann. § 1034.
 Transfer of certificate of shares, see 18 Okl.St. Ann. § 1054.

Library References

Corporations ☞153.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 369, 371.

§ 1–1053. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption; exoneration from liability; contribution among directors; subrogation

A. In case of any willful or negligent violation of the provisions of this act, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six (6) years after paying any unlawful dividend or after any unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation’s stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after he has notice of the same.

B. Any director against whom a claim is successfully asserted under the provisions of this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

C. Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be surrogated to the rights of the corporation against shareholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act, in proportion to the amounts received by such shareholders respectively.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Contents of certificate of incorporation, see Title 3, § 1–1006.

Oklahoma Statutes Annotated

Liability of directors for unlawful payment of dividend or unlawful stock, purchase or redemption, exoneration from liability, contribution among directors, subrogation, see 18 Okl.St. Ann. § 1053.

Library References

Corporations ☞153, 334.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 369, 371, 637.

§ 1-1054. Transfer of stock, stock certificates and uncertified stock

Except as otherwise provided for in the Muscogee (Creek) Nation General Corporation Act, the transfer of stock and the certificates of stock which represent the stock or uncertified stock shall be governed by the Uniform Commercial Code—Investment Securities.¹ To the extent that any provision of the Muscogee (Creek) Nation General Corporation Act is inconsistent with any provision of the Uniform Commercial Code—Investment Securities, the provisions of the Uniform Commercial Code—Investment Securities shall be controlling.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

¹ Title 33, § 8-101 et seq.

Oklahoma Statutes Annotated

Bank or trust company stock, see 6 Okl.St. Ann. § 706.

Transfer of stock, stock certificates and uncertificated stock, see 18 Okl.St. Ann. § 1054.

Library References

Corporations ¶¶ 111 to 149.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 285 to 318, 320 to 353.

§ 1-1055. Restriction on transfer of securities

A. A written restriction or restrictions on the transfer or registration of transfer of a security of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, if permitted by this section and noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices sent pursuant to the provisions of subsection F of Section 1-1032 of this Title, may be enforced against the holder of the restricted security or securities or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate or certificates representing the security or securities so restricted or, in the case of uncertificated shares, contained in the notice or notices sent pursuant to the provisions of subsection F of Section 1-1032 of this Title, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

B. A restriction on the transfer or registration of transfer of securities of a corporation, or on the amount of a corporation's securities that may be owned by any person or group of persons, may be imposed either by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

C. A restriction on the transfer or registration of transfer of securities of a corporation or on the amount of a corporation's securities that may be owned

by any person or group of persons is permitted by the provisions of this section if it:

1. Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities;

2. Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities;

3. Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities or to approve the amount of securities of the corporation that may be owned by any person or group of persons;

4. Obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, or causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing; or

5. Prohibits or restricts the transfer of the restricted securities to, or the ownership of restricted securities by, designated persons or classes of persons or groups of persons, and such designation is not manifestly unreasonable.

D. Any restriction on the transfer or the registration of transfer of the securities of a corporation, or on the amount of securities of a corporation that may be owned by a person or group of persons, shall be conclusively presumed to be for a reasonable purpose for any of the following purposes:

1. Maintaining any local, state, federal or foreign tax advantage to the corporation or its shareholders, including without limitation:

a. maintaining the corporation's status as an electing small business corporation under Subchapter S of the United States Internal Revenue Code,¹

b. maintaining or preserving any tax attribute, including, without limitation, net operating losses, or

c. qualifying or maintaining the qualification of the corporation as a real estate investment trust pursuant to the United States Internal Revenue Code or regulations adopted pursuant to the United States Internal Revenue Code; or

2. Maintaining any statutory or regulatory advantage or complying with any statutory or regulatory requirements under applicable local, state, federal, or foreign law.

E. Any other lawful restriction on transfer or registration of transfer of securities, or on the amount of securities that may be owned by any person or group of persons, is permitted by the provisions of this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ 26 U.S.C.A. § 1361 et seq.

Cross References

Classes and series of stock, shareholder rights, see Title 3, § 1-1032.

Oklahoma Statutes Annotated

Restriction on transfer of securities, see 18 Okl.St. Ann. § 1055.

Library References

Corporations ¶113.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 288 to 293.

§ 1-1056. Meetings of shareholders

A. Meetings of shareholders may be held at such place, either within or without this Nation, as may be designated by or in the manner provided for in the bylaws or, if not so designated, at the registered office of the corporation in this Nation.

B. 1. Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by or in the manner provided for in the bylaws. Shareholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; provided however, that if the consent is less than unanimous, the action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of the action are vacant and are filled by the action.

2. Any other proper business may be transacted at the annual meeting.

C. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided for in the Muscogee (Creek) Nation General Corporation Act. If the annual meeting for election of directors is not held on the date designated therefor or action by written consent to elect directors in lieu of an annual meeting had not been taken, the directors shall cause the meeting to be held as soon as is convenient. If there is a failure to hold the annual meeting or action by written consent to elect directors in lieu of an annual meeting, for a period of thirty (30) days after the date designated for the annual meeting, or if no date has been designated, for a period of thirteen (13) months after the latest to occur of the organization of the corporation, its last annual meeting, or the last action by written consent to elect directors in lieu of an annual meeting, the district court may summarily order a meeting to be held upon the application of any shareholder or director. The shares of stock represented at the meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of the meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The district court may issue orders as may be appropriate, including, without limitation, orders designating the time and

place of the meeting, the record date for determination of shareholders entitled to vote, and the form of notice of the meeting.

D. Special meetings of the shareholders may be called by the board of directors or by the person or persons as may be authorized by the certificate of incorporation or by the bylaws.

E. All elections of directors shall be by written ballot, unless otherwise provided for in the certificate of incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Duties of inspectors and voting procedures, see Title 3, § 1-1075.1.

Oklahoma Statutes Annotated

Meetings of shareholders, see 18 Okl.St. Ann. § 1056.
Notice, meetings and adjourned meetings, see 18 Okl.St. Ann. § 1067.
Powers of court, elections of directors, see 18 Okl.St. Ann. § 1072.
Summary order, election of directors,
 Prior election invalid, see 18 Okl.St. Ann. § 1070.
 Vacancies, see 18 Okl.St. Ann. § 1068.

Library References

Corporations ¶191 to 201.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 442 to 481.

§ 1-1057. Voting rights of shareholders; proxies; limitations

A. Unless otherwise provided for in the certificate of incorporation and subject to the provisions of Section 1-1058 of this Title, each shareholder shall be entitled to one vote for each share of capital stock held by the shareholder. If the certificate of incorporation provides for more or less than one vote for any share on any matter, every reference in the Muscogee (Creek) Nation General Corporation Act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

B. Each shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for the shareholder by proxy, but no proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

C. Without limiting the manner in which a shareholder may authorize another person or persons to act as a proxy pursuant to subsection B of this section, the following shall constitute a valid means by which a shareholder may grant such authority:

1. A shareholder may execute a writing authorizing another person or persons to act for him or her as proxy. Execution may be accomplished by the shareholder or the shareholder's authorized officer, director, employee, or agent signing the writing or causing his or her signature to be affixed to the writing by any reasonable means including, but not limited to, by facsimile signature.

2. A shareholder may authorize another person or persons to act for him or her as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided, that any telegram, cablegram, or other means of electronic transmission must either set forth, or be submitted with information from which it can be determined, that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. If it is determined that telegrams, cablegrams, or other electronic transmissions are valid, the inspectors or, if there are no inspectors, any other person making that determination shall specify the information upon which they relied.

D. Any copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to subsection C of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, that the copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission.

E. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Duties of inspectors and voting procedures, see Title 3, § 1-1075.1.

Oklahoma Statutes Annotated

Voting rights of shareholders, proxies, limitations, see 18 Okl.St. Ann. § 1057.

Library References

Corporations \S 197, 198.
Westlaw Topic No. 101.

C.J.S. Corporations \S 456 to 459, 463 to 466, 472 to 478, 481.

§ 1-1058. Fixing date for determination of shareholders of record

A. In order that the corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any

adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

B. 1. In order that the corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by the Muscogee (Creek) Nation General Corporation Act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by the Muscogee (Creek) Nation General Corporation Act, the record date for determining shareholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

2. The provisions of this subsection shall be effective with respect to corporate actions taken by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after November 1, 1988.

C. In order that the corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fixing date for determination of shareholders of record, see 18 Okl.St. Ann. § 1058.

Library References

Corporations ☞ 197.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 456 to 459, 463 to 466, 481.

§ 1-1059. Cumulative voting

The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, or at elections held under specified circumstances, each holder of stock or of any class or classes or of a series or series thereof shall be entitled to as many votes as shall equal the number of votes which, except for such provision as to cumulative voting, he would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected by him, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two (2) or more of them as he may see fit.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cumulative voting, see 18 Okl.St. Ann. § 1059.

Library References

Corporations ⇌ 200, 283(2).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 462, 524 to 527.

§ 1-1060. Voting rights of members of nonstock corporations; quorum; proxies

A. The provisions of Sections 1-1056 through 1-1059 and 1-1061 of this Title shall not apply to corporations not authorized to issue stock.

B. Unless otherwise provided for in the certificate of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period.

C. Unless otherwise provided for in the Muscogee (Creek) Nation General Corporation Act, the certificate of incorporation or bylaws of a nonstock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of such specification in the certificate of incorporation or bylaws of a nonstock corporation:

1. One-third (1/3) of the members of the corporation shall constitute a quorum at a meeting of the members;

2. In all matters other than the election of the governing body of the corporation, the affirmative vote of a majority of the members present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by the provisions of the Muscogee (Creek) Nation General Corporation Act, the certificate of incorporation or bylaws; and

3. Members of the governing body shall be elected by a plurality of the votes of the members of the corporation present in person or represented by proxy at the meeting and entitled to vote.

D. If the election of the governing body of any nonstock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture or dissolution of the corporation, but the district court may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the certificate of incorporation or the bylaws of the corporation to the contrary. [Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers of court, election of directors, see 18 Okl.St. Ann. § 1072.

Summary order, election of directors, prior election invalid, see 18 Okl.St. Ann. § 1070.

Voting rights of members of nonstock corporations, quorum, proxies, see 18 Okl.St. Ann. § 1060.

Library References

Corporations ⇌ 195 to 198.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 445, 453 to 459, 461,
463 to 466, 472 to 478, 481.

§ 1-1061. Quorum and required vote for stock corporations

Subject to the provisions of the Muscogee (Creek) Nation General Corporation Act, in respect of the vote that shall be required for a specified action, the certificate of incorporation or bylaws of any corporation authorized to issue stock may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business, but in no event shall a quorum consist of less than one-third (1/3) of the shares entitled to vote at the meeting, except that, where a separate vote by a class or series or classes or series is required, a quorum shall consist of no less than one-third (1/3) of the share of that class or series or classes or series. In the absence of such specification in the certificate of incorporation or bylaws of the corporation:

1. A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of shareholders;
2. In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the shareholders;
3. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors; and
4. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or series or classes or series present in

person or represented by proxy at the meeting shall be the act of such class or series or classes or series.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Quorum and required vote for stock corporations, see 18 Okl.St. Ann. § 1061.

Library References

Corporations ☞195.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 454, 461.

§ 1-1062. Voting rights of fiduciaries, pledgors and joint owners of stock

A. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee, to vote thereon, in which case only the pledgee, or his proxy may represent such stock and vote thereon.

B. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

1. If only one (1) vote, his act binds all; or
2. If more than one (1) vote, the act of the majority so voting binds all; or
3. If more than one (1) vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the Muscogee (Creek) Nation District Court to appoint an additional person to act with the persons so voting the shares, which shall then be voted as determined by a majority of such persons and the person appointed by such Court. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting rights of fiduciaries, pledgors and joint owners of stock, see 18 Okl.St. Ann. § 1062.

Library References

Corporations ☞197.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 456 to 459, 463 to 466, 481.

§ 1-1063. Voting trusts and other voting agreements

A. One (1) or more shareholders, by agreement in writing, may deposit capital stock of an original issue with or transfer capital stock to any person or

persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in the person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by the agreement, upon the terms and conditions stated in the agreement. The agreement may contain any other lawful provisions not inconsistent with its purpose. After the filing of a copy of the agreement in the registered office of the corporation in this Nation, which copy shall be open to the inspection of any shareholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with the trustee or trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and canceled and new certificates or uncertificated stock shall be issued therefor to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to the agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy. In voting the stock, the voting trustee, or trustees shall incur no responsibility as shareholder, trustee or otherwise, except for his or their own individual malfeasance. In any case where two (2) or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided or the right and manner of voting the stock in any particular case, the vote of the stock shall be divided equally among the trustees.

B. Any amendment to a voting trust agreement shall be made by a written agreement, a copy of which shall be filed in the registered office of the corporation in this Nation.

C. An agreement between two (2) or more shareholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them.

D. This section shall not be construed to invalidate any voting or other agreement among shareholders or any irrevocable proxy which is not otherwise illegal.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Classes and series of stock, shareholder rights, see Title 3, § 1–1032.

Oklahoma Statutes Annotated

Voting trusts and other voting agreements, see 18 Okl.St. Ann. § 1063.

Written notice of rights and restrictions, uncertificated stock, see 18 Okl.St. Ann. § 1032.

Library References

Corporations ☞198.1.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 467 to 471.

§ 1-1064. List of shareholders entitled to vote; penalty for refusal to produce; stock ledger

A. The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Nothing contained in this section shall require the corporation to include electronic mail addresses or other electronic contact information on the list. The list shall be open to the examination of any shareholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting:

1. On a reasonably accessible electronic network; provided that the information required to gain access to the list is provided with the notice of the meeting; or

2. During ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that the information is available only to shareholders of the corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any shareholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

B. Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors held at a place, or to open such a list to examination on a reasonably accessible electronic network during any meeting for the election of directors held solely by means of remote communication, they shall be ineligible for election to any office at the meeting.

C. The stock ledger shall be the only evidence as to who are the shareholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of shareholders.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

List of shareholders entitled to vote, penalty for refusal to produce, stock ledger, see 18 Okl.St. Ann. § 1064.

Library References

Corporations ☞181, 311.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 409 to 419, 594 to 595.

§ 1-1065. Inspection of books and records

A. As used in this section:

1. "Shareholder" means:

- a. a shareholder of record in a stock corporation, and
- b. a member of a nonstock corporation as reflected on the records of the nonstock corporation; and

2. "List of shareholders" includes a list of members in a nonstock corporation.

B. Any shareholder, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, shall have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the shareholder. The demand under oath shall be directed to the corporation at its registered office in this Nation or at its principal place of business.

C. 1. If the corporation or an officer or agent thereof refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to the provisions of subsection B of this section or does not reply to the demand within five (5) business days after the demand has been made, the shareholder may apply to the Muscogee (Creek) Nation District Court for an order to compel an inspection. The court may summarily order the corporation to permit the shareholder to inspect the corporation's stock ledger, an existing list of shareholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing the list and on other conditions as the Court deems appropriate.

2. Where the shareholder seeks to inspect the corporation's books and records, other than its stock ledger or list of shareholders, the shareholder shall first establish that:

- a. the shareholder has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents; and

- b. the inspection the shareholder seeks is for a proper purpose.

3. Where the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and he has complied with the provisions of this section respecting the form and manner of making demand for inspection of the documents, the burden of proof shall be upon the corporation to establish that

the inspection the shareholder seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions upon the inspection, or award such other or further relief as the Court may deem just and proper. The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this Nation and kept in this Nation upon such terms and conditions as the order may prescribe.

D. Any director, including a member of the governing body of a nonstock corporation shall have the right to examine the corporation's stock ledger, a list of its shareholders and its other books and records for a purpose reasonably related to his or her position as a director. The Muscogee (Creek) Nation District Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the list of shareholders and to make copies or extracts therefrom. The Court, in its discretion, may prescribe any limitations or conditions with reference to the inspection, or award other or further relief as the Court may deem just and proper.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Inspection of books and records, see 18 Okl.St. Ann. § 1065.

Library References

Corporations ⌘181.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 409 to 419.

§ 1-1066. Voting, inspection and other rights of bondholders and debenture holders

Every corporation, in its certificate of incorporation, may confer upon the holders of any bonds, debentures or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the certificate of incorporation, and may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the shareholders of the corporation have or may have by reason of the provisions of the Muscogee (Creek) Nation General Corporation Act or of its certificate of incorporation. If the certificate of incorporation so provides, such holders of bonds, debentures or other obligations shall be deemed to be shareholders, and their bonds, debentures or other obligations shall be deemed to be shares of stock, for the purpose of any provision of the Muscogee (Creek) Nation General Corporation Act which requires the vote of shareholders as a prerequisite to any corporate action and the certificate of incorporation may divest the holders of capital stock, in whole or in part, of their right to vote on any corporate matter whatsoever.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting, inspection and other rights of bondholders and debenture holders, see 18 Okl.St. Ann. § 1066.

Library References

Corporations \S 181(3), 473.
Westlaw Topic No. 101.
C.J.S. Corporations $\S\S$ 415, 755.

§ 1–1067. Notice of meetings and adjourned meetings

A. Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the meetings and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

B. Unless otherwise provided for in this Act, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each shareholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the shareholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

C. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which shareholders and proxyholders may be deemed to be present in person and vote at the adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Certificate of incorporation, amendment, see 18 Okl.St. Ann. § 1077.
Election of directors following renewal or revival of certificate of incorporation, see 18 Okl.St. Ann. § 1120.
Merger or consolidation, domestic corporations, see 18 Okl.St. Ann. § 1081.
Notice of meetings and adjourned meetings, see 18 Okl.St. Ann. § 1067.
Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

Corporations $\S\S$ 193, 194, 197.
Westlaw Topic No. 101.
C.J.S. Corporations $\S\S$ 443 to 444, 447 to 452, 455 to 459, 463 to 466, 481.

§ 1-1068. Vacancies and newly created directorships

A. 1. Unless otherwise provided in the certificate of incorporation or bylaws:

a. Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the shareholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and

b. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one (1) or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

2. If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any shareholder or an executor, administrator, trustee or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the provisions of the certificate of incorporation or the bylaws, or may apply to the Muscogee (Creek) Nation District Court for a decree summarily ordering an election as provided for in this act.

B. In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection A of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

C. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board, as constituted immediately prior to any such increase, the district court, upon application of any shareholder or shareholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, may summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office, which election shall be governed by the provisions of this act as far as applicable.

D. Unless otherwise provided in the certificate of incorporation or bylaws, when one or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided for in this section in the filling of other vacancies.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Boards of directors, generally, see 18 Okl.St. Ann. § 1027.

Vacancies and newly created directorships, see 18 Okl.St. Ann. § 1068.

Library References

Corporations ⇨281, 283, 291 to 295.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 518 to 530, 535 to 542.

§ 1–1069. Form of records

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept in, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device, provided that the records so kept can be converted into clearly legible written form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect the same. Where records are kept in such manner, a clearly legible written form produced from the cards, tapes, photographs, microphotographs or other information storage device shall be admissible in evidence and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been, when said written form accurately portrays the record.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Certificates filed with Oklahoma Secretary of State, evidence, see 18 Okl.St. Ann. § 1009.

Form of records, see 18 Okl.St. Ann. § 1069.

Penalty for destroying or concealing corporate records, books, etc., see 17 Okl.St. Ann. § 16.

Shareholder right to inspect records, see 18 Okl.St. Ann. § 1065.

Library References

Corporations ⇨59.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 150 to 153.

§ 1–1070. Contested election of directors; proceedings to determine validity

A. Upon application of any shareholder or director, or any officer whose title to office is contested, or any member of a corporation without capital stock, the Muscogee (Creek) Nation District Court may hear and determine the validity of any election of any director, member of the governing body, or officer of any corporation, and the right of any person to hold such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the Muscogee (Creek) Nation District Court may order an election to be held in accordance with this act. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such

person at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant shareholder. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

B. Upon application of any shareholder or any member of a corporation without capital stock, the Muscogee (Creek) Nation District Court may hear and determine the result of any vote of shareholders or members, as the case may be, upon matters other than the election of directors, officers or members of the governing body. Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting notice of the application as it deems proper under the circumstances.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Contested election of directors, proceedings to determine validity, see 18 Okl.St. Ann. § 1070.
Registered agent, see 18 Okl.St. Ann. § 1022.

Library References

Corporations ☞283.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 518 to 529.

§ 1-1071. Appointment of custodian or receiver of corporation on deadlock or for other cause

A. The Muscogee (Creek) Nation District Court, upon application of any shareholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

1. at any meeting held for the election of directors the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or
2. the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the shareholders are unable to terminate this division; or

3. the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

B. A custodian appointed pursuant to the provisions of this section shall have all the powers and title of a receiver appointed by the Court under applicable law, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court shall otherwise order and except in cases arising pursuant to paragraph 3 of subsection A of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appointment of custodian or receiver of corporation on deadlock or for other cause, see 18 Okl.St. Ann. § 1071.

Receivers,

Dissolved corporations, see 18 Okl.St. Ann. § 1100 et seq.

Insolvent corporations, see 18 Okl.St. Ann. § 1106 et seq.

Library References

Corporations ⇨551.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 841 to 870.

§ 1–1072. Powers of court in elections of directors

A. The Muscogee (Creek) Nation District Court, in any proceeding instituted pursuant to the provisions of this act, may determine the right and power of persons claiming to own stock, or in the case of a corporation without capital stock, of the persons claiming to be members, to vote at any meeting of the shareholders or members.

B. The Muscogee (Creek) Nation District Court may appoint a master to hold any election provided for in this act under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the Court; and, in case of disobedience by a corporation of any order made by the Court, may enter a decree against such corporation for a penalty of not more than five thousand dollars (\$5,000.00).

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers of court in elections of directors, see 18 Okl.St. Ann. § 1072.

Library References

Corporations ⇨201, 283.

Indians ⇨501, 533, 539.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 479 to 481, 518 to 529.

C.J.S. Indians §§ 151 to 179.

§ 1–1073. Consent of shareholders in lieu of meeting

A. Except as provided in subsection B of this section or unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Muscogee (Creek) Nation General Corporation Act to be taken at any annual or special meeting of shareholders of a corporation or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

B. With respect to a domestic corporation with a class of voting stock listed or traded on a national securities exchange or registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as amended, which has one thousand or more shareholders of record, unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Muscogee (Creek) Nation General Corporation Act to be taken at any annual or special meeting of shareholders of the corporation or any action which may be taken at any annual or special meeting of such shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of all outstanding stock entitled to vote thereon and shall be delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. The provisions of this subsection shall be effective with respect to corporate actions by written consent, and to such written consent or consents, as to which the first written consent is executed or solicited after September 1, 1991.

C. Unless otherwise provided for in the certificate of incorporation, any action required by the provisions of the Muscogee (Creek) Nation General Corporation Act to be taken at a meeting of the members of a nonstock corporation, or any action which may be taken at any meeting of the members of a nonstock corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members having a right to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

D. Every written consent shall bear the date of signature of each shareholder or member who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders or members to take action are delivered to the corporation by delivery to its registered office in this Nation, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

E. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those shareholders or members, as the case may be, who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of

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the meeting if the record date for the meeting had been the date that written consents signed by a sufficient number of holders or members to take the action were delivered to the corporation as provided in subsection C of this section. In the event that the action for which consent is given is an action that would have required the filing of a certificate under any other section of this title if the action had been voted on by shareholders or by members at a meeting thereof, the certificate filed under the other section shall state, in lieu of any statement required by the section concerning any vote of shareholders or members, that written consent has been given in accordance with the provisions of this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.

Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

Corporations ⌘191.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 442, 446.

§ 1–1074. Waiver of notice

Whenever notice is required to be given under any provision of the Muscogee (Creek) Nation General Corporation Act or of the certificate of incorporation or bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders, directors, or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or the bylaws.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Waiver of notice, see 18 Okl.St. Ann. § 1074.

Library References

Corporations ⌘194, 298(3).

Westlaw Topic No. 101.

C.J.S. Corporations §§ 444, 447 to 452, 547.

§ 1–1075. Exception to requirements of notice

A. Whenever notice is required to be given, pursuant to any provision of Title 3 of the Muscogee (Creek) Nation Statutes or of the certificate of incorporation or bylaws of any corporation, to any person with whom communication

is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of Title 3 of the Muscogee (Creek) Nation Statutes, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

B. Whenever notice is required to be given pursuant to any provision of the Muscogee (Creek) Nation General Corporation Act or the certificate of incorporation or bylaws of any corporation, to any shareholder or, if the corporation is a nonstock corporation, to any member to whom:

1. notice of two consecutive annual meetings and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings; or

2. All, and at least two, payments, if sent by first-class mail, of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at his address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of the Muscogee (Creek) Nation General Corporation Act, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to the provisions of this subsection.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Exception to requirements of notice, see 18 Okl.St. Ann. § 1075.

Library References

Corporations \S 194, 298(3).
Westlaw Topic No. 101.
C.J.S. Corporations $\S\S$ 444, 447 to 452, 547.

§ 1-1075.1. Duties of inspectors and voting procedures

A. The corporation shall, in advance of any meeting of shareholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of shareholders, the person presiding at the

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meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

B. The inspectors shall:

1. Ascertain the number of shares outstanding and the voting power of each;
2. Determine the shares represented at a meeting and the validity of proxies and ballots;
3. Count all votes and ballots;
4. Determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and
5. Certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

C. The date and time of the opening and the closing of the polls for each matter upon which the shareholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the district court upon application by a shareholder shall determine otherwise.

D. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with subsection E of Section 1-1056 or paragraph 2 of subsection C of Section 1-1057 of this Title, or any information provided pursuant to divisions (1) or (3) of subparagraph b of paragraph 2 of subsection A of Section 1-1056 of this Title, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the shareholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to paragraph 5 of subsection B of this section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that the information is accurate and reliable.

E. Unless otherwise provided in the certificate of incorporation or bylaws, this section shall not apply to a corporation that does not have a class of voting stock that is:

1. Listed on a national securities exchange;

2. Authorized for quotation on an interdealer quotation system of a registered national securities association; or

3. Held of record by more than 2,000 shareholders.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting procedures and inspectors of elections, see 18 Okl.St. Ann. § 1075.1.

Library References

Corporations ⌘196.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 445, 453, 455.

§ 1-1075.2. Electronic notice

A. Without limiting the manner of which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any provision of this act, the certificate of incorporation, or the bylaws shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. The consent shall be revocable by the shareholder by written notice to the corporation. The consent shall be deemed revoked if:

1. The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with the consent; and

2. The inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat the inability as a revocation shall not invalidate any meeting or other action.

B. Notice given pursuant to subsection A of this section shall be deemed given if by:

1. Facsimile telecommunication, when directed to a number at which the shareholder has consented to receive notice;

2. Electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;

3. A posting on an electronic network together with separate notice to the shareholder of the specific posting, upon the later of:

a. the posting, and

b. the giving of the separate notice; and

4. Any other form of electronic transmission, when directed to the shareholder in accordance with the shareholder's consent. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

C. For purposes of this act, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that

Title 3, § 1–1075.2

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creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

D. This section shall apply to a domestic corporation that is not authorized to issue capital stock, and when so applied, all references to shareholders shall be deemed to refer to members of such a corporation.

E. This section shall not apply to Sections 1–1045 or 1–1111 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Electronic notice, effectiveness, revocation of consent, see 18 Okl.St. Ann. § 1075.2.

Library References

Corporations \Leftrightarrow 194.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 444, 447 to 452.

§ 1–1076. Amendment of certificate of incorporation before receipt of payment for stock

A. Before a corporation has received any payment for any of its stock, it may amend its certificate of incorporation at any time or times, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of filing the amendment.

B. The amendment of certificate of incorporation authorized by the provisions of this section shall be adopted by a majority of the incorporators, if directors were not named in the original certificate of incorporation or have not yet been elected, or, if directors were named in the original certificate of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock and that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed in accordance with the provisions of this act. Upon such filing, the corporation's certificate of incorporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation became effective, except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Amendment of certificate of incorporation before receipt of payment for stock, see 18 Okl.St. Ann. § 1076.

Certificate of incorporation,

 Certificate of merger, see 18 Okl.St. Ann. § 1081.

 Contents, see 18 Okl.St. Ann. § 1006.

 Defined, see 18 Okl.St. Ann. § 1008.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations Ⓒ40.
Westlaw Topic No. 101.
C.J.S. Corporations § 58.

§ 1-1077. Amendment of certificate of incorporation after receipt of payment for stock; nonstock corporations

A. 1. After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and if a change in stock or the rights of shareholders, or an exchange, reclassification, subdivision, combination, or cancellation of stock or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, subdivision, combination, or cancellation. In particular, and without limitation upon the general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

- a. to change its corporate name,
- b. to change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes,
- c. to increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares or by subdividing or combining the outstanding shares of any class or series of a class of shares into a greater or lesser number of outstanding shares,
- d. to cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared,
- e. to create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued, or
- f. to change the period of its duration.

2. Any or all changes or alterations provided for in paragraph 1 of this subsection may be effected by one certificate of amendment.

B. Every amendment authorized by the provisions of subsection A of this section shall be made and effected in the following manner:

1. If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the shareholders entitled to vote in respect thereof for the consideration of the amendment or directing that the amendment proposed be considered at the next annual meeting of shareholders. The special or annual meeting shall be called and held upon notice in accordance

with the provisions of Section 1-1067 of this Title. The notice shall set forth the amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the shareholders entitled to vote thereon shall be taken for and against the proposed amendment. If a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, has been voted in favor of the amendment, a certificate setting forth the amendment and certifying that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title.

2. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of the class, increase or decrease the par value of the shares of the class, or alter or change the powers, preferences or special rights of the shares of the class so as to affect them adversely. If any proposed amendment would alter or change the powers, preferences, or special rights of one or more series of any class so as to affect them adversely, but shall not so affect the entire class, then only the shares of the series so affected by the amendment shall be considered a separate class for the purposes of this paragraph. The number of authorized shares of any the class or classes of stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote irrespective of the provisions of this paragraph, if so provided in the original certificate of incorporation, in any amendment thereto which created the class or classes of stock or which was adopted prior to the issuance of any shares of the class or classes of stock, or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of the class or classes of stock.

3. If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body, shall vote in favor of the amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. The certificate of incorporation of a corporation without capital stock may contain a provision requiring an amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of the corporation in which event the proposed amendment shall be submitted to the members or to any specified class of members of the corporation without capital stock in the same manner, so far as applicable, as is provided for in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by the members, a certificate evidencing the amendment shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title.

4. Whenever the certificate of incorporation shall require for action by the board of directors, by the holders of any class or series of shares or by the holders of any other securities having voting power the vote of a greater number or proportion than is required by the provisions of the Muscogee (Creek) Nation General Corporation Act, the provision of the certificate of incorporation requiring a greater vote shall not be altered, amended or repealed except by such greater vote.

C. The resolution authorizing a proposed amendment to the certificate of incorporation may provide that at any time prior to the effectiveness of the filing of the amendment with the Secretary of the Nation, notwithstanding authorization of the proposed amendment by the shareholders of the corporation or by the members of a nonstock corporation, the board of directors or governing body may abandon the proposed amendment without further action by the shareholders or members.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Amendment of certificate of incorporation after receipt of payment for stock, nonstock corporations, see 18 Okl.St. Ann. § 1077.

Certificate of merger, see 18 Okl.St. Ann. § 1081.

Holders of bonds and debentures, voting rights, see 18 Okl.St. Ann. § 1066.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ¶40.

Westlaw Topic No. 101.

C.J.S. Corporations § 58.

§ 1-1078. Retirement of stock

A. A corporation, by resolution of its board of directors, may retire any shares of its capital stock that are issued but are not outstanding.

B. Whenever any shares of the capital stock of a corporation are retired, they shall resume the status of authorized and unissued shares of the class or series to which they belong unless the certificate of incorporation otherwise provides. If the certificate of incorporation prohibits the reissuance of such shares, or prohibits the reissuance of such shares as a part of a specific series only, a certificate stating that reissuance of the shares, as part of the class or series, is prohibited identifying the shares and reciting their retirement shall be executed, acknowledged and filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. When such certificate becomes effective, it shall have the effect of amending the certificate of incorporation so as to reduce accordingly the number of authorized shares of the class or series to which such shares belong or, if such retired shares constitute all of the authorized shares of the class or series to which they belong, of eliminating from the certificate of incorporation all reference to such class or series of stock.

C. If the capital of the corporation will be reduced by or in connection with the retirement of shares, the reduction of capital shall be effected pursuant to the provisions of Section 1-1079 of this Title.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see Title 3, § 1–1041.

Oklahoma Statutes Annotated

Corporate purchase or redemption of stock out of capital, see 18 Okl.St. Ann. § 1041.
Retirement of stock, see 18 Okl.St. Ann. § 1078.

Library References

Corporations Ⓒ68.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 245 to 248.

§ 1–1079. Reduction of capital

A. A corporation, by resolution of its board of directors, may reduce its capital in any of the following ways:

1. By reducing or eliminating the capital represented by shares of capital stock which have been retired; or

2. By applying to an otherwise authorized purchase or redemption of outstanding shares of its capital stock some or all of the capital represented by the shares being purchased or redeemed, or any capital that has not been allocated to any particular class of its capital stock; or

3. By applying to an otherwise authorized conversion or exchange of outstanding shares of its capital stock some or all of the capital represented by the shares being converted or exchanged, or some or all of any capital that has not been allocated to any particular class of its capital stock, or both, to the extent that such capital in the aggregate exceeds the total aggregate par value or the stated capital of any previously unissued shares issuable upon such conversion or exchange; or

4. By transferring to surplus:

a. some or all of the capital not represented by any particular class of its capital stock; or

b. some or all of the capital represented by issued shares of its par value capital stock, which capital is in excess of the aggregate par value of such shares; or

c. some of the capital represented by issued shares of its capital stock without par value.

B. Notwithstanding the other provisions of this section, no reduction of capital shall be made or effected unless the assets of the corporation remaining after such reduction shall be sufficient to pay any debts of the corporation for which payment has not been otherwise provided. No reduction of capital shall release any liability of any shareholder whose shares have not been fully paid.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Corporation's powers respecting ownership, voting, etc. of its own stock, rights of stock called for redemption, see Title 3, § 1–1041.

Dividends, payment, see Title 3, § 1-1049.

Oklahoma Statutes Annotated

Amount of stated capital, see 18 Okl.St. Ann. § 1035.


Consolidation or merger, see 18 Okl.St. Ann. § 1089.

Corporate purchase or redemption of stock out of capital, see 18 Okl.St. Ann. § 1041.

Dividends, payment, see 18 Okl.St. Ann. § 1049.

Reduction of capital, see 18 Okl.St. Ann. § 1079.

Library References

Corporations 67.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 243 to 244.

§ 1-1080. Restated certificate of incorporation

A. A corporation, whenever desired, may integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having up to that time been filed with the Secretary of the Nation one or more certificates or other instruments pursuant to any of the sections referred to in Section 1-1008 of this Title, and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.

B. If the restated certificate of incorporation merely restates and integrates but does not further amend the certificate of incorporation, as up to that time amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in Section 1-1008 of this Title, it may be adopted by the board of directors without a vote of the shareholders, or it may be proposed by the directors and submitted by them to the shareholders for adoption, in which case the procedure and vote required by Section 1-1077 of this Title for amendment of the certificate of incorporation shall be applicable. If the restated certificate of incorporation restates and integrates and also further amends in any respect the certificate of incorporation, as up to that time amended or supplemented, it shall be proposed by the directors and adopted by the shareholders in the manner and by the vote prescribed by Section 1-1077 of this Title or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by Section 1-1076 of this Title.

C. A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Secretary of the Nation. If it was adopted by the board of directors without a vote of the shareholders, unless it was adopted pursuant to the provisions of Section 1-1076 of this Title, it shall state that it only restates and integrates and does not further amend the provisions of the corporation's certificate of incorporation as up to that time amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit:

1. Such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and

2. Such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

D. A restated certificate of incorporation shall be executed, acknowledged and filed in accordance with the provisions of this act. Upon its filing with the Secretary of the Nation, the original certificate of incorporation, as up to that time amended or supplemented, shall be superseded. From that time forward, the restated certificate of incorporation, including any further amendments or changes made thereby, shall be the certificate of incorporation of the corporation, but the original date of incorporation shall remain unchanged.

E. Any amendment or change effected in connection with the restatement and integration of the certificate of incorporation shall be subject to any other provision of the Muscogee (Creek) Nation General Corporation Act, not inconsistent with the provisions of this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Classes and series of stock, shareholder rights, see Title 3, § 1–1032.

Oklahoma Statutes Annotated

Amendment of certificate, see 18 Okl.St. Ann. §§ 1076, 1077.

Certificate of merger, domestic corporations, see 18 Okl.St. Ann. § 1081 et seq.

Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.

Notice,

Exception, see 18 Okl.St. Ann. § 1075.

Waiver, see 18 Okl.St. Ann. § 1074.

Restated certificate of incorporation, see 18 Okl.St. Ann. § 1080.

Stock issue resolutions not prohibited by prior filing of restated certificate of incorporation, see 18 Okl.St. Ann. § 1032.

Library References

Corporations ⇌40.

Westlaw Topic No. 101.

C.J.S. Corporations § 58.

§ 1–1081. Merger or consolidation of domestic corporations

A. Any two or more corporations existing under the laws of this Nation may merge into a single corporation, which may be any one of the constituent corporations or may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation and declaring its advisability. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
 2. The mode of carrying the same into effect;
 3. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation of the surviving or resulting corporation;
 4. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement;
 5. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights or securities of any other corporation which the holders of the shares are to receive in exchange for or upon conversion of the shares and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and
 6. Other details or provisions as are deemed desirable, including without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of Section 1-1036 of this Title. The agreement so adopted shall be executed and acknowledged in accordance with the provisions of Section 1-1007 of this Title. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement; provided, that the manner in which these facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The terms "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.
- C. The agreement required by the provisions of subsection B of this section shall be submitted to the shareholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. The terms of the agreement may require that the agreement be submitted to the shareholders whether or not the board of directors determines at any time subsequent to declaring its advisability that the agreement is no longer advisable and recommends that the shareholders reject it. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock whether voting or nonvoting, of the corporation at the address which appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable; provided, however, the notice shall be effective only with respect to mergers or consolidations for which the notice of the shareholders meeting to vote thereon has been mailed after November 1, 1988. At the meeting the agreement shall be considered and

a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or the assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. In lieu of filing an agreement of merger or consolidation required by this section, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1-1007 of this Title and which states:

1. The name and state of incorporation of each of the constituent corporations;
2. that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this section;
3. The name of the surviving or resulting corporation;
4. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;
6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation, stating the address thereof; and
7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation. For purposes of Sections 1-1084 and 1-1086 of this Title, the term "shareholder" shall be deemed to include "member".

D. Any agreement of merger or consolidation may contain a provision that at any time prior to the time that the agreement, or a certificate filed with the Secretary of the Nation in lieu thereof, becomes effective in accordance with Section 1-1007 of this Title, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the shareholders of all or any of the constituent corporations; provided, if the agreement of merger or consolidation is terminated after the filing of the agreement, or a certificate filed with the Secretary of the Nation in lieu thereof, but before the agreement or certificate has become effective, a certificate of termination of merger or consolidation shall be filed in accordance with Section 1-1007 of this Title. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the time that the agreement, or a certificate, filed with the Secretary of the Nation in lieu thereof, becomes effective in accordance with Section 1-1007 of this Title; provided, that an

amendment made subsequent to the adoption of the agreement by the shareholders of any constituent corporation shall not:

1. Alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation;
2. Alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation; or
3. Alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of the constituent corporation.

If the agreement of merger or consolidation is amended after the filing of the agreement, or a certificate in lieu thereof, with the Secretary of State, but before the agreement or certificate has become effective, a certificate of amendment of merger or consolidation shall be filed in accordance with Section 1-1007 of this Title.

E. In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the certificate of merger.

F. Notwithstanding the requirements of subsection C of this section, unless required by its certificate of incorporation, no vote of shareholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if:

1. The agreement of merger does not amend in any respect the certificate of incorporation of the constituent corporation;
2. Each share of stock of the constituent corporation outstanding immediately prior to the effective date of the merger is to be an identical outstanding or treasury share of the surviving corporation after the effective date of the merger; and
3. Either no shares of common stock of the surviving corporation and no shares, securities, or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under the plan do not exceed twenty percent (20%) of the shares of common stock of the constituent corporation outstanding immediately prior to the effective date of the merger. No vote of shareholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of the corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its shareholders pursuant to the provisions of this subsection, the secretary or assistant secretary of that corporation shall certify on the agreement that the agreement has been adopted pursuant to the provisions of this subsection and:

a. if it has been adopted pursuant to paragraph 1 of this subsection, that the conditions specified have been satisfied, or

b. if it has been adopted pursuant to paragraph 2 of this subsection, that no shares of stock of the corporation were issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation.

The agreement so adopted and certified shall then be filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. Filing shall constitute a representation by the person who executes the certificate that the facts stated in the certificate remain true immediately prior to such filing.

G. 1. Notwithstanding the requirements of subsection C of this section, unless expressly required by its certificate of incorporation, no vote of shareholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly owned subsidiary of the constituent corporation if

a. the constituent corporation and the direct or indirect wholly owned subsidiary of the constituent corporation are the only constituent corporations to the merger,

b. each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers, and preferences, and the qualifications, limitations, and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger,

c. the holding company and each of the constituent corporations to the merger are corporations of this Nation,

d. the certificate of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and bylaws of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective, as a result of the merger, the constituent corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company,

f. the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger,

g. the certificate of incorporation of the surviving corporation immediately following the effective time of the merger is identical to the certificate of incorporation of the constituent corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial

board of directors, and the initial subscribers of shares and provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of stock, if a change, exchange, reclassification, or cancellation has become effective; provided, however, that:

(1) the certificate of incorporation of the surviving corporation other than the election or removal of directors of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption under this title or its certificate of incorporation the approval of the shareholders of the surviving corporation shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company or any successor by merger, by the same vote as is required by this title or by the certificate of incorporation of the surviving corporation, and

(2) the certificate of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue, and

h. the shareholders of the constituent corporation do not recognize gain or loss for federal income tax purposes as determined by the board of directors of the constituent corporation.

Neither division (1) of subparagraph g of paragraph 1 of subsection G of this section nor any provision of the surviving corporation's certificate of incorporation required by division (1) of subparagraph g of paragraph 1 of subsection G of this section shall be deemed or construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.

2. As used in this subsection, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly owned subsidiary of the constituent corporation and whose capital stock is issued in a merger.

3. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection:

a. to the extent the restriction of Section 1-1090.3 of this Title applied to the constituent corporation and its shareholders at the effective time of the merger, restrictions shall apply to the holding company and its shareholders immediately after the effective time of the merger as though I were the constituent corporation, and all shareholders of stock of the holding company acquired in the merger shall for purposes of Section 1-1090.3 of this Title be deemed to have been acquired at the time that the shareholder of stock of the constituent corporation converted in the merger was acquired; provided, that any shareholder who immediate prior to the effective time of the merger was not an interested shareholder within the meaning of Section 1-1090.3 of this Title shall not solely by reason of the merger become an interested shareholder of the holding company, and

b. if the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted shall be represented by the stock certificates that previously represented the shares of capital stock of the constituent corporation. If any agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in this subparagraph have been satisfied. The agreement so adopted and certified shall then be filed and become effective in accordance with Section 1–1007 of this Title. Filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to the filing.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.
 Banks, see 6 Okl.St. Ann. § 1101 et seq.
 Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
 Burial associations, see 8 Okl.St. Ann. § 217.
 Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.
 Dissenting shareholders, appraisal rights, see 18 Okl.St. Ann. § 1091.
 Domestic and foreign stock and nonstock corporations, see 18 Okl.St. Ann. § 1087.
 Fees for filing articles, see 18 Okl.St. Ann. § 1142.
 Insurance,
 Limited stock accident, health and life insurers, see 36 Okl.St. Ann. § 2509.
 Mutual insurers, see 36 Okl.St. Ann. § 2133.
 Merger or consolidation of domestic corporations, see 18 Okl.St. Ann. § 1081.
 National bank, conversion into state bank, see 6 Okl.St. Ann. § 1107.
 Notice,
 Exception, see 18 Okl.St. Ann. § 1075.
 Waiver, see 18 Okl.St. Ann. § 1074.
 Public service corporations, consolidation, see Okl.St. Ann. Const. Art. 9, § 8.
 Railroads, competing lines, see Okl.St. Ann. Const. Art. 9, §§ 8, 9.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.
 Rural electric cooperatives, merger or consolidation, see 18 Okl.St. Ann. §§ 437.12, 437.13.
 Rural telephone cooperatives, merger or consolidation, see 18 Okl.St. Ann. §§ 438.17, 438.18.
 Sales tax, transfers pursuant to consolidation or merger, exemptions, see 68 Okl.St. Ann. § 1360.
 Savings and loan associations, see 18 Okl.St. Ann. § 381.61.
 Street railways, see 66 Okl.St. Ann. § 202.
 Take-over offers, see 71 Okl.St. Ann. § 451 et seq.

Library References

Corporations ⇄ 581 to 591.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 885 to 913.

§ 1–1082. Merger or consolidation of domestic and foreign corporations; service of process upon surviving or resulting corporation

A. Any one or more corporations of this state may merge or consolidate with one or more other corporations of any other state or states of the United States, or of the District of Columbia if the laws of the other state or states or of

the District permit a corporation of the jurisdiction to merge or consolidate with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this Nation if the surviving or resulting corporation will be a corporation of this Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of that jurisdiction to merge or consolidate with a corporation of another jurisdiction.

B. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the same into effect;
3. The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the cash, property, rights, or securities of any other corporation which the holder of the shares are to receive in exchange for, or upon conversion of, the shares and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation;
4. Other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation, or for some other arrangement with respect thereto consistent with the provisions of Section 1-1036 of this Title; and
5. Other provisions or facts as shall be required to be set forth in the certificate of incorporation by the laws of the Nation which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement, provided that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

C. The agreement shall be adopted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of an Muscogee (Creek) Nation corporation, in the same manner as is provided for in Section 1-1081 of this Title. The agreement shall be filed and shall become effective for all purposes of the laws of this Nation when and as provided for in Section 1-1081 of this Title with respect to the merger or consolidation of corporations of this Nation. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation executed in accordance with the provisions of Section 1-1007 of this Title, which states:

1. The name and state of incorporation of each of the constituent corporations;

2. That an agreement of merger or consolidation has been approved, adopted, executed and acknowledged by each of the constituent corporations in accordance with the provisions of this subsection;

3. The name of the surviving or resulting corporation;

4. In the case of a merger, the amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;

5. In the case of a consolidation, that the certificate of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

6. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof;

7. That a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any shareholder of any constituent corporation;

8. If the corporation surviving or resulting from the merger or consolidation is to be a corporation of this Nation, the authorized capital stock of each constituent corporation which is not a corporation of this Nation; and

9. The agreement, if any, required by the provisions of subsection D of this section. For purposes of Section 1-1085 of this Title, the term "shareholder" in subsection D of this section shall be deemed to include "member".

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any nation other than this Nation, it shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of any constituent corporation of this Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1-1091 of this Title, and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of process shall be mailed by the Secretary of the Nation. In the event of service upon the Secretary of the Nation in

accordance with the provisions of this subsection, the Secretary of the Nation shall immediately notify the surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to the surviving or resulting corporation at its address specified unless the surviving or resulting corporation shall have designated in writing to the Secretary of the Nation a different address for this purpose, in which case it shall be mailed to the last address so designated. The notice shall include a copy of the process and any other papers served on the Secretary of the Nation pursuant to the provisions of this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Nation that service is being effected pursuant to the provisions of this subsection and to pay the Secretary of the Nation the fee provided for in paragraph 7 of Section 1-1142 of this Title, which fee shall be taxed as part of the costs in the proceeding. The Secretary of the Nation shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of the Nation, the fact that service has been effected pursuant to the provisions of this subsection, the return date thereof, and the date service was made. The Secretary of the Nation shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of the Nation.

E. The provisions of subsections C and D of Section 1-1081 of this Title shall apply to any merger or consolidation pursuant to the provisions of this section. The provisions of subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is a corporation of this Nation. The provisions of subsection F of Section 1-1081 of this Title shall apply to any merger pursuant to the provisions of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
 Merger or consolidation of domestic and foreign corporations, service of process upon surviving or resulting corporation, see 18 Okl.St. Ann. § 1082.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.
 Service, generally, see 12 Okl.St. Ann. §§ 2004, 2005.
 Take-over offers, see 71 Okl.St. Ann. § 451 et seq.

Library References

Corporations ☞581 to 591, 690.	C.J.S. Corporations §§ 885 to 913, 1016.
Indians ☞510.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 101, 209.	

§ 1-1083. Merger of parent corporation and subsidiary or subsidiaries

A. In any case in which at least ninety percent (90%) of the outstanding shares of each class of the stock of a corporation or corporations, other than a corporation which has in its certificate of incorporation the provision required by division (1) of subparagraph g of paragraph 1 of Section 1-1081 of this Title of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by another corporation and one of

the corporations is a corporation of this Nation and the other or others are corporations of this Nation or of any other nation or nations or of the District of Columbia and the laws of the other nation or nations or of the District of Columbia, permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction, the corporation having such stock ownership may either merge the other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of the other corporations, into one of the other corporations by executing, acknowledging, and filing, in accordance with the provisions of Section 1-1007 of this Title, a certificate of ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of its adoption; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, which are parties to the merger, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. Any of the terms of the resolution of the board of directors to so merge may be made dependent upon facts ascertainable outside of such resolution, provided that the manner in which such facts shall operate upon the terms of the resolution is clearly and expressly set forth in the resolution. The term "facts", as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation. If the parent corporation is not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of any certificates therefore, and the certificate of ownership and merger shall state that the proposed merger has been approved by a majority of the outstanding stock of the parent corporation entitled to vote thereon at a meeting thereof duly called and held after twenty (20) days' notice of the purpose of the meeting is mailed to each such shareholder at the shareholder's address as it appears on the records of the corporation if the parent corporation is a corporation of this Nation or nation that the proposed merger has been adopted, approved, certified, executed and acknowledged by the parent corporation in accordance with the laws under which it is organized if the parent corporation is not a corporation of this Nation. If the surviving corporation exists under the laws of the District of Columbia or any nation other than this Nation, the provisions of subsection D of Section 1-1082 of this Title shall also apply to a merger pursuant to the provisions of this section.

B. Subject to the provisions of paragraph 1 of subsection A of Section 1-1006 of this Title, if the surviving corporation is a Muscogee (Creek) Nation corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

C. The provisions of subsection D of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section, and the provisions of

subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section in which the surviving corporation is the subsidiary corporation and is a corporation of this Nation. For purposes of this subsection, references to “agreement of merger” in subsections D and E of Section 1-1081 of this Title shall mean the resolution of merger adopted by the board of directors of the parent corporation. Any merger which effects any changes other than those authorized by the provisions of this section or made applicable by this subsection shall be accomplished in accordance with the provisions of Section 1-1081 or 1-1082 of this Title. The provisions of Section 1-1091 of this Title shall not apply to any merger effected pursuant to the provisions of this section, except as provided for in subsection D of this section.

D. In the event all of the stock of a subsidiary Muscogee (Creek) Nation corporation party to a merger effected pursuant to the provisions of this section is not owned by the parent corporation immediately prior to the merger, the shareholders of the subsidiary Muscogee (Creek) Nation corporation party to the merger shall have appraisal rights as set forth in Section 1-1091 of this Title.

E. A merger may be effected pursuant to the provisions of this section although one or more of the corporate parties to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States; provided, that the laws of that jurisdiction permit a corporation of that jurisdiction to merge with a corporation of another jurisdiction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Board of directors, committees, powers, see 18 Okl.St. Ann. § 1027.
 Dissolution of joint venture corporation having two shareholders, see 18 Okl.St. Ann. § 1094.
 Insurance companies, subsidiaries, see 36 Okl.St. Ann. § 1651 et seq.
 Merger of parent corporation and subsidiary or subsidiaries, see 18 Okl.St. Ann. § 1083.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ¶581 to 590.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 885 to 913.

§ 1-1084. Merger or consolidation of domestic nonstock, not for profit corporations

A. Any two or more nonstock corporations of this Nation, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section.

B. 1. The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation;

- b. the mode of carrying the same into effect;
- c. other provisions or facts required or permitted by the Muscogee (Creek) Nation General Corporation Act to be stated in a certificate of incorporation for nonstock corporations as can be stated in the case of a merger or consolidation, stated in an altered form as the circumstances of the case require;
- d. the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and
- e. other details or provisions as are deemed desirable.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of the agreement, provided that the manner in which the facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. The term "facts" as used in this paragraph, includes, but is not limited to, the occurrence of any event, including a determination of action by any person or body, including the corporation.

C. The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting for the purpose of acting on the agreement. Notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of the corporation, at the member's address as it appears on the records of the corporation at least twenty (20) days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable. At the meeting, the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement. If a majority of the voting power of voting members of each such corporation shall be for the adoption of the agreement, that fact shall be certified on the agreement by the officer performing the duties ordinarily performed by the secretary or assistant secretary of a corporation. The agreement shall be executed, acknowledged and filed, and shall become effective, in accordance with the provisions of Section 1-1007 of this Title. The provisions of paragraphs 1 through 6 of subsection C of Section 1-1081 of this Title shall apply to a merger or consolidation under this section.

D. If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided for in subsection B of this section shall be submitted to the members of the governing body of the corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds (2/3) of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the

agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

E. The provisions of subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if the charitable nonstock corporation would thereby have its charitable status lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation of domestic nonstock, not for profit corporations, see 18 Okl.St. Ann. § 1084.
 Required filing with county clerk, see 18 Okl.St. Ann. § 1144.
 Rural electric cooperative corporations, merger or consolidation, see 18 Okl.St. Ann. § 437.12 et seq.
 Rural telephone cooperative corporations, merger or consolidation, see 18 Okl.St. Ann. §§ 438.17, 438.18.

Library References

Corporations ¶581 to 590.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 885 to 913.

§ 1-1085. Merger or consolidation of domestic and foreign nonstock, not for profit corporations; service of process upon surviving or resulting corporation

A. Any one or more nonstock, not for profit corporations of this Nation may merge or consolidate with one or more other nonstock, not for profit corporations of any other Nation or Nations of the United States or of the District of Columbia, if the laws of such other Nation or Nations or of the District of Columbia permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, not for profit corporation formed by the consolidation, which may be a corporation of the Nation of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. In addition, any one or more nonstock, not for profit corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock, not for profit corporations of this Nation if the surviving or resulting corporation will be a corporation of this Nation, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

B. 1. All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state:

- a. the terms and conditions of the merger or consolidation;

- b. the mode of carrying the same into effect;
- c. the manner of converting the memberships of each of the constituent corporations into members of the corporation surviving or resulting from such merger or consolidation;
- d. such other details and provisions as shall be deemed desirable; and
- e. such other provisions or facts as shall then be required to be stated in a certificate of incorporation by the laws of the Nation which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation.

2. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed and, in the case of an Oklahoma corporation, in the same manner as is provided for in this act. The agreement shall be filed and shall become effective for all purposes of the laws of this Nation when and as provided for in this act with respect to the merger of nonstock, not for profit corporations of this Nation.

D. If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any Nation other than this Nation, it shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of any constituent corporation of this Nation, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of the Nation. In the event of such service upon the Secretary of the Nation in accordance with the provisions of this subsection, the Secretary of the Nation shall immediately notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of the Nation a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of the Nation. 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 Nation that service is being made pursuant to the provisions of this subsection, and to pay the Secretary of the Nation the fee prescribed by this act, which fee shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of the Nation shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to the provisions of this

subsection, the return date thereof, and the date when the service was made. The Secretary of the Nation shall not be required to retain such information for a period longer than five (5) years from his receipt of service of process.

E. This act shall apply to a merger pursuant to the provisions of this section if the corporation surviving the merger is a corporation of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation of domestic and foreign nonstock, not for profit corporations, service of process upon surviving or resulting corporation, see 18 Okl.St. Ann. § 1085.
Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ⇄581 to 591, 690.
Indians ⇄510.
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 885 to 913, 1016.
C.J.S. Indians §§ 151 to 179.

§ 1-1086. Merger or consolidation of domestic stock and nonstock corporations

A. Any one or more nonstock corporations of this Nation, whether or not organized for profit, may merge or consolidate with one or more stock corporations of this Nation, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving constituent corporation or a new corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

B. The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state:

1. the terms and conditions of the merger or consolidation;
2. the mode carrying the same into effect;
3. such other provisions or facts required or permitted by the Muscogee (Creek) Nation General Corporation Act to be stated in the certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require;
4. the manner of converting the shares of stock of a stock corporation and the interests of the members of nonstock corporation into shares or other securities of a stock corporation or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation, and if any shares of any such stock corporation or membership interests of any such nonstock corporation are not to be converted solely into shares or other securities of the stock corporation or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the

holders of shares of any such stock corporation or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and

5. such other details or provisions as are deemed desirable.

C. In a merger or consolidation provided for in this section, the interests of members of a constituent nonstock corporation may be treated in various ways so as to convert such interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporations received by shareholders of a constituent stock corporation, and the voting or nonvoting shares of a stock corporation may be converted into voting or nonvoting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

D. The agreement, required by subsection B of this section in the case of each constituent stock corporation, shall be adopted, approved, certified, executed and acknowledged by each constituent corporation in the same manner as is provided for in Section 1-1081 of this Title and, in the case of each constituent nonstock corporation, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations in the same manner as is provided for in Section 1-1084 of this Title. The agreement shall be filed and shall become effective for all purposes of the laws of this Nation when and as provided for in Section 1-1081 of this Title with respect to the merger of stock corporations of this Nation. Insofar as they may be applicable, the provisions of paragraphs 1 through 7 of subsection C of Section 1-1081 of this Title shall apply to a merger under this section.

E. The provisions of subsection E of Section 1-1081 of this Title shall apply to a merger pursuant to the provisions of this section, if the surviving corporation is a corporation of this Nation. The provisions of subsections C and D of Section 1-1081 of this Title shall apply to any constituent stock corporation participating in a merger or consolidation pursuant to the provisions of this

section. The provisions of subsection F of Section 1-1081 of this Title shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

F. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.

Merger or consolidation of domestic stock and nonstock corporations, see 18 Okl.St. Ann. § 1086.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ⇌ 581 to 590.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 885 to 913.

§ 1-1087. Merger or consolidation of domestic and foreign stock and nonstock corporations

A. Any one or more corporations of this Nation, whether stock or nonstock corporations and whether or not organized for profit, may merge or consolidate with one or more other corporations of any other Nation or Nations of the United States or of the District of Columbia, whether stock or nonstock corporations and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the place of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with the provisions of this section. The surviving or new corporation may be either a stock corporation or a membership corporation, as shall be specified in the agreement of merger required by the provisions of subsection B of this section.

B. The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in Section 1-1086 of this Title in the case of Muscogee (Creek) Nation corporations. The agreement of merger or consolidation shall also set forth such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of the Nation which are stated in the agreement to be the laws which shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. The agreement, in the case of foreign corporations, shall be adopted, approved, executed and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is formed.

C. The requirements of the provisions of this Title as to the appointment of the Secretary of the Nation to receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the laws of any other Nation shall also apply to mergers or consolidations effected pursuant to the provisions of this section. The provisions of this Title shall apply to mergers effected pursuant to the provisions of this section if the surviving corporation is a corporation of this Nation. The provisions of this Title shall apply to any constituent stock corporation participating in a merger of consolidation pursuant to the provisions of this section. The provisions of this Title shall apply to any constituent stock corporation participating in a merger pursuant to the provisions of this section.

D. Nothing in this section shall be construed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.

Merger or consolidation of domestic and foreign stock and nonstock corporations, see 18 Okl.St. Ann. § 1087.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ¶¶ 581 to 590, 690.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 885 to 913, 1016.

§ 1–1088. Status, rights, liabilities, etc. of constituent and surviving or resulting corporations following merger or consolidation

When any merger or consolidation shall have become effective pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act, for all purposes of the laws of this Nation the separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, possessing all the rights, privileges, powers and franchises as well of public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or

otherwise, under the laws of this Nation, in any of such constituent corporations, shall not revert or be in any way impaired by reason of the provisions of the Muscogee (Creek) Nation General Corporation Act; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations, from that time forward, shall attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, dissenting shareholders, see 18 Okl.St. Ann. § 1091.

Effect of merger on pending action, see 18 Okl.St. Ann. § 1090.

Status, rights, liabilities, etc. of constituent and surviving or resulting corporations following merger or consolidation, see 18 Okl.St. Ann. § 1088.

Transfer of vehicle title in merger or consolidation without excise tax, see 68 Okl.St. Ann. § 2105.

Library References

Corporations ⌘586.

Westlaw Topic No. 101.

C.J.S. Corporations § 907.

§ 1–1089. Powers of corporation surviving or resulting from merger or consolidation; issuance of stock, bonds or other indebtedness

When two or more corporations are merged or consolidated, the corporation surviving or resulting from the merger may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all payments it will be required to make, or obligations it will be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges and property, real, personal or mixed. The surviving or resulting corporation may issue certificates of its capital stock or uncertificated stock if authorized to do so and other securities to the shareholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Mortgage or pledge of assets, see 18 Okl.St. Ann. § 1093.

Powers of corporation surviving or resulting from merger or consolidation, issuance of stock, bonds or other indebtedness, see 18 Okl.St. Ann. § 1089.

Library References

Corporations ⌘588.

Westlaw Topic No. 101.

C.J.S. Corporations § 909.

§ 1-1090. Effect of merger upon pending actions

Any action or proceeding, whether civil, criminal or administrative, pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Effect of merger upon pending actions, see 18 Okl.St. Ann. § 1090.

Library References

Corporations ⇌590.

Indians ⇌509.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 910 to 913.

C.J.S. Indians §§ 151 to 179.

§ 1-1090.1. Share acquisitions by domestic corporations

A. One or more corporations may acquire all or part of the outstanding shares of one or more other corporations, if the board of directors of each corporation adopts and its shareholders approve, if required by subsection C of this section, the agreement of acquisition.

B. The agreement of acquisition shall set forth:

1. the name or names of the corporation or corporations whose shares will be acquired and the name or names of the acquiring corporation or corporations;
2. the terms and conditions of the acquisitions;
3. the manner and basis of exchanging the shares to be acquired for the consideration proffered;
4. any amendments or changes in the certificate of incorporation of a corporation which is a party to the agreement; and
5. such other provisions as the directors shall deem advisable.

C. After adopting an agreement of acquisition, the board of directors of each corporation whose shares are to be acquired, in whole or in part, or whose certificate of incorporation is to be amended, shall submit the agreement of acquisition for approval by the shareholders entitled to vote thereon. Due notice of the meeting shall be mailed to each holder of stock, whether voting or nonvoting, of the corporation at his address as it appears on the records of the corporation, at least twenty (20) days prior to the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the directors shall deem advisable. At the meeting, the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be adopted and approved in accordance with the provisions of this section, it shall then be filed and shall become effective in accordance with the provisions of Section 1-1007 of this Title. In lieu of filing an agreement of acquisition required by this

section, the acquiring corporation may file a certificate of acquisition, executed in accordance with the provisions of Section 1-1007 of this Title, which states:

1. the name and jurisdiction of incorporation of each corporation which is a party to the agreement;
2. that the agreement of acquisition has been adopted, approved, certified, executed, and acknowledged in accordance with the provisions of this section;
3. whether the corporation is an acquiring corporation or a corporation whose shares are to be acquired;
4. the amendments or changes, if any, in the certificate of incorporation that are to be effected by the agreement of acquisition;
5. that the executed agreement of acquisition is on file at the principal place of business of each corporation, stating the address thereof; and
6. that a copy of the agreement of acquisition will be furnished by each corporation, on request and without cost, to any of its shareholders.

D. Any agreement of acquisition may contain a provision that at any time prior to the filing of the agreement with the Secretary of the Nation, the agreement may be terminated by the board of directors of any affected corporation notwithstanding approval of the agreement by the shareholders of one or more of the affected corporations. Any agreement of acquisition may contain a provision that the board of directors of the affected corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the Secretary of the Nation, provided that an amendment made subsequent to the adoption of the agreement by the shareholders of any affected corporation shall not:

1. alter or change the amount or kind of consideration to be received in exchange for or on conversion of all or part of the shares to be acquired;
2. alter or change any term of the certificate of incorporation of the affected corporations; or
3. alter or change any of the terms and consideration of the agreement if such alteration or change would adversely affect the holders of any class or series of a corporation whose shares are to be acquired.

E. The holders of the outstanding shares of a class shall be entitled to vote as a class upon an agreement of acquisition, whether or not entitled to vote thereon by the provisions of the certificate of incorporation, if the agreement provides for the acquisition of all or part of the shares of the class.

F. This section shall not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

G. Any shareholder whose shares are to be acquired pursuant to an agreement of acquisition adopted and approved in accordance with this section and who has complied with the procedural steps specified in subsection D of Section 1-1091 of this Title for mergers and consolidations and who has neither voted in favor of the share acquisition nor consented thereto in writing shall be entitled to an appraisal by the district court of the fair value of his shares in compliance with the same provisions and procedures and with the same rights

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and limitations as set out in subsections E through K of Section 1–1091 of this Title.

H. If the entity acquiring shares pursuant to this section is governed by the laws of the District of Columbia or any nation other than this Nation, the entity shall agree that it may be served with process in this Nation in any proceeding for enforcement of any obligation of the acquiring corporation arising from the share acquisition, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1–1091 of this Title, and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of the Nation. In the event of such service upon the Secretary of the Nation in accordance with this subsection, the Secretary of the Nation shall forthwith notify such acquiring corporation thereof by letter sent by certified mail, with return receipt requested, directed to such acquiring corporation at its address so specified, unless such acquiring corporation shall have designated in writing to the Secretary of the Nation a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of the Nation pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of the Nation that service is being effected pursuant to this subsection and to pay the Secretary of the Nation the fee provided for in paragraph 7 of Section 1–1142 of this Title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of Nation shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of the Nation, the fact that service has been served upon the Secretary of Nation, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of the Nation shall not be required to retain such information longer than five (5) years from receipt of the service of process by the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Share acquisitions, see 18 Okl.St. Ann. § 1090.1.

Library References

Corporations \S 115, 377.
Westlaw Topic No. 101.
C.J.S. Corporations $\S\S$ 301 to 318, 658.

§ 1–1090.2. Merger or consolidation of domestic corporation and limited partnership

A. Any one or more corporations of this Nation may merge or consolidate with one or more business entities of this Nation or of any other Nation or Nations of the United States, or of the District of Columbia, unless the laws of

the other Nation or Nations or the District of Columbia forbid the merger or consolidation. A corporation or corporations and one or more business entities may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into a business entity, which may be any one of the business entities, or they may consolidate into a new corporation or business entity formed by the consolidation, which shall be a corporation or business entity of this Nation or any other Nation of the United States, or the District of Columbia, which permits the merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more business entities formed under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this Nation if the surviving or resulting corporation will be a corporation of this Nation and the laws under which the business entity or entities are formed permit a business entity of such jurisdiction to merge or consolidate with a corporation of another jurisdiction. As used in this section, "business entity" means a domestic or foreign partnership whether general or limited, limited liability company, business trust, common law trust, or other unincorporated business.

B. Each corporation and business entity merging or consolidating shall enter into a written agreement of merger or consolidation. The agreement shall state:

1. The terms and conditions of the merger or consolidation;
2. The mode of carrying the consolidation into effect;
3. The manner of converting the shares of stock of each such corporation and the ownership interests of each business entity into shares, ownership interests or other securities of the entity surviving or resulting from such merger or consolidation, and if any shares of any such corporation or any partnership interests of any such business entity are not to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from the merger or consolidation, the cash, property, rights, or securities of any other rights or securities of any other corporation or entity which the holders of the shares or ownership interests are to receive in exchange for, or upon conversion of, the shares or ownership interests and the surrender of any certificates evidencing them, which cash, property, rights, or securities of any other corporation or entity may be in addition to or in lieu of shares, ownership interests or other securities of the entity surviving or resulting from the merger or consolidation; and
4. Other details or provisions as are deemed desirable, including but not limited to, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or business entity. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

C. The agreement required by subsection B of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in Section 1-1081 of this Title and, in the case of the business entities, in accordance with their constituent agreements and in accordance with the laws of the jurisdiction under which they are formed, as the case may be; provided that no holder of securities or an interest in a constituent entity who has not voted for or consented to the merger or consolidation shall be required to accept an interest in the surviving or resulting business entity if acceptance would expose the holder to personal liability for debts of the surviving business entity. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this Nation when and as provided in Section 1-1081 of this Title with respect to the merger or consolidation of corporations of this Nation. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation or business entity may file a certificate of merger or consolidation, executed in accordance with Section 1-1007 of this Title if the surviving or resulting entity is a corporation, or by a person authorized to act for the business entity, if the surviving or resulting entity is a business entity, which states:

1. The name and jurisdiction of formation of each of the constituent entities;
2. That an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;
3. The name of the surviving or resulting corporation or business entity;
4. In the case of a merger in which a corporation is the surviving entity, any amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no amendments or changes are desired, a statement that the certificate of incorporation of the surviving corporation shall be its certificate of incorporation;
5. In the case of a consolidation in which a corporation is the resulting entity, that the certificate of incorporation of the resulting corporation shall be as set forth in an attachment to the certificate;
6. In the case of a consolidation in which a business entity other than a corporation is the resulting entity, that the charter of the resulting entity shall be as set forth in an attachment to the certificate;
7. That the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation or business entity and the address thereof;
8. That a copy of the agreement of consolidation or merger shall be furnished by the surviving or resulting entity, on request and without cost, to any shareholder of any constituent corporation or any partner of any constituent business entity; and
9. The agreement, if any, required by subsection D of this section.

D. If the entity surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any nation other than this Nation, the entity shall agree that it may be served with process in this

Nation in any proceeding for enforcement of any obligation of any constituent corporation or business entity of this Nation, as well as for enforcement of any obligation of the surviving or resulting corporation or business entity arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Section 1-1091 of this Title, and shall irrevocably appoint the Secretary of the Nation as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of any process shall be mailed by the Secretary of the Nation. In the event of service upon the Secretary of the Nation pursuant to this subsection, the Secretary of the Nation shall forthwith notify the surviving or resulting corporation or business entity by a letter, sent by certified mail with return receipt requested, directed to the surviving or resulting corporation or business entity at its specified address, unless the surviving or resulting corporation or business entity shall have designated in writing to the Secretary of the Nation a different address for that purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of the Nation pursuant to this subsection. It shall be the duty of the plaintiff in the event of any service to serve process and any other papers in duplicate, to notify the Secretary of the Nation that service is being effected pursuant to this subsection and to pay the Secretary of the Nation the fee provided for in paragraph 7 of subsection A of Section 1-1142 of this Title, which fee shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of the Nation shall maintain an alphabetical record of any such service, setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of the Nation, the fact that service has been served upon the Secretary of the Nation, the fact that service has been effected pursuant to this subsection, the return date thereof, and the date service was made. The Secretary of the Nation shall not be required to retain this information longer than five (5) years from the date of receipt of the service of process by the Secretary of the Nation.

E. Subsections C, D, E, F and G of Section 1-1081 of this Title and Sections 1-1088 through 1-1090 and 1-1127 of this Title, insofar as they are applicable, shall apply to mergers or consolidations between corporations and business entities.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation of domestic corporation and business entity, see 18 Okl.St. Ann. § 1090.2.

Library References

Corporations ☞ 581 to 590.

Partnership ☞ 363.

Westlaw Topic Nos. 101, 289.

C.J.S. Corporations §§ 885 to 913.

C.J.S. Partnership §§ 417, 427.

§ 1-1090.3. Business combinations with interested shareholders

A. Notwithstanding any other provisions of this Title, a corporation shall not engage in any business combination with any interested shareholder for a

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period of three (3) years following the time that the person became an interested shareholder, unless:

1. Prior to that time, the board of directors of the corporation approved either the business combination or the transaction which resulted in the person becoming an interested shareholder;

2. Upon consummation of the transaction which resulted in the person becoming an interested shareholder, the interested shareholder owned of record or beneficially at least eighty-five percent (85%) of the outstanding voting stock of the corporation at the time the transaction commenced, excluding for purposes of determining the voting power the votes attributable to those shares owned of record or beneficially by:

- a. persons who are directors and also officers, and
- b. employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

3. At or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds (2/3) of the outstanding voting stock which is not attributable to shares owned of record or beneficially by the interested shareholder.

B. The restrictions contained in this section shall not apply if:

1. The corporation's original certificate of incorporation contains a provision expressly electing not to be governed by this section;

2. The corporation, by action of its board of directors, adopts an amendment to its bylaws within ninety (90) days of the effective date of this section, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors;

3. a. The corporation, by action of its shareholders, adopts an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law, an amendment to the certificate of incorporation or bylaws must be approved by the affirmative vote of a majority of the outstanding voting stock of the corporation.

b. An amendment adopted pursuant to this paragraph shall be effective immediately in the case of a corporation that both:

(1) has never had a class of voting stock that falls within any of the three categories set out in paragraph 4 of this subsection, and

(2) has not elected by a provision in its original certificate of incorporation or any amendment thereto to be governed by this section.

c. In all other cases, an amendment adopted pursuant to this paragraph shall not be effective until twelve (12) months after the adoption of the amendment and shall not apply to any business combination between a corporation and any person who became an interested shareholder of the corporation on or prior to the adoption. A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors;

4. The corporation does not have a class of voting stock that is:
 - a. listed on a national securities exchange,
 - b. authorized for quotation on the NASDAQ stock market, or
 - c. held of record by one thousand or more shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder;
5. A person becomes an interested shareholder inadvertently and:
 - a. as soon as practicable divests itself of ownership of sufficient shares so that the person ceases to be an interested shareholder, and
 - b. would not, at any time within the three-year period immediately prior to a business combination between the corporation and the person, have been an interested shareholder but for the inadvertent acquisition;
6. a. The business combination is proposed prior to the consummation or abandonment of, and subsequent to the earlier of the public announcement or the notice required hereunder of, a proposed transaction which:
 - (1) constitutes one of the transactions described in subparagraph b of this paragraph,
 - (2) is with or by a person who:
 - (a) was not an interested shareholder during the previous three (3) years, or
 - (b) became an interested shareholder with the approval of the corporation's board of directors or during the period described in paragraph 7 of this subsection, and
 - (3) is approved or not opposed by a majority of the members of the board of directors then in office, but not less than one, who were directors prior to any person becoming an interested shareholder during the previous three (3) years or were recommended for election or elected to succeed the directors by a majority of the directors;
- b. The proposed transactions referred to in subparagraph a of this paragraph are limited to:
 - (1) a share acquisition pursuant to Section 1-1090.1 of this Title, or a merger or consolidation of the corporation, except for a merger in respect of which, pursuant to subsection F or G of Section 1-1081 of this Title, no vote of the shareholders of the corporation is required,
 - (2) a sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to any direct or indirect wholly-owned subsidiary or to the corporation, having an aggregate market value equal to fifty percent (50%) or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation, or
 - (3) a proposed tender or exchange offer for outstanding stock of the corporation which represents fifty percent (50%) or more of the outstanding voting

stock of the corporation. The corporation shall give not less than twenty (20) days' notice to all interested shareholders prior to the consummation of any of the transactions described in divisions (1) or (2) of this subparagraph.

7. The business combination is with an interested shareholder who became an interested shareholder at a time when the restriction contained in this section did not apply by reason of any paragraphs 1 through 4 of this subsection; provided, however, that this paragraph shall not apply if, at the time the interested shareholder became an interested shareholder, the corporation's certificate of incorporation contained a provision authorized by subsection C of this section.

C. Notwithstanding paragraphs 1, 2, 3 and 4 of subsection B of this section, a corporation may elect by a provision of its original certificate of incorporation or any amendment thereto to be governed by this section; provided, that any such amendment to the certificate of incorporation shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became an interested shareholder prior to the effective date of the amendment.

D. As used in this section:

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person;

2. "Associate", when used to indicate a relationship with any person, means:

a. any corporation, partnership, unincorporated association, or other entity of which the person is a director, officer or partner or is the owner, of record or beneficially of twenty percent (20%) or more of any class of voting stock of the corporation,

b. any trust or other estate in which the person has at least a twenty-percent (20%) or as to which the person serves as trustee or in a similar fiduciary capacity, and

c. any relative or spouse of the person, or any relative of the spouse, who has the same residence as the person;

3. "Business combination", when used in reference to any corporation and any interested shareholder of the corporation, means:

a. any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with:

(1) the interested shareholder, or

(2) any other corporation, partnership, unincorporated association, or other entity if the merger or consolidation is caused by the interested shareholder and, as a result of the merger or consolidation subsection A of this section is not applicable to the surviving entity,

b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of the corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any

direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation,

c. any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of the subsidiary to the interested shareholder, except:

(1) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the corporation or any such subsidiary which securities were outstanding prior to the time that the interested shareholder became an interested shareholder,

(2) pursuant to a merger under subsection G of Section 1-1081 of this Title,

(3) pursuant to a dividend or distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for or convertible into stock of the corporation or any subsidiary which security is distributed, pro rata, to all holders of a class or series of stock of the corporation subsequent to the time the interested shareholder became an interested shareholder, or

(4) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock;

(5) any issuance or transfer of stock by the corporation; provided, however, that in no case under divisions (3) through (5) of this subparagraph shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation,

d. any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, or the outstanding voting stock, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder,

e. any receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs a through d of this paragraph, provided by or through the corporation or any direct or indirect majority-owned subsidiary, or

f. any share acquisition by the interested shareholder from the corporation or any direct or indirect majority-owned subsidiary of the corporation pursuant to Section 1-1090.1 of this Title;

4. "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent (20%) or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of the entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where the person holds stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of the entity;

5. a. "Interested shareholder" means:

(1) any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that:

(a) is the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation, or

(b) is an affiliate or associate of the corporation and was the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested shareholder, and

(2) the affiliates and associates of the person;

b. "Interested shareholder" shall not mean:

(1) any person who:

(a) owned shares in excess of the fifteen-percent (15%) limitation set forth herein as of, or acquired such shares pursuant to a tender offer commenced prior to, September 1, 1991, or pursuant to an exchange offer announced prior to September 1, 1991, and commenced within ninety (90) days thereafter and either:

i. continued to own shares in excess of the fifteen-percent (15%) limitation or would have but for action by the corporation, or

ii. is an affiliate or associate of the corporation and so continued, or so would have continued but for action by the corporation, to be the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested shareholder, or

(b) acquired the shares from a person described in subdivision (a) of this division by gift, inheritance or in a transaction in which no consideration was exchanged, or

(2) any person whose ownership of shares in excess of the fifteen-percent (15%) limitation set forth herein is the result of action taken solely by the corporation; provided, that the person shall be an interested shareholder if thereafter the person acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by the person;

c. For the purpose of determining whether a person is an interested shareholder, the stock of the corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of paragraph 8 of this subsection, but shall not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise;

6. "Person" means any individual, corporation, partnership, unincorporated association, any other entity, any group and any member of a group.

7. "Stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest;

8. "Voting stock" means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any entity interest entitled to vote generally in the election of the governing body of the entity; and

9. "Owner", including the terms "own" and "owned", when used with respect to any stock, means a person who individually or with or through any of its affiliates or associates:

a. beneficially owns the stock, directly or indirectly, or

b. has:

(1) the right to acquire the stock, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered stock is accepted for purchase or exchange, or

(2) the right to vote the stock pursuant to any agreement, arrangement, or understanding; provided, however, that a person shall not be deemed the owner of any stock because of the person's right to vote the stock if the agreement, arrangement, or understanding to vote the stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons, or

c. has any agreement, arrangement, or understanding for the purpose of acquiring, holding, or voting, except voting pursuant to a revocable proxy or consent as described in division (2) of subparagraph b of this paragraph, or disposing of the stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the stock.

E. No provisions of a certificate of incorporation or bylaw shall require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Business combinations with interested shareholders, see 18 Okl.St. Ann. § 1090.3.

Library References

Corporations ☞ 115, 186, 441, 581 to 590.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 301 to 318, 386 to
387, 396 to 398, 742, 744 to 747, 885 to
913.

§ 1-1090.4. Conversion of business entity to corporation

A. As used in this section, the term “business entity” means a domestic partnership, whether general or limited, limited liability company, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a corporation incorporated under the laws of this Nation by complying with subsection G of this section and filing in the office of the Secretary of the Nation a certificate of conversion that has been executed in accordance with subsection H of this section and filed in accordance with Section 1-1007 of this Title, to which shall be attached, a certificate of incorporation that has been prepared, executed and acknowledged in accordance with Section 1-1007 of this Title.

C. The certificate of conversion shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the certificate of conversion;
3. The name of the corporation as set forth in its certificate of incorporation filed in accordance with subsection B of this section; and
4. The future effective date or time, which shall be a date or time certain, of the conversion to a corporation if the conversion is not to be effective upon the filing of the certificate of conversion and the certificate of incorporation provides for the same future effective date as authorized in subsection D of Section 1-1007 of this Title.

D. Upon the effective time of the certificate of conversion and the certificate of incorporation, the business entity shall be converted into a corporation of this state and the corporation shall thereafter be subject to all of the provisions of this title, except that notwithstanding Section 1-1007 of this Title, the existence of the corporation shall be deemed to have commenced on the date the business entity commenced its existence.

E. The conversion of any business entity into a corporation of this Nation shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a corporation of this Nation or the personal liability of any person incurred prior to such conversion.

F. Unless otherwise agreed or otherwise provided by any laws of this Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such business entity and shall constitute a continuation of the existence of the converting business entity in the form of a corporation of this Nation.

G. Prior to filing a certificate of conversion with the Secretary of the Nation, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, govern-

ing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and a certificate of incorporation shall be approved by the same authorization required to approve the conversion.

H. The certificate of conversion shall be signed by an officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director of a corporation of this Nation, however named or described, and who is authorized to sign the certificate of conversion on behalf of the business entity.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of a domestic business entity to a domestic corporation, see 18 Okl.St. Ann. § 1090.4.

Library References

Associations ↻24.	Westlaw Topic Nos. 41, 225, 241E, 289.
Joint–Stock Companies and Business Trusts ↻21.	C.J.S. Associations § 106.
Limited Liability Companies ↻49.	C.J.S. Joint Stock Companies §§ 41 to 42.
Partnership ↻20, 363.	C.J.S. Partnership §§ 8, 417, 427.

§ 1–1090.5. Conversion of corporation to business entity

A. A corporation of this Nation may, upon the authorization of such conversion in accordance with this section, convert to a business entity. As used in this section, the term “business entity” means a domestic partnership, whether general or limited, limited liability company, business trust, common law trust, or other unincorporated association.

B. The board of directors of the corporation which desires to convert under this section shall adopt a resolution approving such conversion, specifying the type of business entity into which the corporation shall be converted and recommending the approval of the conversion by the shareholders of the corporation. The resolution shall be submitted to the shareholders of the corporation at an annual or special meeting. Due notice of the time, and purpose of the meeting shall be mailed to each holder of shares, whether voting or nonvoting, of the corporation at the address of the shareholder as it appears on the records of the corporation, at least twenty (20) days prior to the date of the meeting. At the meeting, the resolution shall be considered and a vote taken for its adoption or rejection. If all outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted for the adoption of the resolution, the corporation shall file with the Secretary of the Nation a certificate of conversion executed in accordance with Section 1–1007 of this Title which certifies:

1. The name of the corporation, and if it has been changed, the name under which it was originally incorporated;
2. The date of filing of its original certificate of incorporation with the Secretary of the Nation;
3. The name of the business entity into which the corporation shall be converted;

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4. That the conversion has been approved in accordance with the provisions of this section; and

5. If the business entity into which the corporation is converting was required to make a filing with the Secretary of the Nation as a condition of its information, the type and date of such filing.

C. Upon the filing of a certificate of conversion in accordance with subsection B of this section and payment to the Secretary of the Nation of all fees prescribed under this title, the Secretary of the Nation shall certify that the corporation has filed all documents and paid all fees required by this title, and thereupon the corporation shall cease to exist as a corporation of this Nation at the time the certificate of conversion becomes effective in accordance with Section 1-1007 of this Title. The certificate of the Secretary of the Nation shall be *prima facie* evidence of the conversion by the corporation.

D. The conversion of a corporation pursuant to a certificate of conversion under this section shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to such conversion or the personal liability of any person incurred prior to the conversion.

E. After the time the certificate of conversion becomes effective the corporation shall continue to exist as a business entity of this Nation, and the laws of this Nation shall apply to the entity to the same extent as prior to the time.

F. Unless otherwise provided in a resolution of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of such corporation and shall constitute a continuation of the existence of the converting corporation in the form of the applicable business entity of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of domestic corporation to a domestic business entity, see 18 Okl.St. Ann. § 1090.5.

Library References

Associations ◊3.	Westlaw Topic Nos. 41, 101, 225, 241E, 289.
Corporations ◊572 to 579.	C.J.S. Associations § 7.
Joint-Stock Companies and Business Trusts ◊3.	C.J.S. Business Trusts §§ 12 to 13.
Limited Liability Companies ◊3.	C.J.S. Joint Stock Companies § 4.
Partnership ◊20, 352.	C.J.S. Partnership §§ 8, 406, 418.

§ 1-1091. Appraisal rights

A. Any shareholder of a corporation of this state who holds shares of stock on the date of the making of a demand pursuant to the provisions of subsection D of this section with respect to the shares, who continuously holds the shares through the effective date of the merger or consolidation, who has otherwise complied with the provisions of subsection D of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to the provisions of Section 1-1073 of this Title shall be entitled to an appraisal by the Muscogee (Creek) Nation District Court of the

fair value of the shares of stock under the circumstances described in subsections B and C of this section. As used in this section, the word "shareholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and "depository receipt" means an instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository. The provisions of this subsection shall be effective only with respect to mergers or consolidations consummated pursuant to an agreement of merger or consolidation entered into after November 1, 1988.

B. 1. Except as otherwise provided for in this subsection, appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation, or of the acquired corporation in a share acquisition, to be effected pursuant to the provisions of Section 1-1081 other than a merger effected pursuant to subsection G of Section 1081, and Sections 1-1082, 1-1086, 1-1087, 1-1090.1 or 1-1090.2 of this Title.

2. a. No appraisal rights under this section shall be available for the shares of any class or series of stock which stock, or depository receipts in respect thereof, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon the agreement of merger or consolidation, were either:

(1) listed on a national securities exchange or designated as a national market system security or an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(2) held of record by more than two thousand holders.

No appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided in subsection G of Section 1-1081 of this Title.

b. In addition, no appraisal rights shall be available for any shares of stock, or depository receipts in respect thereof, of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the shareholders of the surviving corporation as provided for in subsection F of Section 1-1081 of this Title.

3. Notwithstanding the provisions of paragraph 2 of this subsection, appraisal rights provided for in this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to the provisions of Sections 1-1081, 1-1082, 1-1086, 1-1087, 1-1090.1 or 1-1090.2 of this Title to accept for the stock anything except:

a. shares of stock of the corporation surviving or resulting from such merger or consolidation or depository receipts thereof, or

b. shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock or depository receipts at the effective date of the

merger or consolidation will be either listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Security Dealers, Inc. or held of record by more than two thousand holders, or

c. cash in lieu of fractional shares or fractional depository receipts described in subparagraphs a and b of this paragraph, or

d. any combination of the shares of stock, depository receipts, and cash in lieu of the fractional shares or depository receipts described in subparagraphs a, b and c of this paragraph.

4. In the event all of the stock of a subsidiary Muscogee (Creek) Nation corporation party to a merger effected pursuant to the provisions of Section 1-1083 of this Title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Muscogee (Creek) Nation corporation.

C. Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections D and E of this section, shall apply as nearly as is practicable.

D. Appraisal rights shall be perfected as follows:

1. If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of shareholders, the corporation, not less than twenty (20) days prior to the meeting, shall notify each of its shareholders entitled to the appraisal rights that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in the notice a copy of this section. Each shareholder electing to demand the appraisal of the shares of the shareholder shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of the shares of the shareholder. The demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends thereby to demand the appraisal of the shares of the shareholder. A proxy or vote against the merger or consolidation shall not constitute such a demand. A shareholder electing to take such action must do so by a separate written demand as herein provided. Within ten (10) days after the effective date of the merger or consolidation, the surviving or resulting corporation shall notify each shareholder of each constituent corporation who has complied with the provisions of this subsection and has not voted in favor of or consented to the merger or consolidation as of the date that the merger or consolidation has become effective; or

2. If the merger or consolidation is approved pursuant to the provisions of Section 1-1073 or 1-1083 of this Title, each constituent corporation, either before the effective date of the merger or consolidation or within ten (10) days thereafter, shall notify each of the holders of any class or series of stock of such

constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all of the shares of the class or series of stock of the constituent corporation, and shall include in such notice a copy of this section; provided if the notice is given on or after the effective date of the merger or consolidation, the notice shall be given by the surviving or resulting corporation to all the holders of any class or series of stock of a constituent corporation that are entitled to appraisal rights. The notice may, and, if given on or after the effective date of the merger or consolidation, shall also notify the shareholders of the effective date of the merger or consolidation. Any shareholder entitled to appraisal rights may, within twenty (20) days after the date of mailing of the notice, demand in writing from the surviving or resulting corporation the appraisal of the holder's shares. The demand will be sufficient if it reasonably informs the corporation of the identity of the shareholder and that the shareholder intends to demand the appraisal of the holder's shares. If the notice does not notify shareholders of the effective date of the merger or consolidation either:

a. each constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of the constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation, or

b. the surviving or resulting corporation shall send a second notice to all holders on or within ten (10) days after the effective date of the merger or consolidation; provided, however, that if the second notice is sent more than twenty (20) days following the mailing of the first notice, the second notice need only be sent to each shareholder who is entitled to appraisal rights and who has demanded appraisal of the holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the shareholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than ten (10) days prior to the date the notice is given; provided, if the notice is given on or after the effective date of the merger or consolidation, the record date shall be the effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

E. Within one hundred twenty (120) days after the effective date of the merger or consolidation, the surviving or resulting corporation or any shareholder who has complied with the provisions of subsections A and D of this section and who is otherwise entitled to appraisal rights, may file a petition in district court demanding a determination of the value of the stock of all such shareholders; provided, however, at any time within sixty (60) days after the effective date of the merger or consolidation, any shareholder shall have the right to withdraw the demand of the shareholder for appraisal and to accept the terms offered upon the merger or consolidation. Within one hundred twenty (120) days after the effective date of the merger or consolidation, any shareholder who has complied with the requirements of subsections A and D of

this section, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of the shares. The written statement shall be mailed to the shareholder within ten (10) days after the shareholder's written request for a statement is received by the surviving or resulting corporation or within ten (10) days after expiration of the period for delivery of demands for appraisal pursuant to the provisions of subsection D of this section, whichever is later.

F. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which, within twenty (20) days after such service, shall file in the office of the Clerk of Court of the Muscogee (Creek) Nation District Court in which the petition was filed a duly verified list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements regarding the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Clerk of Court, if so ordered by the Court, shall give notice of the time and place fixed for the hearing on the petition by registered or certified mail to the surviving or resulting corporation and to the shareholders shown on the list at the addresses therein stated. Notice shall also be given by one or more publications at least one (1) week before the day of the hearing, in a newspaper of general circulation published in the City of Okmulgee, Oklahoma, or other publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

G. At the hearing on the petition, the Court shall determine the shareholders who have complied with the provisions of this section and who have become entitled to appraisal rights. The Court may require the shareholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Clerk of Court for notation thereon of the pendency of the appraisal proceedings; and if any shareholder fails to comply with this direction, the Court may dismiss the proceedings as to that shareholder.

H. After determining the shareholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. In determining the fair value, the Court shall take into account all relevant factors. In determining the fair rate of interest, the Court may consider all relevant factors, including the rate of interest which the surviving or resulting corporation would have to pay to borrow money during the pendency of the proceeding. Upon application by the surviving or resulting corporation or by any shareholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, permit discovery or other pretrial proceedings and may proceed to trial upon the

appraisal prior to the final determination of the shareholder entitled to an appraisal. Any shareholder whose name appears on the list filed by the surviving or resulting corporation pursuant to the provisions of subsection F of this section and who has submitted the certificates of stock of the shareholder to the Clerk of Court, if required, may participate fully in all proceedings until it is finally determined that the shareholder is not entitled to appraisal rights pursuant to the provisions of this section.

I. The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the shareholders entitled thereto. Interest may be simple or compound, as the Court may direct. Payment shall be made to each shareholder, in the case of holders of uncertificated stock immediately, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing the stock. The Court's decree may be enforced as other decrees in the Muscogee (Creek) Nation District Court may be enforced, whether the surviving or resulting corporation be a corporation of this Nation or of any other Nation.

J. The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a shareholder, the Court may order all or a portion of the expenses incurred by any shareholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all of the shares entitled to an appraisal.

K. From and after the effective date of the merger or consolidation, no shareholder who has demanded appraisal rights as provided for in subsection D of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions payable to shareholders of record at a date which is prior to the effective date of the merger or consolidation; provided, however, that if no petition for an appraisal shall be filed within the time provided for in subsection E of this section, or if the shareholder shall deliver to the surviving or resulting corporation a written withdrawal of the shareholder's demand for an appraisal and an acceptance of the merger or consolidation, either within sixty (60) days after the effective date of the merger or consolidation as provided for in subsection E of this section or thereafter with the written approval of the corporation, then the right of the shareholder to an appraisal shall cease; provided further, no appraisal proceeding in the Muscogee (Creek) Nation District Court shall be dismissed as to any shareholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just.

L. The shares of the surviving or resulting corporation into which the shares of any objecting shareholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appraisal rights, see 18 Okl.St. Ann. § 1091.
 Mortgage or pledge of assets, see 18, § 1093.

Library References

Corporations Ⓒ584.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 899 to 906.

§ 1–1092. Sale, lease or exchange of assets; consideration; procedure

A. Every corporation, at any meeting of its board of directors or governing body, may sell, lease, or exchange all or substantially all of its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon or, if the corporation is a nonstock corporation, by a majority of the members having the right to vote for the election of the members of the governing body, at a meeting duly called upon at least twenty (20) days' notice. The notice of the meeting shall state that such a resolution will be considered.

B. Notwithstanding authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets by the shareholders or members, the board of directors or governing body may abandon such proposed sale, lease or exchange without further action by the shareholders or members, subject to the rights, if any, of third parties under any contract relating thereto.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Authority of corporations to convey real property, see 16 Okl.St. Ann. §§ 1, 91 et seq.
 Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.
 Notice,
 Exception, see 18 Okl.St. Ann. § 1075
 Waiver, see 18 Okl.St. Ann. § 1074.
 Sale, lease or exchange of assets, consideration, procedure, see 18 Okl.St. Ann. § 1092.
 Transfer of vehicle title without excise tax, see 68 Okl.St. Ann. § 2105.
 Voting,
 Generally, see 18 Okl.St. Ann. § 1057 et seq.
 Shares called for redemption, see 18 Okl.St. Ann. § 1041.

Library References

Corporations Ⓒ441.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 742, 744 to 747.

§ 1–1093. Mortgage or pledge of assets

The authorization or consent of shareholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Mortgage or pledge of assets, see 18 Okl.St. Ann. § 1093.

Library References

Corporations ☞474 to 482.5.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 754, 761 to 773.

§ 1-1094. Dissolution of joint venture corporation having two shareholders

A. If the shareholders of a corporation of this Nation, having only two shareholders each of which owns fifty percent (50%) of the stock therein, shall be engaged in the prosecution of a joint venture and if the shareholders shall be unable to agree upon the desirability of discontinuing the joint venture and disposing of the assets used in the venture, either shareholder may, unless otherwise provided in the certificate of incorporation of the corporation or in a written agreement between the shareholders, file with the Muscogee (Creek) Nation District Court a petition stating that it desires to discontinue the joint venture and to dispose of the assets used in the venture in accordance with a plan to be agreed upon by both shareholders or that, if no such plan shall be agreed upon by both shareholders, the corporation be dissolved. The petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of the petition and plan have been transmitted in writing to the other shareholder and to the directors and officers of the corporation. The petition and certificate shall be executed and acknowledged in accordance with the provisions of Section 1-1007 of this Title.

B. 1. Unless both shareholders file with the Muscogee (Creek) Nation District Court, the Muscogee (Creek) Nation District Court may dissolve such corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed pursuant to the provisions of Section 1-1100 of this Title, administer and wind up its affairs:

a. within three (3) months of the date of the filing of the petition, a certificate similarly executed and acknowledged stating that they have agreed on the plan, or a modification thereof, and

b. within one (1) year from the date of the filing of the petition, a certificate similarly executed and acknowledged stating that the distribution provided by the plan has been completed.

2. Either or both of the periods provided for in paragraph 1 of this subsection may be extended by agreement of the shareholders, evidenced by a certificate similarly executed, acknowledged and filed with the Muscogee (Creek) Nation District Court prior to the expiration of the period.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution of joint venture corporation having two shareholders, see 18 Okl.St. Ann. § 1094.
Merger of parent corporation and subsidiary, see 18 Okl.St. Ann. § 1083.

Library References

Corporations ☞592 to 630. Westlaw Topic No. 101.

C.J.S. Corporations §§ 914 to 967.

§ 1-1095. Dissolution before the issuance of shares or beginning business; procedure

If a corporation has not issued shares or has not commenced the business for which the corporation was organized, a majority of the incorporators, or, if directors were named in the certificate of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's rights and franchises by filing in the Office of the Secretary of the Nation a certificate, executed and acknowledged by a majority of the incorporators or directors, stating that no shares of stock have been issued or that the business of activity for which the corporation was organized has not begun; that no part of the capital of the corporation has been paid, or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; that if the corporation has begun business but it has not issued shares, all debts of the corporation have been paid; that if the corporation has not begun business but has issued stock certificates all issued stock certificates, if any, have been surrendered and canceled; and that all rights and franchises of the corporation are surrendered. Upon such certificate becoming effective in accordance with the provisions of Section 1-1007 of this Title, the corporation shall be dissolved.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution before the issuance of shares or beginning business, procedure, see 18 Okl.St. Ann. § 1095.

Library References

Corporations ⌘596.
Westlaw Topic No. 101.

§ 1-1096. Dissolution; procedure

A. If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each shareholder entitled to vote thereon of the adoption of the resolution and of a meeting of shareholders to take action upon the resolution.

B. At the meeting a vote shall be taken upon the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon shall vote for the proposed dissolution, a certificate of dissolution shall be filed with the Secretary of the Nation pursuant to subsection D of this section.

C. Dissolution of a corporation may also be authorized without action of the directors if all the shareholders entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Secretary of the Nation pursuant to subsection D of this section.

D. If dissolution is authorized in accordance with this section, a certificate of dissolution shall be executed, acknowledged and filed, and shall become

effective, in accordance with Section 1-1007 of this Title. Such certificate of dissolution shall set forth:

1. the name of the corporation;
2. the date dissolution was authorized;
3. that the dissolution has been authorized by the board of directors and shareholders of the corporation, in accordance with subsections A and B of this section, or that the dissolution has been authorized by all of the shareholders of the corporation entitled to vote on a dissolution, in accordance with subsection C of this section; and
4. the names and addresses of the directors and officers of the corporation.

E. The resolution authorizing a proposed dissolution may provide that notwithstanding authorization or consent to the proposed dissolution by the shareholders, or the members of a nonstock corporation pursuant to Section 1-1097 of this Title, the board of directors or governing body may abandon such proposed dissolution without further action by the shareholders or members.

F. Upon a certificate of dissolution becoming effective in accordance with Section 1-1007 of this Title, the corporation shall be dissolved.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action in the nature of quo warranto, dissolution of corporation, see 12 Okl.St. Ann. §§ 1532, 1537, 1538.

Consent of shareholders in lieu of meeting, see 18 Okl.St. Ann. § 1073.

Dissolution, procedure, see 18 Okl.St. Ann. § 1096.

Dissolved corporations, service by publication, see 12 Okl.St. Ann. § 2004.

Franchise tax, forfeiture of corporate rights for nonpayment, see 68 Okl.St. Ann. § 1212.

Notice,

Exception, see 18 Okl.St. Ann. § 1075.

Waiver, see 18 Okl.St. Ann. § 1074.

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Sales tax, transfers pursuant to dissolution, see 68 Okl.St. Ann. § 1360.

Voting,

Generally, see 18 Okl.St. Ann. § 1057 et seq.

Shares called for redemption, nonvoting, see 18 Okl.St. Ann. § 1041.

Library References

Corporations ⌘610.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 919 to 922.

§ 1-1097. Dissolution of nonstock corporation; procedure

A. Whenever it shall be desired to dissolve any corporation having no capital stock, the governing body shall perform all the acts necessary for dissolution which are required by the provisions of Section 1-1096 of this Title to be performed by the board of directors of a corporation having capital stock. If the members of a corporation having no capital stock are entitled to vote for the election of members of its governing body, they shall perform all the acts necessary for dissolution which are required by the provisions of Section 1-1096 of this Title to be performed by the shareholders of a corporation

having capital stock. If there is no member entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to dissolve by the vote of a majority of members of its governing body then in office. In the event of the dissolution of a not for profit corporation, a notice of dissolution shall be published one (1) time in a newspaper having general circulation in the county in which the principal place of business of such corporation is located. In all other respects, the method and proceedings for the dissolution of a corporation having no capital stock shall conform as nearly as may be to the proceedings prescribed by the provisions of Section 1–1096 of this Title for the dissolution of corporations having capital stock.

B. If a corporation having no capital stock has not commenced the business for which the corporation was organized, a majority of the governing body or, if none, a majority of the incorporators may surrender all of the corporation rights and franchises by filing in the Office of the Secretary of the Nation a certificate, executed and acknowledged by a majority of the incorporators or governing body, conforming as nearly as may be to the certificate prescribed by Section 1–1095 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution of nonstock corporation, procedure, see 18 Okl.St. Ann. § 1097.

Library References

Corporations ⌘610.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 919 to 922.

§ 1–1098. Reserved

§ 1–1099. Continuation of corporation after dissolution for purposes of suit and winding up affairs

All corporations, whether they expire by their own limitation or are otherwise dissolved, nevertheless shall be continued, for the term of three (3) years from such expiration or dissolution or for such longer period as the district court shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three (3) years after the date of its expiration or dissolution, the action shall not abate by reason of the expiration or dissolution of the corporation. The corporation, solely for the purpose of such action, suit or proceeding, shall be continued as a body corporate beyond the three-year period and until any judgments, orders or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Muscogee (Creek) Nation District Court.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Continuation of corporation after dissolution for purposes of suit and winding up affairs, see 18 Okl.St. Ann. § 1099.

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

Corporations ⌘618, 630.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 950, 952 to 953, 955,
958.

§ 1–1100. Trustees or receivers for dissolved corporations; appointment; powers; duties

When any corporation organized in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be dissolved in any manner whatever, the Muscogee (Creek) Nation District Court, on application of any creditor, shareholder or director of the corporation, or any other person who shows good cause therefore, at any time, may either appoint one or more of the directors of the corporation to be trustees, or appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the Muscogee (Creek) Nation District Court shall think necessary for the purposes provided for in this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

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Appointment of receivers or custodians, deadlock or other cause, see 18 Okl.St. Ann. § 1071.

Joint venture corporation, dissolution, see 18 Okl.St. Ann. § 1094.

Receiver, dissolved or insolvent corporation, see 12 Okl.St. Ann. § 1551.

Trustees or receivers for dissolved corporations, appointment, powers, duties, see 18 Okl.St. Ann. § 1100.

Voluntary dissolution, revocation, see 18 Okl.St. Ann. § 1119.

Library References

Corporations ⌘619 to 622.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 959 to 962, 964.

§ 1–1100.1. Notice to claimants; filing of claims

A. 1. After a corporation has been dissolved in accordance with the procedures set forth in the Muscogee (Creek) Nation General Corporation Act, the corporation or any successor entity may give notice of the dissolution requiring all persons having a claim against the corporation other than a claim against the corporation in a pending action, suit, or proceeding to which the corporation is a party to present their claims against the corporation in accordance with the notice. The notice shall state:

Title 3, § 1-1100.1

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a. that all such claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim;

b. the mailing address to which a claim must be sent;

c. the date by which a claim must be received by the corporation or successor entity, which date shall be no earlier than sixty (60) days from the date of the notice; and

d. that the claim will be barred if not received by the date referred to in subparagraph c of this paragraph,

e. that the corporation or a successor entity may make distributions to other claimants and the corporation's shareholders or persons interested as having been such without further notice to the claimant, and

f. the aggregate amount, on an annual basis, of all distributions made by the corporation to its shareholders for each of the three (3) years prior to the date the corporation dissolved.

2. The notice shall also be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the office of the corporation's last registered agent in this Nation is located and in the corporation's principal place of business and, in the case of a corporation having ten million dollars (\$10,000,000.00) or more in total assets at the time of its dissolution, at least once in an Oklahoma newspaper having a circulation of at least two hundred fifty thousand (250,000). On or before the date of the first publication of the notice, the corporation or successor entity shall mail a copy of the notice by certified or registered mail, return receipt requested, to each known claimant of the corporation, including persons with claims asserted against the corporation in a pending action, suit, or proceeding to which the corporation is a party.

3. Any claim against the corporation required to be presented pursuant to the subsection is barred if the claimant who was given actual notice under the subsection does not present the claim to the dissolved corporation or successor entity by the date referred to in subparagraph c of paragraph 1 of this subsection.

4. A corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of rejection by certified or registered mail return receipt requested to the claimant within ninety (90) days after receipt of the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1-1099 of this Title of the Muscogee (Creek) Nation Statutes; provided, however, that in the case of a claim filed pursuant to Section 1-1110 of this Title against a corporation or successor entity for which a receiver or trustee has been appointed by the district court, the time period shall be as provided for in Section 1-1111 of this Title, and the thirty-day appeal period provided for in Section 1-1111 of this Title shall be applicable. A notice sent by a corporation or successor entity pursuant to this subsection shall state that any claim rejected will be barred if an action, suit, or proceeding with respect to the claim is not commenced within one hundred twenty (120) days of the date thereof,

and shall be accompanied by a copy of Sections 1-1099 through 1-1100.3 of this Title, and, in the case of a notice sent by a court-appointed receiver or trustee for a claim filed pursuant to Section 1-1110 of this Title, the notice shall be accompanied by copies of Sections 1-1110 and 1-1111 of this Title.

5. A claim against a corporation is barred if a claimant whose claim is rejected pursuant to paragraph 4 of this subsection does not commence an action, suit, or proceeding with respect to the claim within one hundred twenty (120) days after the mailing of the rejection notice.

B. 1. A corporation or successor entity electing to follow the procedures described in subsection A of this section shall also give notice of the dissolution of the corporation to persons with contractual claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that those persons present their claims in accordance with the terms of the notice. As used in this section and Section 1-1100.2 of this Title, the term “contractual claims” shall not include any implied warranty as to any product manufactured, sold, distributed, or handled by the dissolved corporation. The notice shall be in substantially the form, and sent and published in the same manner, as described in paragraph 1 of subsection A of this section.

2. The corporation or successor entity shall offer any claimant whose claim is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall mail the offer to the claimant by certified or registered mail, return receipt requested, within ninety (90) days of receipt of the claim and, in all events, at least one hundred fifty (150) days before the expiration of the period described in Section 1-1099 of this Title. If the claimant offered the security does not deliver in writing to the corporation or successor entity a notice rejecting the offer within one hundred twenty (120) days after receipt of the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy his claim against the corporation.

C. 1. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the Muscogee (Creek) Nation District Court to determine the amount and form of security that will be reasonable likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a party other than a claim barred pursuant to subsection A of this section.

2. A corporation or successor entity which has given notice in accordance with subsections A and B of this section shall petition the Muscogee (Creek) Nation District Court to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to paragraph 2 of subsection B of this section.

3. A corporation or successor entity which has given notice in accordance with subsection A of this section shall petition the Muscogee (Creek) Nation District Court to determine the amount and form of security which will be reasonably likely to be sufficient to provide compensation for claims that have

not been made known to the corporation or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity within five (5) years after the date of dissolution or a longer period of time as the Muscogee (Creek) Nation District Court may determine not to exceed ten (10) years after the date of dissolution. The Muscogee (Creek) Nation District Court may appoint a guardian ad litem in respect of any such proceeding brought under this subsection. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the petitioner in the proceeding.

D. The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the corporation or successor entity that any person to whom the notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom the notice is sent.

E. As used in this section, the term “successor entity” shall include any trust, receivership or other legal entity governed by the laws of this Nation to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits, by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation’s shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Notice to claimants, filing of claims, see 18 Okl.St. Ann. § 1100.1.

Library References

Corporations §§ 610(4), 614(1), 626.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 927 to 928, 940, 942
to 943, 953.

§ 1–1100.2. Payment and distribution to claimants and shareholders

A. 1. A dissolved corporation or successor entity which has followed the procedures described in Section 1–1100.1 of this Title shall:

- a. pay the claims made and not rejected in accordance with subsection A of Section 1–1100.1 of this Title;
- b. post the security offered and not rejected pursuant to paragraph 2 of subsection B of Section 1–1100.1 of this Title;
- c. post any security ordered by the district court in any proceeding under subsection C of Section 1–1100.1 of this Title; and
- d. pay or make provision for all other claims that are mature, known, and uncontested or that have been finally determined to be owing by the corporation or successor entity.

2. Claims or obligations shall be paid in full and any provision for payment shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority, and, among claims of equal priority, ratably to the extent of assets legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation; provided, however, that such distribution shall not be made before the expiration of one hundred fifty (150) days from the date of the last notice of rejections given pursuant to paragraph 3 of subsection A of Section 1-1100.1 of this Title. In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of the successor entity as to the provision made for the payment of all obligations under paragraph 4 of this subsection shall be conclusive.

B. A dissolved corporation or successor entity which has not followed the procedures described in Section 1-1100.1 of this Title shall, prior to the expiration of the period described in Section 1-1099 of this Title, adopt a plan of distribution pursuant to which the dissolved corporation or successor entity:

1. Shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured contractual claims known to the corporation or the successor entity;

2. Shall make provision as will be reasonably likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit, or proceeding to which the corporation is a party; and

3. Shall make provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or successor entity or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or become known to the corporation or successor entity within ten (10) years after the date of dissolution. The plan of distribution shall provide that the claims shall be paid in full and any provision for payment made shall be made in full if there are sufficient assets. If there are insufficient assets, the plan shall provide that the claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of assets legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation.

C. Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection A or B of this section shall not be personally liable to the claimants of the dissolved corporation.

D. As used in this section, the term "successor entity" has the meaning set forth in subsection E of Section 1-1100.1 of this Title.

E. As used in this section, the term "priority" does not refer either to the order of payments set forth in paragraphs 1 through 4 of subsection A of this section or to the relative times at which any claims mature or are reduced to judgment.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Title 3, § 1-1100.2

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Oklahoma Statutes Annotated

Payment and distribution to claimants and shareholders, see 18 Okl.St. Ann. § 1100.2.
Transfer of vehicle title without excise tax, distribution in kind to shareholders, see 68 Okl.St. Ann. § 2105.

Library References

Corporations ☞627 to 629.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 963, 965.

§ 1-1100.3. Liability of shareholders of dissolved corporations

A. A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection A or B of Section 1-1100.2 of this Title shall not be liable for any claim against the corporation in an amount in excess of the shareholder's pro rata share of the claim or the amount so distributed to the shareholder, whichever is less.

B. A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection A of Section 1-1100.2 of this Title shall not be liable for any claim against the corporation on which an action, suit or proceeding is not begun prior to the expiration of the period described in Section 1-1099 of this Title.

C. The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to the shareholder in dissolution.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of shareholders of dissolved corporations, see 18 Okl.St. Ann. § 1100.3.

Library References

Corporations ☞629.
Westlaw Topic No. 101.
C.J.S. Corporations § 965.

§ 1-1101. Jurisdiction of Muscogee (Creek) Nation District Court

The Muscogee (Creek) Nation District Court shall have jurisdiction of the application prescribed in Section 1-1100 of this Title and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

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Jurisdiction of court, see 18 Okl.St. Ann. § 1101.
Voluntary dissolution, revocation, see 18 Okl.St. Ann. § 1119.

§ 1-1102. Repealed**§ 1-1103. Repealed****§ 1-1104. Revocation or forfeiture of charter; proceedings**

A. The Muscogee (Creek) Nation District Court shall have jurisdiction to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney General, upon his own motion or upon the relation of a proper party, shall proceed for this purpose by complaint in the county in which the registered office of the corporation is located.

B. The Muscogee (Creek) Nation District Court shall have power, by appointment of receivers or otherwise, to administer and wind up the affairs of any corporation whose charter shall be revoked or forfeited by any court pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act or otherwise, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its shareholders and creditors.

C. No proceeding shall be instituted pursuant to the provisions of this section for nonuse of any corporation's powers, privileges or franchises during the first two (2) years after its incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Receivers, powers, see 18 Okl.St. Ann. § 1100.

Registered office, see 18 Okl.St. Ann. § 1021.

Revocation or forfeiture of charter, proceedings, see 18 Okl.St. Ann. § 1104.

§ 1-1105. Dissolution or forfeiture of charter by decree of court; filing

Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the Muscogee (Creek) Nation District Court, the decree or judgment shall be immediately filed by the Clerk of Court in which the decree or judgment was entered, in the Office of the Secretary of the Nation, and a note thereof shall be made by the Secretary of the Nation on the corporation's charter or certificate of incorporation and on the index thereof.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution or forfeiture of charter by decree of court, filing, see 18 Okl.St. Ann. § 1105.

§ 1-1106. Receivers for insolvent corporations; appointment and powers

Whenever a corporation shall be insolvent, the Muscogee (Creek) Nation District Court may at any time upon the application of a shareholder or shareholders, severally or jointly, who have been registered owners for a period of not less than six (6) months, of not less than ten percent (10%) of the entire outstanding stock of the corporation or a creditor whose claim has been reduced to judgment and execution thereon has been issued, appoint one or

Title 3, § 1-1106

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more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the Court shall deem necessary.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Receivers for insolvent corporations, appointment and powers, see 18 Okl.St. Ann. § 1106.

Library References

Corporations ☞551.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 841 to 870.

§ 1-1107. Title to property; filing order of appointment; exception

A. Trustees of or receivers for any corporation, appointed by the Muscogee (Creek) Nation District Court, and their respective survivors and successors, upon their appointment and qualification or upon the death, resignation or discharge of any co-trustee or co-receiver, shall be vested by operation of law and without any act or deed, with the title of the corporation to all of its property, real, personal, or mixed of whatsoever nature, kind, class or description, and wheresoever situated, except real estate situated outside this Nation.

B. Trustees or receivers appointed by the Muscogee (Creek) Nation District Court, within twenty (20) days from the date of their qualification, shall file in the office of the Clerk of Court in this Nation in which any real estate belonging to the corporation may be situated, a certified copy of the order of their appointment and evidence of their qualification.

C. This section shall not apply to receivers appointed *pendente lite*.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Title to property, filing order of appointment, exception, see 18 Okl.St. Ann. § 1107.

Library References

Corporations ☞560(4).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 871, 874 to 876.

§ 1-1108. Notices to shareholders and creditors

All notices required to be given to shareholders and creditors in any action in which a receiver or trustee for a corporation was appointed shall be given by the Muscogee (Creek) Nation District Court, unless otherwise ordered by the Court.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Notices to shareholders and creditors, see 18 Okl.St. Ann. § 1108.

Library References

Corporations ⌘557(3).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 841, 856.

§ 1-1109. Receivers or trustees; inventory; list of debts and reports

Trustees or receivers, as soon as convenient, shall file in the Muscogee (Creek) Nation District Court a full and complete itemized inventory of all the assets of the corporation which shall show their nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained. Trustees or receivers shall make a report to the Muscogee (Creek) Nation District Court of their proceedings, whenever and as often as the Court shall direct.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Receivers or trustees, inventory, list of debts and reports, see 18 Okl.St. Ann. § 1109.

Library References

Corporations ⌘560. C.J.S. Corporations §§ 871 to 876, 883 to 884.
Westlaw Topic No. 101.

§ 1-1110. Creditors' proofs of claims; when barred; notice

All creditors shall make proof under oath of their respective claims against the corporation, and cause the same to be filed in the Muscogee (Creek) Nation District Court of the Nation or county in which the proceeding is pending within the time fixed by the order of the Muscogee (Creek) Nation District Court. All creditors and claimants failing to do so, within the time limited by the provisions of this section, or the time prescribed by the order of the Muscogee (Creek) Nation District Court, by direction of the Muscogee (Creek) Nation District Court, may be barred from participating in the distribution of the assets of the corporation. The Muscogee (Creek) Nation District Court may also prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of claims.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Creditors' proofs of claims, when barred, notice, see 18 Okl.St. Ann. § 1110.

Library References

Corporations ⌘565.
Westlaw Topic No. 101.

§ 1-1111. Adjudication of claims; appeal

A. The Muscogee (Creek) Nation District Court immediately upon the expiration of the time fixed for the filing of claims, in compliance with the

Title 3, § 1-1111

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provisions of this act, shall notify the trustee or receiver of the filing of the claims, and the trustee or receiver, within thirty (30) days after receiving the notice, shall inspect the claims, and if the trustee or receiver or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, the trustee or receiver shall immediately notify the creditors whose claims are disputed of his decision. The trustee or receiver shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the trustee or receiver shall direct, and the creditors shall produce such books and papers relating to their claims as shall be required. The trustee or receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

B. Every creditor or claimant who shall have received notice from the receiver or trustee that his claim has been disallowed in whole or in part may appeal to the Muscogee (Creek) Nation District Court within thirty (30) days thereafter. The Muscogee (Creek) Nation District Court, after hearing, shall determine the rights of the parties.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Electronic notice, see Title 3, § 1-1075.2.

Oklahoma Statutes Annotated

Adjudication of claims, appeal, see 18 Okl.St. Ann. § 1111.

Library References

Corporations ⇨565(7), 568, 569.
Westlaw Topic No. 101.

§ 1-1112. Sale of perishable or deteriorating property

Whenever the property of a corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien, the Muscogee (Creek) Nation District Court may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of the sale into the Muscogee (Creek) Nation District Court, there to remain subject to the order of the Muscogee (Creek) Nation District Court, and to be disposed of as the Muscogee (Creek) Nation District Court shall direct.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Sale of perishable or deteriorating property, see 18 Okl.St. Ann. § 1112.

Library References

Corporations ☞560(5).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 871, 883.

§ 1-1113. Compensation, costs and expenses of receiver or trustee

The Muscogee (Creek) Nation District Court, before making distribution of the assets of a corporation among the creditors or shareholders thereof, shall allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in the Muscogee (Creek) Nation District Court, to be first paid out of the assets.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Compensation, costs and expenses of receiver or trustee, see 18 Okl.St. Ann. § 1113.

Library References

Receivers ☞195.
Westlaw Topic No. 323.
C.J.S. Receivers §§ 472 to 475, 482 to 486.

§ 1-1114. Substitution of trustee or receiver as party; abatement of actions

A trustee or receiver, upon application by him in the Court in which any suit is pending, shall be substituted as party plaintiff in the place of the corporation in any suit or proceeding which was so pending at the time of his appointment. No action against a trustee or receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts of the record, shall be continued against his successor or against the corporation in case no new trustee or receiver is appointed.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Substitution of trustee or receiver as party, abatement of actions, see 18 Okl.St. Ann. § 1114.

Library References

Corporations ☞560(10).
Westlaw Topic No. 101.
C.J.S. Corporations § 871.

§ 1-1115. Liens for wages or products when corporation is insolvent

A. Whenever any corporation of this Nation, or any foreign corporation doing business in this Nation, shall become insolvent, the employees performing labor or services of whatever character in the regular employ of the corporation, and the producers of agricultural and dairy products, including cooperative marketing associations of such producers, shall have a lien upon the assets of such corporation for the amount of the wages or payments for agricultural and dairy products due to them, not exceeding four months' wages or payments for such products which shall have accrued prior to the adjudica-

Title 3, § 1–1115

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tion of the insolvency of such corporation, which lien shall be paid prior to any other debts, charges or claims against said corporation, except taxes due the United States government. The word “employee” shall not be construed to include any of the officers of the corporation.

B. The lien provided for in this section shall be enforced in the manner provided for by law for the enforcement of other liens for labor.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liens for wages or products when corporation is insolvent, see 18 Okl.St. Ann. § 1115.

Library References

Corporations ⇨566(1), 566(6), 568.
Westlaw Topic No. 101.

§ 1–1116. Discontinuance of liquidation

The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Muscogee (Creek) Nation District Court in its discretion, and subject to such condition as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Discontinuance of liquidation, see 18 Okl.St. Ann. § 1116.

Library References

Corporations ⇨537, 610(5).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 819, 922.

§ 1–1117. Compromise or arrangement between corporation and creditors or shareholders

A. Whenever the provision provided for in paragraph 2 of subsection B of Section 1–1006 of this Title is included in the original certificate of incorporation of any corporation, all persons who become creditors or shareholders thereof shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them. Whenever that provision is inserted in the certificate of incorporation of any such corporation by an amendment of its certificate all persons who become creditors or shareholders of such corporation after such amendment shall be deemed to have become such creditors or shareholders subject in all respects to that provision and the same shall be absolutely binding upon them.

B. The Muscogee (Creek) Nation District Court may administer and enforce any compromise or arrangement made pursuant to the provision provided for in paragraph 2 of subsection B of Section 1–1006 of this Title and may restrain,

pendente lite, all actions and proceedings against any corporation with respect to which the Muscogee (Creek) Nation District Court shall have begun the administration and enforcement of that provision and may appoint a temporary receiver for such corporation and may grant the receiver such powers as it deems proper, and may make and enforce such rules as it deems necessary for the exercise of such jurisdiction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Compromise or arrangement between corporation and creditors or shareholders, see 18 Okl.St. Ann. § 1117.

Library References

Compromise and Settlement ☞5.
Corporations ☞547 to 550.
Westlaw Topic Nos. 89, 101.

C.J.S. Compromise and Settlement §§ 1, 6 to 7, 9 to 13, 19 to 21.
C.J.S. Corporations §§ 825, 828 to 837, 840.

§ 1-1118. Bankruptcy proceedings under a statute of the United States; effectuation

A. Any corporation of this Nation, a plan of reorganization of which, pursuant to the provisions of any applicable statute of the United States relating to the bankruptcy of corporations, has been or shall be confirmed by the decree or order of a court of competent jurisdiction, may put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceedings and do any act provided in the plan or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed in the bankruptcy proceedings, or a majority thereof, or if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

B. Such corporation, in the manner provided for in subsection A of this section, but without limiting the generality or effect of the foregoing, may alter, amend, or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by the provisions of the Muscogee (Creek) Nation General Corporation Act; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by the provisions of the Muscogee (Creek) Nation General Corporation Act, in which case, however, no shareholder shall have any statutory right of appraisal of his stock; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process; authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations, whether or not convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or

subscribe for stock of any class; or lease its property and franchises to any corporation, if permitted by law.

C. A certificate of any amendment, change or alteration, or of dissolution, or any agreement of merger or consolidation, made by such corporation pursuant to the provisions of this section, shall be filed with the Secretary of the Nation in accordance with the provisions of this act, and, subject to the provisions of this act, shall thereupon become effective in accordance with its terms and the provisions of this section. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed in the reorganization or debtor in possession in the bankruptcy proceedings, or a majority thereof, or, if none be appointed and acting, by the officers of the corporation, or by a master or other representative appointed by the court or judge, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order of a court or judge having jurisdiction of a proceeding under such applicable statute of the United States for the reorganization of such corporation.

D. The provisions of this section shall cease to apply to such corporation upon consummation of a plan of reorganization or the entry of a final decree in the bankruptcy proceedings closing the case and discharging the trustee, if any, or the debtor in possession.

E. On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of this section, there shall be paid to the Secretary of the Nation, for the use of the Nation, the same fees as are payable by corporations not in bankruptcy proceedings upon the filing of like certificates, agreements, reports or other papers.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Filing fees, see 18 Okl.St. Ann. § 1142.

Motor vehicle obtained by reorganization, excise tax exemption, see 68 Okl.St. Ann. § 2105.

Proceedings under Federal Bankruptcy Code, effectuation, see 18 Okl.St. Ann. § 1118.

Sales tax, transfers pursuant to reorganization, see 68 Okl.St. Ann. § 1360.

Library References

Bankruptcy ☞ 3501 to 3627.

Westlaw Topic No. 51.

C.J.S. Bankruptcy §§ 69, 83 to 87, 129 to 135,

359 to 362, 364, 414, 416, 422 to 425, 441

to 445, 451 to 452, 457, 459, 463 to 470,

473 to 474, 1126 to 1129, 1131 to 1164.

§ 1–1119. Revocation of voluntary dissolution

A. At any time prior to the expiration of three (3) years following the dissolution of a corporation pursuant to the provisions of Section 1–1096 of this act, or, at any time prior to the expiration of such longer period as the Muscogee (Creek) Nation District Court may have directed, a corporation may revoke the dissolution up to that time effected by it in the following manner:

1. The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders.

2. Notice of the special meeting of shareholders shall be given in accordance with the provisions of this act to each shareholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved.

3. At the meeting a vote of the shareholders shall be taken on a resolution to revoke the dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed and acknowledged in accordance with the provisions of this act which shall state:

- a. the name of the corporation;
- b. the names and respective addresses of its officers;
- c. the names and respective addresses of its directors; and
- d. that a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of shareholders, the shareholders have given their written consent to the revocation in accordance with the provisions of this act.

B. Upon the filing in the Office of the Secretary of the Nation of the certificate of revocation of dissolution, the Secretary of the Nation, upon being satisfied that the requirements of this section have been complied with, shall issue his certificate that the dissolution has been revoked. Upon the issuance of such certificate by the Secretary of the Nation, the revocation of the dissolution shall become effective and the corporation may again carry on its business.

C. If, after three (3) years from the date upon which the dissolution became effective, the name of the corporation is unavailable upon the records of the Secretary of the Nation, then, in such case, the corporation shall not be reinstated under the same name which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the certificate to be filed pursuant to the provisions of this section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

D. Nothing in this section shall be construed to affect the jurisdiction or power of the Muscogee (Creek) Nation District Court pursuant to the provisions of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Revocation of voluntary dissolution, see 18 Okl.St. Ann. § 1119.

Library References

- Corporations \S 610(5).
- Westlaw Topic No. 101.
- C.J.S. Corporations \S 922.

§ 1-1120. Renewal, revival, extension and restoration of certificate of incorporation

A. As used in this section, the term certificate of incorporation includes the charter of a corporation organized pursuant to the provisions of any law of this Nation.

B. Any corporation, at any time before the expiration of the time limited for its existence and any corporation whose certificate of incorporation has become forfeited by law for nonpayment of taxes and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of the Muscogee (Creek) Nation General Corporation Act, the validity of whose renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.

C. The extension, restoration, renewal or revival of the certificate of incorporation may be procured by executing, acknowledging and filing a certificate in accordance with the provisions of this act.

D. The certificate required by the provisions of subsection C of this section shall state:

1. The name of the corporation, which shall be the existing name of the corporation or the name it bore when its certificate of incorporation expired, except as provided for in subsection F of this section;

2. The address, including the street, city and county, of the corporation's registered office in this Nation and the name of its registered agent at such address;

3. Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the time limited for its existence, the date when the renewal is to commence, which shall be prior to the date of the expiration of the old certificate of incorporation which it is desired to renew;

4. That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of incorporation was organized pursuant to the laws of this Nation;

5. The date when the certificate of incorporation would expire, if such is the case, or such other facts as may show that the certificate of incorporation has become forfeited or that the validity of any renewal has been brought into question; and

6. That the certificate for renewal or revival is filed by authority of those who were directors or members of the governing body of the corporation at the time its certificate of incorporation expired or who were elected directors or

members of the governing body of the corporation as provided for in subsection H of this section.

E. Upon the filing of the certificate in accordance with the provisions of Section 1-1007, the corporation shall be renewed and revived with the same force and effect as if its certificate of incorporation had not become forfeited, or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was forfeited or after its expiration by limitation, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became forfeited, or expired by limitation and which were not disposed of prior to the time of its revival or renewal shall be vested in the corporation after the renewal or revival, as fully and amply as they were held by the corporation at and before the time its certificate of incorporation became forfeited, or expired by limitation, and the corporation after its renewal and revival shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its certificate of incorporation had at all times remained in full force and effect.

F. If, after three (3) years from the date upon which the certificate of incorporation became forfeited for nonpayment of taxes, or expired by limitation, the name of the corporation is unavailable upon the records of the Secretary of the Nation, then in such case the corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of incorporation became forfeited, or expired but shall adopt or be renewed under some other name and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the corporation at the time its certificate of incorporation became forfeited, or expired and the new name under which the corporation is to be renewed or revived.

G. Any corporation that renews or revives its certificate of incorporation pursuant to the provisions of this section shall pay to this Nation the amounts provided in this statute of the Muscogee (Creek) Nation Statutes. No payment made pursuant to this subsection shall reduce the amount of franchise tax due pursuant to the provisions of the Muscogee (Creek) Nation Statutes for the year in which the renewal or revival is effected.

H. If a sufficient number of the last acting officers of any corporation desiring to renew or revive its certificate of incorporation are not available by reason of death, unknown address or refusal or neglect to act, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of the corporation available to renew or revive the certificate of incorporation of the corporation, the shareholders may elect a full board of directors, as provided by the bylaws of the corporation, and the board shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to

carry on the business and affairs of the corporation. A special meeting of the shareholders for the purposes of electing directors may be called by any officer, director or shareholder upon notice given in accordance with the provisions this act.

I. After a renewal or revival of the certificate of incorporation of the corporation shall have been effected, except where a special meeting of shareholders has been called in accordance with the provisions of subsection H of this section, the officers who signed the certificate of renewal or revival shall, jointly, immediately call a special meeting of the shareholders of the corporation upon notice given in accordance with the provisions of this act, and at the special meeting the shareholders shall elect a full board of directors, which board shall then elect such officers as are provided by law, by the certificate of incorporation or the bylaws to carry on the business and affairs of the corporation.

J. Whenever it shall be desired to renew or revive the certificate of incorporation of any corporation organized pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act not for profit and having no capital stock, the governing body shall perform all the acts necessary for the renewal or revival of the charter of the corporation which are performed by the board of directors in the case of a corporation having capital stock. The members of any corporation not for profit and having no capital stock who are entitled to vote for the election of members of its governing body, shall perform all the acts necessary for the renewal or revival of the certificate of incorporation of the corporation which are performed by the shareholders in the case of a corporation having capital stock. In all other respects, the procedure for the renewal or revival of the certificate of incorporation of a corporation not for profit or having no capital stock shall conform, as nearly as may be applicable, to the procedure prescribed in this section for the renewal or revival of the certificate of incorporation of a corporation having capital stock.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Renewal, revival, extension and restoration of certificate of incorporation, see 18 Okl.St. Ann. § 1120.

Library References

Corporations ☞18, 615.5.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56, 948 to 949.

§ 1–1121. Status of corporation

Any corporation desiring to renew, extend and continue its corporate existence, upon complying with the provisions of this act, shall be and continue for the time stated in its certificate of renewal, a corporation and, in addition to the rights, privileges and immunities conferred by its charter, shall possess and enjoy all the benefits of the provisions of the Muscogee (Creek) Nation General Corporation Act, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities prescribed by the provisions of the Muscogee (Creek) Nation General Corporation Act imposed on such corporations.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Status of corporation, see 18 Okl.St. Ann. § 1121.

Library References

Corporations ☞18, 615.5.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 47 to 49, 56, 948 to
949.

§ 1–1122. Failure of corporation to obey order of court; appointment of receiver

Whenever any corporation shall refuse, fail or neglect to obey any order or decree of any court of this Nation within the time fixed by the court for its observance, such refusal, failure or neglect shall be a sufficient ground for the appointment of a receiver of the corporation by a court of competent jurisdiction. If the corporation is a foreign corporation, such refusal, failure, or neglect shall be a sufficient ground for the appointment of a receiver of the assets of the corporation within this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Failure of corporation to obey order of court, appointment of receiver, see 18 Okl.St. Ann. § 1122.

Library References

Corporations ☞553(1).
Westlaw Topic No. 101.
C.J.S. Corporations §§ 841, 845.

§ 1–1123. Failure of corporation to obey writ of mandamus; quo warranto proceedings for forfeiture of charter

If any corporation fails to obey the mandate of any peremptory writ of mandamus issued by a court of competent jurisdiction of this Nation for a period of thirty (30) days after the serving of the writ upon the corporation in any manner as provided by the laws of this Nation for the service of writs, any party in interest in the proceeding in which the writ of mandamus issued, either himself or through his or its attorney, may file a statement of such fact with the Attorney General of this Nation, and it shall thereupon be the duty of the Attorney General to immediately commence proceedings in the nature of quo warranto against the corporation in a court of competent jurisdiction, and the court, upon competent proof of such state of facts and proper proceedings had in such proceeding in the nature of quo warranto, shall decree the charter of the corporation forfeited.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Failure of corporation to obey writ of mandamus, quo warranto proceedings for forfeiture of charter, see 18 Okl.St. Ann. § 1123.

Library References

Corporations ☞592.
Indians ☞538.

Westlaw Topic Nos. 101, 209.
C.J.S. Corporations §§ 914 to 915, 932, 946.

C.J.S. Indians §§ 151 to 179.

§ 1–1124. Actions against officers, directors or shareholders to enforce liability of corporation; unsatisfied judgment against corporation

A. When the officers, directors or shareholders of any corporation shall be liable by the provisions of the Muscogee (Creek) Nation General Corporation Act to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action, at law or in equity, against any one or more of them, and the petition shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.

B. No suit shall be brought against any officer, director or shareholder for any debt of a corporation of which he is an officer, director or shareholder, until judgment is obtained therefor against the corporation and execution thereon returned unsatisfied.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions against officers, directors or shareholders to enforce liability of corporation, unsatisfied judgment against corporation, see 18 Okl.St. Ann. § 1124.

Nonprofit corporations, immunity of directors, see 18 Okl.St. Ann. § 866.

Stock not paid in full, shareholders, liability, see 18 Okl.St. Ann. § 1043.

Library References

Corporations ⌘258, 350.

Westlaw Topic No. 101.

§ 1–1125. Action by officer, director or shareholder against corporation for corporate debt paid

When any officer, director or shareholder shall pay any debt of a corporation for which he is made liable by the provisions of the Muscogee (Creek) Nation General Corporation Act, he may recover the amount so paid in an action against the corporation for money paid for its use, and in such action only the property of a corporation shall be liable to be taken, and not the property of any shareholder.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action by officer, director or shareholder against corporation for corporate debt paid, see 18 Okl.St. Ann. § 1125.

Library References

Corporations ⌘189, 319.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 431 to 434, 561.

§ 1–1126. Shareholder’s derivative action; allegation of stock ownership

In any derivative suit instituted by a shareholder of a corporation, it shall be averred in the petition that the plaintiff was a shareholder of the corporation at

the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Shareholder's derivative action, allegation of stock ownership, see 18 Okl.St. Ann. § 1126.

Library References

Corporations ⌘211(2).
Westlaw Topic No. 101.

§ 1-1127. Liability of corporation, etc.; impairment by certain transactions

The liability of a corporation of this Nation, or of the shareholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the sale of its assets, or by the increase or decrease in the capital stock of the corporation, or by its merger or consolidation with one or more corporations or by any change or amendment in its certificates of incorporation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability of corporation, etc., impairment by certain transactions, see 18 Okl.St. Ann. § 1127.

Library References

Corporations ⌘40, 66, 67, 441, 590. C.J.S. Corporations §§ 58, 183, 242 to 244,
Westlaw Topic No. 101. 742, 744 to 747, 910 to 913.

§ 1-1128. Defective organization of corporation as defense

A. No corporation of this Nation and no person sued by any such organization shall be permitted to assert the want of legal organization as a defense to any claim.

B. This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of a corporation, or its lawful possession of any corporate power it may assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain the challenge shall be admissible in any such suit or proceeding.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Defective organization of corporation as defense, see 18 Okl.St. Ann. § 1128.

Library References

Corporations ⌘34. C.J.S. Corporations §§ 93 to 98.
Westlaw Topic No. 101.
C.J.S. Building and Loan Associations; Savings and Loan Associations, and Credit Unions § 16.

§ 1-1129. Usury; pleading by corporation

No corporation shall plead any statute against usury in any court of law or equity in any suit instituted to enforce the payment of any bond, note or other evidence of indebtedness issued or assumed by it.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Usury, pleading by corporation, see 18 Okl.St. Ann. § 1129.

Library References

Usury ⇄83, 89.
Westlaw Topic No. 398.

C.J.S. Interest and Usury; Consumer Credit
§§ 278 to 283, 353, 367.

§ 1-1130. Foreign corporations; definition; qualification to do business in Nation; procedure

A. As used in the Muscogee (Creek) Nation General Corporation Act, the words “foreign corporation” mean a corporation organized pursuant to the laws of any jurisdiction other than this Nation.

B. No foreign corporation shall do any business in this Nation, through or by branch offices, agents or representatives located in this Nation, until it shall have paid to the Secretary of the Nation the fees prescribed in Section 1-1142 of this Title and shall have filed with the Secretary of the Nation:

1. A certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

2. A statement executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1-1007 of this Title, setting forth:

a. the mailing address of the corporation’s principal place of business, wherever located;

b. the name and street address of its additional registered agent in this Nation, if any, which agent shall be either an individual resident in this Nation when appointed or another corporation, limited liability company, or limited partnership authorized to transact business in this Nation;

c. the aggregate number of its authorized shares itemized by classes, par value of shares, shares without par value, and series, if any, within any classes authorized, unless it has no authorized capital;

d. a statement, as of a date not earlier than six (6) months prior to the filing date, of the assets and liabilities of the corporation;

e. the business it proposes to do in this Nation and a statement that it is authorized to do that business in the jurisdiction of its incorporation; and

f. a statement of the maximum amount of capital such corporation intends and expects to invest in the Nation at any time during the current fiscal year. “Invested capital” is defined as the value of the maximum amount of funds, credits, securities and property of whatever kind existing at any time during the

fiscal year in the Muscogee (Creek) Nation and used or employed by such corporation in its business carried on in this Nation.

C. The Secretary of the Nation, upon payment to the Secretary of the Nation of the fees prescribed in Section 1-1142 of this Title, shall issue a sufficient number of certificates under the hand and official seal of the Secretary of the Nation, evidencing the filing of the statement required by the provisions of subsection B of this section. The certificate of the Secretary of the Nation shall be prima facie evidence of the right of the corporation to do business in this Nation; provided that the Secretary of the Nation shall not issue such certificate unless the name of the corporation is such as to distinguish it upon the records of the Office of the Secretary of the Nation in accordance with the provisions of Section 1-1141 of this Title.

D. A foreign corporation, upon receiving a certificate from the Secretary of the Nation, shall enjoy the same rights and privileges as, but not greater than, a corporation organized under the laws of this Nation for the purposes set forth in the statement filed by the corporation with the Secretary of the Nation pursuant to which such certificate is issued and, except as otherwise provided in the Muscogee (Creek) Nation General Corporation Act, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a corporation organized under the laws of this Nation with like purpose and of like character.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Attachment, actions against foreign corporations, see 12 Okl.St. Ann. §§ 1151, 1239.

Consolidation or merger,

Domestic and foreign corporations, see 18 Okl.St. Ann. § 1082.

Domestic and foreign nonstock corporations, see 18 Okl.St. Ann. § 1085.

Guaranty or surety companies, conditions precedent to transacting business, see 18 Okl.St. Ann. § 482.

Income tax, see 68 Okl.St. Ann. §§ 2362, 2365, 2368.

International bank agencies, applicability of provisions of Oklahoma General Corporation Act relating to foreign corporations notwithstanding definition under this section, see 6 Okl.St. Ann. § 1603.

Principal office or place of business, see 18 Okl.St. Ann. § 1021.

Registered agent,

Generally, see 18 Okl.St. Ann. § 1022.

Change, see 18 Okl.St. Ann. § 1023.

Venue of actions, see Okl.St. Ann. Const. Art. 9, § 43; 18 Okl.St. Ann. § 471; 12 Okl.St. Ann. § 137.

Library References

Corporations ☞ 632, 634, 638, 642 to 648.
Westlaw Topic No. 101.

C.J.S. Corporations §§ 968, 971, 977 to 980,
985 to 989, 992 to 1003.

§ 1-1131. Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger or consolidation

A. Every foreign corporation admitted to do business in this Nation which shall change its corporate name, the mailing address of its principal office, or its authorized capital, or shall enlarge, limit or otherwise change the business which it proposes to do in this Nation, within thirty (30) days after the time the change becomes effective, shall file with the Secretary of the Nation a statement

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executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1-1007 of this Title, setting forth:

1. The name of the foreign corporation as it appears on the records of the Secretary of the Nation;
2. The jurisdiction of its incorporation;
3. The date it was authorized to do business in this Nation;
4. If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name and a statement that the change of name has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;
5. If the mailing address of its principal office has been changed, a statement of the mailing address relinquished and a statement of the new mailing address;
6. If the authorized capital of the corporation has been changed, a restatement of the corporate article which states its amended capitalization, a statement that the change has been effected pursuant to the laws of the jurisdiction of its incorporation and the date the change was effected;
7. If the business it proposes to do in this Nation is to be enlarged, limited or otherwise changed, a statement reflecting such change and a statement that it is authorized to do such business in the jurisdiction of its incorporation; and
8. If the name and/or address of the additional agent has changed, a statement of the new name and address.

B. Whenever a foreign corporation authorized to transact business in this Nation shall be the survivor of a merger permitted by the laws of the Nation or country in which it is incorporated, within thirty (30) days after the merger becomes effective, it shall file a certificate, issued by the proper officer of the Nation or country of its incorporation, attesting to the occurrence of such event. If the merger has changed the corporate name, mailing address, or authorized capital of such foreign corporation or has enlarged, limited or otherwise changed the business it proposes to do in this Nation, it shall also comply with the provisions of subsection A of this section.

C. Whenever a foreign corporation authorized to transact business in this Nation ceases to exist because of a statutory merger or consolidation with a foreign corporation not qualified to transact business in this Nation, it shall comply with the provisions of Section 1-1135 of this Title.

D. The Secretary of the Nation shall be paid the fee prescribed in Section 1-1142 of this Title for filing and indexing each statement or certificate required by the provisions of subsection A or B of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Additional requirements in case of change of name, mailing address, authorized capital or business purpose, or merger, consolidation or conversion, see 18 Okl.St. Ann. § 1131.

Principal place of business, see 18 Okl.St. Ann. § 1021.

Required filing with county clerk, see 18 Okl.St. Ann. § 1144.

Library References

Corporations ☞645, 646, 690.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 987, 1016.

§ 1-1132. Exceptions to requirements

A. No foreign corporation shall be required to comply with the provisions of this act, if:

1. it is the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside this Nation, and filing them with goods shipped into this Nation; or

2. it employs salesmen, either resident or traveling, to solicit orders in this Nation, either by display of samples or otherwise, whether or not maintaining sales offices in this Nation, all orders being subject to approval at the offices of the corporation without this Nation, and all goods applicable to the orders being shipped in pursuance thereof from without this Nation, to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within this Nation are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this Nation; or

3. it sells, by contract consummated outside this Nation, and agrees by the contract, to deliver into this Nation, machinery, plants or equipment, the construction, erection or installation of which within this Nation requires the supervision of technical engineers or skilled employees performing services not generally available, and as a part of the contract of sale agrees to furnish such services, and such services only, to the vendee at the time of construction, erection or installation; or

4. its business operations within this Nation are wholly interstate in character; or

5. it is an insurance company doing business in this Nation; or

6. it creates, as borrower or lender, or acquires, evidences of debt, mortgages or liens on real or personal property; or

7. it secures or collects debts or enforces any rights in property securing the same.

B. The provisions of this section shall have no application to the question of whether any foreign corporation is:

1. subject to service of process and suit in this Nation pursuant to the provisions of this act or any other law of this Nation; or

2. subject to the taxation laws of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Exceptions to requirements, see 18 Okl.St. Ann. § 1132.

Library References

Corporations ☞631.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 968 to 970.

§ 1-1133. Change of registered agent upon whom process may be served

A. 1. Any foreign corporation which has qualified to do business in this Nation may change its registered agent and substitute therefor another registered agent by filing a certificate with the Secretary of the Nation, acknowledged in accordance with the provisions of Section 1-1007 of this Title, setting forth:

- a. The name and street address of its registered agent designated in this Nation upon whom process directed to the corporation may be served; and
- b. A revocation of all previous appointments of agent for such purposes.

2. The registered agent shall be either an individual residing in this Nation when appointed or a corporation, limited liability company, or limited partnership authorized to transact business in this Nation.

B. Any individual or corporation designated by a foreign corporation as its registered agent for service of process may resign by filing with the Secretary of the Nation a signed statement that the agent is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post office address of the main or headquarters office of the foreign corporation, but the resignation shall not become effective until thirty (30) days after the statement is filed. The statement shall be acknowledged by the registered agent and shall contain a representation that written notice of resignation was given to the corporation at least thirty (30) days prior to the filing of the statement by mailing or delivering the notice to the corporation at its address given in the statement.

C. If any agent designated and certified as required by the provisions of Section 1-1130 of this Title shall die, remove himself from this Nation or resign, then the foreign corporation for which the agent had been so designated and certified, within ten (10) days after the death, removal or resignation of its agent, shall substitute, designate and certify to the Secretary of the Nation, the name of another registered agent for the purposes of the Muscogee (Creek) Nation General Corporation Act, and all process, orders, rules and notices may be served on or given to the substituted agent with like effect.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change of registered agent upon whom process may be served, see 18 Okl.St. Ann. § 1133.
Registered agent,

Generally, see 18 Okl.St. Ann. § 1022.
Change, see 18 Okl.St. Ann. § 1023.

Library References

Corporations ☞646.
Westlaw Topic No. 101.
C.J.S. Corporations § 987.

§ 1-1134. Violations and penalties

A. Any foreign corporation doing business of any kind in this Nation without first having complied with any provision of the Muscogee (Creek) Nation General Corporation Act applicable to it, shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) for each such offense. Any agent of any foreign corporation that shall do any business in this Nation for any foreign corporation before the foreign corporation has complied with any provision of the Muscogee (Creek) Nation General Corporation Act applicable to it, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each such offense.

B. If any foreign corporation fails to file or cause to be filed a certificate as provided for in paragraphs 11 and 13 of subsection A of Section 1-1142 of this Title or fails to pay to the Secretary of the Nation any additional fees shown to be due by the certificate provided for in paragraph 13 of subsection A of Section 1-1142 of this Title, the corporation:

1. may be ousted from this Nation by the Secretary of the Nation and its certificate of authority to do business in this Nation revoked and canceled. Before such revocation the Secretary of the Nation shall give not less than thirty (30) days' notice sent by mail duly addressed to such corporation at its principal place of business or last address shown on the records of the Secretary of the Nation of the Secretary of the Nation's intent to revoke the corporation's authority to transact business in this Nation; and

2. after notice required in paragraph 1 above, shall be subject to a penalty and shall forfeit to the Nation for each day it fails to comply with the provisions of this subsection, the sum of twenty-five dollars (\$25.00) per day but not more than five hundred dollars (\$500.00) for each such offense.

C. All fines and penalties provided for by this section may be recovered in a suit brought therefore by the Attorney General, in the name of the Nation, against the corporation, in any Muscogee (Creek) Nation District Court of the Nation. Fines and penalties received or collected pursuant to this section by the Attorney General as a result of an action brought in the name of the Nation by the Attorney General, shall be paid into the Nation's Treasury. Such fines and penalties shall be properly accounted for and paid monthly by the Secretary of the Nation to the Nation's Treasurer for deposit into the Nation's Treasury.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Criminal liability, see 21 Okl.St. Ann. § 1644.

Violations and penalties, see 18 Okl.St. Ann. § 1134.

Library References

Corporations ☞ 652.

Indians ☞ 210, 501.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 1004 to 1005, 1008.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

§ 1–1135. Withdrawal of foreign corporation from Nation; procedure; service of process on Secretary of the Nation

A. Any foreign corporation which shall have qualified to do business in this Nation pursuant to the provisions of Section 1–1130 of this Title, may surrender its authority to do business in this Nation and may withdraw therefrom by filing with the Secretary of the Nation:

1. A certificate, executed by an authorized officer of the corporation and acknowledged in accordance with the provisions of Section 1–1007 of this Title, stating that it surrenders its authority to transact business in this Nation and withdraws therefrom; and stating the address to which the Secretary of the Nation may mail any process against the corporation that may be served upon the Secretary of the Nation; or

2. A copy of a certificate of dissolution issued by the proper official of the Nation or other jurisdiction of its incorporation, together with a certificate, which shall be executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Secretary of the Nation may mail any process against the corporation that may be served upon the Secretary of the Nation; or

3. A copy of an order or decree of dissolution made by any court of competent jurisdiction or other competent authority of the Nation or other jurisdiction of its incorporation, certified to be a true copy under the hand of the Clerk of the Court or other official body, and the official seal of the court or official body or clerk thereof, together with a certificate executed in accordance with the provisions of paragraph 1 of this subsection, stating the address to which the Secretary of the Nation may mail any process against the corporation that may be served upon the Secretary of the Nation.

B. The Secretary of the Nation, upon payment to the Secretary of the Nation of the fees prescribed in Section 1–1142 of this Title, shall issue a sufficient number of certificates, under the hand and official seal of the Secretary of the Nation, evidencing the surrender of the authority of the corporation to do business in this Nation and its withdrawal therefrom.

C. Upon the issuance of the certificates by the Secretary of the Nation, the appointment of the registered agent of the corporation in this Nation, upon whom process against the corporation may be served, shall be revoked, and service on the corporation may be made by serving the Secretary of the Nation State as its agent.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Service, generally, see 12 Okl.St. Ann. §§ 2004, 2005.
 Withdrawal of foreign corporation from Oklahoma, procedure, service of process on Oklahoma Secretary of State, see 18 Okl.St. Ann. § 1135.

Library References

Corporations ☞651.	C.J.S. Corporations § 1004.
Indians ☞510.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 101, 209.	

§ 1-1136. Service of process on nonqualifying foreign corporations

A. If any foreign corporation shall transact business in this Nation without having qualified to do business in accordance with the provisions of Section 1-1130 of this Title, service on the corporation may be made by serving the Secretary of the Nation as its agent.

B. The provisions of Section 1-1132 of this Title shall not apply in determining whether any foreign corporation is transacting business in this Nation within the meaning of this section; and “the transaction of business” or “business transacted in this Nation”, by any such foreign corporation, whenever those words are used in this section, shall mean the course or practice of carrying on any business activities in this Nation, including, without limiting the generality of the foregoing, the solicitation of business or orders in this Nation. The provisions of this section shall not apply to any insurance company doing business in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Service, generally, see 12 Okl.St. Ann. §§ 2004, 2005.

Service of process on nonqualifying foreign corporations, see 18 Okl.St. Ann. § 1136.

Library References

Corporations ⇨668(14).

Indians ⇨510.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 1023, 1035.

C.J.S. Indians §§ 151 to 179.

§ 1-1137. Actions by and against unqualified foreign corporations

A. A foreign corporation which is required to comply with the provisions of this act and which has done business in this Nation without authority shall not maintain any action or special proceeding in this Nation unless and until such corporation has been authorized to do business in this Nation, and has paid to the Nation all fees, penalties and franchise taxes for the years or parts thereof during which it did business in this Nation without authority. This prohibition shall not apply to any successor in interest of such foreign corporation.

B. The failure of a foreign corporation to obtain authority to do business in this Nation shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions,

By and against unqualified foreign corporations, see 18 Okl.St. Ann. § 1137.

Foreign corporations, generally, see Okl.St. Ann. Const. Art. 9, § 43; 18 Okl.St. Ann. § 471.

Nonresident defendants, see 12 Okl.St. Ann. § 187.

Library References

Corporations ⇨657, 661.

Westlaw Topic No. 101.

C.J.S. Conflict of Laws § 47.

C.J.S. Corporations §§ 1005 to 1006, 1009 to 1010, 1020.

§ 1–1138. Foreign corporations doing business without having qualified; injunctions

The Muscogee (Creek) Nation District Court shall have jurisdiction to enjoin any foreign corporation, or any agent thereof, from transacting any business in this Nation, if such corporation has failed to comply with any provision of the Muscogee (Creek) Nation General Corporation Act applicable to it or if such corporation has secured a certificate of the Secretary of the Nation pursuant to provisions of this act on the basis of false or misleading representations. The Attorney General, upon his own motion or upon the relation of proper parties, shall proceed for this purpose by petition in any county in which such corporation is doing business.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations doing business without having qualified, injunctions, see 18 Okl.St. Ann. § 1138.

Injunctions, generally, see 12 Okl.St. Ann. § 1381 et seq.

Venue,

Foreign corporations, generally, see Okl.St. Ann. Const. Art. 9, § 43; 18 Okl.St. Ann. § 471.

Nonresident defendants, see 12 Okl.St. Ann. § 187.

Library References

Corporations ☞634, 651, 671.

Indians ☞537.

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 971, 1004, 1023.

C.J.S. Indians §§ 151 to 179.

§ 1–1139. Reservation of corporate name

A. The exclusive right to the use of a corporate name, in good faith, may be reserved by:

1. Any person intending to form a corporation under Title 3 of the Muscogee (Creek) Nation Statutes; or

2. Any corporation organized under the laws of this Nation intending to change its name; or

3. Any foreign corporation intending to qualify to transact business in this Nation under Title 3 of the Muscogee (Creek) Nation Statutes; or

4. Any foreign corporation qualified to transact business in this Nation intending to change its name; or

5. Any person intending to organize a foreign corporation and intending to have such corporation qualified to transact business in this Nation under the laws of this Nation; or

6. Any corporation whose charter has expired or has been forfeited intending to renew or revive the corporation under Title 3 of the Muscogee (Creek) Nation Statutes.

B. Such reservation shall be made by filing in the Office of the Secretary of the Nation an application to reserve a specified corporate name. If the

Secretary of the Nation finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of sixty (60) days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person by filing in the Office of the Secretary of the Nation a notice of such transfer, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Banks, deception of public by use of words "Banker, bankers", etc., see 6 Okl.St. Ann. § 1401.
 Fee for name reservation, see 18 Okl.St. Ann. § 1142.
 Names, requirements, see 18 Okl.St. Ann. § 1006.
 Reservation of corporate name, see 18 Okl.St. Ann. § 1139.

Library References

Corporations ¶43 to 45.5.
 Westlaw Topic No. 101.
 C.J.S. Corporations §§ 132, 134, 136 to 138.

§ 1-1140. Trade names

A. A corporation or other business entity doing business in this Nation under any name other than its legal name shall file a report with the Secretary of the Nation setting forth the legal name of the corporation or business entity, the jurisdiction of organization of the corporation or business entity, the trade name under which the business is carried on, a brief description of the kind of business transacted under the name, and the address wherein the business is to be carried on. The report shall be executed by a representative of the business entity authorized to sign on its behalf. In the case of a corporation, the report shall be signed and filed in accordance with Section 1-1007 of this Title. The trade name adopted shall be such as to be distinguishable upon the records in the Office of the Secretary of the Nation from:

1. Names of other business entities organized under the laws of this Nation and filed with the Secretary of the Nation then existing or which existed at any time during the preceding three (3) years; or
2. Names of foreign business entities qualified to do business in this Nation and filed with the Secretary of the Nation then existing or which existed at any time during the preceding three (3) years; or
3. Trade names or fictitious names filed with the Secretary of the Nation; or
4. Names reserved with the Secretary of the Nation.

B. As used in this section, "business entity" means a corporation, a business trust, a common law trust, a limited liability company, or any unincorporated business, including any form of partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Limited partnerships, registered names, see 54 Okl.St. Ann. § 304.

Title 3, § 1–1140

CORPORATIONS

Trademarks and tradenames, generally, see 60 Okl.St. Ann. § 314; 78 Okl.St. Ann. § 21 et seq.
Tradenames, see 18 Okl.St. Ann. § 1140.

Library References

Trademarks ⇌1001, 1026.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1–1140.1. Withdrawal of trade name; report

In the event a corporation or other business entity elects to cease doing business in this Nation under a trade name, it shall file a report, in duplicate, with the Secretary of the Nation withdrawing such trade name. The report shall be executed by a party duly authorized to sign on behalf of the corporation or other business entity. In the case of a corporation, the report shall be acknowledged and filed in accordance with Section 1–1007 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Withdrawal of trade name, see 18 Okl.St. Ann. § 1140.1.

Library References

Trademarks ⇌1001, 1026.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1–1140.2. Transfer of trade name ownership; report

In the event a corporation or other business entity elects to transfer ownership of a trade name to another corporation or business entity, it shall file a report, in duplicate, with the Secretary of the Nation, specifying such transfer. The report shall be executed by a party duly authorized to sign on behalf of the corporation or other business entity. In the case of a corporation, the report shall be acknowledged and filed in accordance with Section 1–1007 of this Title. The report shall contain the name of the corporation to which the trade name is being transferred, and the address wherein such business is to be carried on.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Transfer of trade name, see 18 Okl.St. Ann. § 1140.2.

Library References

Trademarks ⇌1001, 1026, 1197.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37, 203 to 206.

§ 1–1140.3. Amending trade name report

A. A trade name report shall be amended when:

1. There is a false or erroneous statement in the trade name report;
2. There is a change in the kind of business transacted under the trade name; or

3. There is a change in or an additional address where the business is to be carried on under the trade name.

B. An amended trade name report shall set forth the trade name and specify the amendment therein. The report shall be executed by a party duly authorized to sign on behalf of the corporation or other business entity. In the case of a corporation, the report shall be acknowledged and filed in accordance with the Muscogee (Creek) Nation Statutes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Amendment of trade name report, see 18 Okl.St. Ann. § 1140.3.

Library References

Trademarks ⇌1001, 1026.
Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1-1141. Prohibition on use of same or indistinguishable names; exceptions

The Secretary of the Nation shall not accept for reservation or filing a statement or certificate containing a name which is the same as or indistinguishable from the name of any business entity, as defined in this act, trade name, fictitious name, or reserved name filed with the Secretary of the Nation unless one of the following is filed with the Secretary of the Nation:

1. The written consent of the business entity or holder of the trade name, fictitious name, or reserved name to use the same or indistinguishable name with the addition of one or more words to make that name distinguishable upon the records of the Secretary of the Nation, except that the addition of words to make the name distinguishable shall not be required where the written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Nation, or be wound up;

2. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the business entity or holder of a reserved name, trade name, or fictitious name to the use of the name in this Nation;

3. In the case of any foreign business entity having a name prohibited by this section which intends to qualify to transact business within this Nation, a resolution adopting a fictitious name not prohibited by this section, which shall be used to the exclusion of its true name when transacting business within this Nation. Such resolution shall be executed by a representative or representatives of the business entity duly authorized to sign on its behalf.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign corporations, qualification to do business in state, see 18 Okl.St. Ann. § 1130.
Prohibition on use of same or indistinguishable names, exceptions, see 18 Okl.St. Ann. § 1141.

Library References

Trademarks ⇌1001, 1026.

Westlaw Topic No. 382T.

C.J.S. Trademarks, Tradenames, and Unfair
Competition §§ 5, 14 to 18, 25, 27, 36 to
37.

§ 1-1142. Filing and other service fees

A. The Secretary of the Nation, for services performed in the Office of the Secretary of the Nation and for expense of mailing, shall charge and collect the following fees:

1. **For any report, document, or other paper required to be filed in the Office of the Secretary of the Nation**, a fee of twenty-five dollars (\$25.00);
2. **For reservation of corporate name**, a fee of ten dollars (\$10.00);
3. **For issuing extra copies of any certificate not requiring any extra filing of papers or documents of any kind**, a fee of ten dollars (\$10.00);
4. **For issuing any other certificate**, a fee of ten dollars (\$10.00);
5. **For receiving a filing or indexing the annual certificate of a foreign corporation doing business in this Nation, or both when filed together**, a fee of ten dollars (\$10.00);
6. **For preclearance of any document for filing**, a fee of fifty dollars (\$50.00);
7. **For each service of process made upon and accepted by the Secretary of the Nation**, a fee of twenty-five dollars (\$25.00);
8. **For preparing and providing a report of a record search**, a fee of five dollars (\$5.00);
9. **For filing and issuing certificates of incorporation**, the fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be fifty dollars (\$50.00); provided further, that not for profit corporations shall only be required to pay a fee of twenty-five dollars (\$25.00);
10. **For filing and issuing amended certificates of incorporation or certificates of restatement, reorganization, revival, extension or dissolution**, the fee shall be fifty dollars (\$50.00); provided, however, not for profit corporations shall only be required to pay a fee of twenty-five dollars (\$25.00). If an amendment shall provide for an increase in authorized capital in excess of fifty thousand dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;
11. **For filing and issuing certificates of consolidation, if the resulting corporation is a domestic corporation, or merger, if the surviving corporation is a domestic corporation**, the fee shall be one hundred dollars (\$100.00); provided, however, not-for-profit corporations shall only be required to pay a fee of twenty-five dollars (\$25.00). If the merger or consolidation shall increase the authorized capital of the surviving or resulting corporation in excess of fifty thousand dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;
12. **For filing and issuing a certificate of conversion, whenever the resulting corporation is a domestic corporation**, the minimum fee shall be one hundred dollars (\$100.00); provided, however, if the certificate of incorpo-

ration of the resulting corporation authorizes capital stock in excess of fifty thousand dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such authorized capital. If the resulting domestic corporation is not for profit, it shall only be required to pay a fee of fifty dollars (\$50.00);

13. **For issuing a certificate to a foreign corporation to do business in this Nation, and filing a certificate and statement of such corporation required pursuant to the provisions of Section 1-1130 of this Title**, the fee shall be one-tenth of one percent (1/10 of 1%) of the maximum amount of capital invested by such corporation in the Nation at any time during the fiscal year such certificate is issued to any such foreign corporation; provided, that the minimum fee for any such service shall be three hundred dollars (\$300.00); provided further, that no such corporation shall be required to pay a fee on an amount in excess of its authorized capital;

14. **For amended certificate of qualification of a foreign corporation**, a fee of two hundred dollars (\$200.00); provided, however, for a certificate solely reflecting a change of mailing address, a fee of ten dollars (\$10.00);

15. **For filing a certificate of consolidation, if the resulting corporation is a foreign corporation, or merger, if the surviving corporation is a foreign corporation**, the fee shall be one hundred dollars (\$100.00);

16. **For filing a certificate of withdrawal of a foreign corporation doing business in this Nation**, a fee of one hundred dollars (\$100.00);

17. Every foreign corporation on the anniversary of its qualification in this Nation each year, shall cause to be filed with the Secretary of the Nation a certificate of its president, vice-president or other managing officers, in which shall be stated and shown the maximum amount of capital the corporation had invested in the Nation at any time subsequent to the issuance to it of a certificate to do business in this Nation and the amount of capital previously paid upon. If the amount of capital so invested as shown by said certificate exceeds the amount formerly paid upon, the corporation, at the time of filing said certificate, shall pay to the Secretary of the Nation an additional fee equal to one-tenth of one percent (1/10 of 1%) of the amount of such excess capital so invested by the corporation in the Nation; provided, that no such corporation shall be required to pay a filing fee on an amount in excess of its authorized capital, or to file the certificate provided for in this paragraph after it shall have paid a filing fee on its total authorized capitalization;

18. **For acting as the registered agent**, a fee of one hundred dollars (\$100.00) payable on the first day of July each year, and if not paid before the next ensuing September 1st, the Secretary of the Nation shall suspend and forfeit the charter of the delinquent corporation pursuant to the procedures prescribed in the Muscogee (Creek) Nation Statutes. The Secretary of the Nation shall collect and audit the registered agent fee authorized pursuant to this paragraph in conjunction with the collection and audit of franchise taxes as provided for in the Muscogee (Creek) Nation Statutes. All monies received by the Secretary of the Nation pursuant to the provisions of this paragraph shall be paid to the Nation's Treasurer for deposit in the Nation's Treasury; and

19. **For any response by means of telecommunications to inquiries regarding information required to be maintained by the Secretary of the Nation**, a fee of five dollars (\$5.00), unless otherwise provided. Fees collected pursuant to this paragraph shall be deposited in the General Fund for the Office of the Secretary of the Nation.

B. Except as otherwise provided by law, fees paid to the Secretary of Nation in accordance with the provisions of the Muscogee (Creek) Nation General Corporation Act shall be properly accounted for and shall be paid monthly to the Nation's Financial Department for deposit in the Nation's account.

C. Reserved

D. In any court proceeding pursuant to the provisions of the Muscogee (Creek) Nation General Corporation Act requiring the filing of any decree, order, report or other document in the Office of the Secretary of the Nation or in the office of the Clerk of the Court of the Muscogee (Creek) Nation District Court, in addition to the usual court costs and the costs for filing in the office of the Clerk of the Court, fees equal to the amounts provided for in this section for such required filing shall be collected as costs in such proceedings and such amount shall be forwarded to the Secretary of the Nation and the Clerk of Court with the papers to be filed.

E. The provisions contained in this section relating to the payment of incorporation fees by foreign corporations are not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual corporate franchise tax to the Secretary of the Nation.

F. For the purposes of computing the fees to be collected by the Secretary of the Nation pursuant to the provisions of this section, each share without par value shall be treated the same as a share with a par value of fifty dollars (\$50.00), and the fees thereon shall be collected accordingly.

G. Payments for any required fees except as otherwise provided by law may be made as follows:

1. By the applicant's personal or company check, cash, or money order; or
2. By a nationally recognized credit card issued to the applicant. The Secretary of the Nation may add a convenience fee, not to exceed four percent (4%) of the amount of such payment for services provided through telephonic or electronic media. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in the State of Oklahoma. The Secretary of the Nation shall determine which nationally recognized credit cards will be accepted; provided, however, the Secretary of the Nation must ensure that no loss of the Nation's revenue will occur by the use of such card. The convenience fee collected pursuant to this paragraph shall be credited to the General Fund for the Office of the Secretary of the Nation, as established in the Muscogee (Creek) Nation Statutes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Change of address or name of registered agent, see Title 3, § 1-1024.
 Merger or consolidation of domestic and foreign corporations, service of process, see Title 3, § 1-1082.
 Share acquisitions by domestic corporations, see Title 3, § 1-1090.1

Oklahoma Statutes Annotated

Certificate of incorporation,
 Generally, see 18 Okl.St. Ann. § 1005 et seq.
 Amended, see 18 Okl.St. Ann. §§ 1076, 1077.
 Renewal, revival, extension, see 18 Okl.St. Ann. § 1120.
 Restated, see 18 Okl.St. Ann. § 1080.
 Certificate of merger or consolidation, see 18 Okl.St. Ann. § 1081 et seq.
 Deposit of fees in Secretary of State Revolving Fund, see 62 Okl.St. Ann. § 276.1.
 Filing and other service fees, see 18 Okl.St. Ann. § 1142.
 Foreign corporations, certificate of change of name or mailing address, authorized capital or business purpose, merger, see 18 Okl.St. Ann. § 1131.
 Franchise taxes, see 68 Okl.St. Ann. § 1204.
 Registered agent, resignation not coupled with appointment of successor, see 18 Okl.St. Ann. § 1026.
 Reservation of name, see 18 Okl.St. Ann. § 1139.
 Service of process, corporation surviving merger,
 Domestic and foreign corporations, see 18 Okl.St. Ann. § 1082.
 Domestic and foreign nonstock, not for profit corporations, see 18 Okl.St. Ann. § 1085.
 Service upon secretary of state, see 18 Okl.St. Ann. §§ 1022, 1135.

Library References

Corporations ☞17 to 23, 391. C.J.S. Corporations §§ 47 to 49, 56 to 57, 59
 Westlaw Topic No. 101. to 60, 62, 679, 682.

§ 1-1142.1. Charges for telephone assistance service by Secretary of the Nation

The Secretary of the Nation is authorized to charge fees as provided by law for a telephone assistance service to provide information concerning records retained by the Secretary of the Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fees for telephone assistance, see 18 Okl.St. Ann. § 1142.1.

Library References

Corporations ☞17 to 23, 391. C.J.S. Corporations §§ 47 to 49, 56 to 57, 59
 Westlaw Topic No. 101. to 60, 62, 679, 682.

§ 1-1143. Duplication of Muscogee (Creek) Nation General Corporation Act by Secretary of the Nation; distribution

The Secretary of the Nation shall make forms necessary for incorporation or registration available via electronic means through a publicly accessible web-page. The Secretary may have printed, from time to time as he deems necessary, pamphlet copies of the Muscogee (Creek) Nation General Corporation Act for distribution to persons and corporations desiring the same for a sum not exceeding the cost of printing. The money received from the sale of the copies shall be disposed of as are other fees of the Office of the Secretary of the Nation. Nothing in this section shall be construed to prevent the free

Title 3, § 1–1143

CORPORATIONS

distribution of single pamphlet copies of the Muscogee (Creek) Nation General Corporation Act by the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Deposit of fees in Secretary of State Revolving Fund, see 62 Okl.St. Ann. § 276.1.

Duplication of Oklahoma General Corporation Act by Secretary of State, distribution, see 18 Okl.St. Ann. § 1143.

Library References

Corporations ☞391.

Westlaw Topic No. 101.

C.J.S. Corporations §§ 679, 682.

CHAPTER 2. MUSCOGEE (CREEK) NATION LIMITED LIABILITY COMPANY ACT

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- 2-2055.2. Certificate for limited liability companies.
- 2-2056. Petition to direct the execution and filing of articles or document.
- 2-2057. Application to commerce.
- 2-2058. Rules of construction; applicable law.

Historical and Statutory Notes

- NCA-92-191, § 101, provides:
- “§ 101. Findings:
“The National Council finds that:
“A. The Muscogee Nation has the power to charter profit or non-profit corporation under tribal law.
“B. An association known as the ‘Rural Fire Protection Association of Creek Indian Territory’ has been formed and the incorporators have submitted a request to the Muscogee National Council to be granted a charter as a non-profit corporation under the laws of the Muscogee Nation.
“C. The purposes of this corporation are compatible with the needs of rural Creek citizens who are without adequate rural fire protection.”

Oklahoma Statutes Annotated

Farming and ranching, authorization, see 18 Okl.St. Ann. § 955.
Franchise tax code, nonapplicability to limited liability companies, see 68 Okl.St. Ann. § 1201.
Revenue and taxation, limited liability company defined for tax purposes, see 68 Okl.St. Ann. § 202.

§ 2-2000. Short title

This act shall be known and may be cited as the “Muscogee (Creek) Nation Limited Liability Company Act”.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Oklahoma Limited Liability Company Act, short title, see 18 Okl.St. Ann. § 2000.

§ 2-2001. Definitions

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

1. “Articles of organization” means documents filed under Section 2-2004 of this Title for the purpose of forming a limited liability company;
2. “Bankrupt” means bankrupt under the United States Bankruptcy Code,¹ as amended, or insolvent under any state insolvency act;
3. “Business” means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;

4. "Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;

5. "Capital interest" means the fair market value as of the date contributed of a member's capital contribution as adjusted for any additional capital contributions or withdrawals;

6. "Corporation" means a corporation formed under the laws of this Nation or a foreign corporation as defined in this section;

7. "Court" includes every court and judge having jurisdiction in the case;

8. "Foreign corporation" means a corporation formed under the laws of any state, or under the laws of the District of Columbia or any foreign country;

9. "Foreign limited liability company" means an entity that is:

- a. an unincorporated association,
- b. organized under the laws of a state, District of Columbia or organized under the laws of any foreign country,
- c. organized under any state or District of Columbia pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and
- d. not required to be registered or organized under any statute of this Nation other than this act;

10. "Foreign limited partnership" means a limited partnership formed under the laws of any state, or under the laws of the District of Columbia or any foreign country;

11. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association or proprietorship having one or more members that is organized and existing under the laws of this Nation;

12. "Limited partnership" means a limited partnership formed under the laws of this Nation or a foreign limited partnership as defined in this section;

13. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;

14. "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

15. "Membership interest" or "interest" means a member's rights in the limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management;

16. "Nation" means the Muscogee (Creek) Nation;

Title 3, § 2–2001

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17. “Operating agreement” means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;

18. “Person” means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity;

19. “Secretary of the Nation” means the Secretary of the Nation of the Muscogee (Creek) Nation; and

20. “State” means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ See 11 U.S.C.A. § 101 et seq.

Oklahoma Statutes Annotated

Definitions, see 18 Okl.St. Ann. § 2001.

§ 2–2002. Purposes of limited liability companies

A limited liability company may be organized under the Muscogee (Creek) Nation General Corporation Act¹ for the purpose of carrying on any lawful business, purpose or activity, whether or not for property, except that a limited liability company may not conduct business as a bank or domestic insurer.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 3, § 1–1001 et seq.

Oklahoma Statutes Annotated

Purposes for formation, see 18 Okl.St. Ann. § 2002.

Library References

Limited Liability Companies ↻6.
Westlaw Topic No. 241E.

§ 2–2003. Limited liability company; powers

Each limited liability company may:

1. Sue, be sued, complain and defend in all courts of this Nation;
2. Transact its business, carry on its operations and have and exercise the powers granted by this section in any state, territory, district or possession of the United States, and in any foreign country;
3. Make contracts and guarantees, incur liabilities, and borrow money;
4. Sell, convey, lease, exchange, transfer, mortgage, pledge, and otherwise dispose of all or any part of its property and assets;
5. Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;
6. Issue notes, bonds and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets;

7. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

8. Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested;

9. Elect or appoint agents and define their duties and fix their compensation;

10. Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, limited liability company, joint venture, trust or other enterprise;

11. Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

12. Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this Nation, for the administration and regulation of the affairs of the limited liability company;

13. Cease its activities and dissolve; and

14. Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its articles of organization.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Powers and authority, see 18 Okl.St. Ann. § 2003.

Library References

Limited Liability Companies ◊32.

Westlaw Topic No. 241E.

§ 2-2004. Filing the articles of organization

A. One or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Secretary of the Nation.

B. 1. When the Office of the Secretary of the Nation files the articles of organization, the proposed organization becomes a limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles.

2. Filing of the articles by the Secretary of the Nation is conclusive evidence of the formation of the limited liability company.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Articles of organization, filing, see 18 Okl.St. Ann. § 2004.

Library References

Limited Liability Companies ⇐3, 14.
Westlaw Topic No. 241E.

§ 2–2005. Required contents of the articles of organization

- A. The articles of organization shall set forth:
1. The name of the limited liability company;
 2. The term of the existence of the limited liability company which may be perpetual; and
 3. The street address of its principal place of business, wherever located, and the name and street address of its resident agent which shall be identical to its registered office in this Nation.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Articles of organization, contents, see 18 Okl.St. Ann. § 2005.

Library References

Limited Liability Companies ⇐14.
Westlaw Topic No. 241E.

§ 2–2006. Execution of the articles of organization

A. Articles required by this act to be filed with the Office of the Secretary of the Nation shall be executed in the following manner:

1. Articles of organization must be signed by at least one person who need not be a member of the limited liability company; and
2. Articles of amendment, merger, or dissolution must be signed by a manager.

B. Any person may sign any articles by an attorney in fact. Powers of attorney relating to the signing of articles by an attorney in fact need not be sworn to, verified or acknowledged, and need not be filed with the Office of the Secretary of the Nation.

C. The execution of any articles under this act constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

D. Any signature on any instrument authorized to be filed with the Secretary of the Nation under this act may be a facsimile.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Execution of articles, evidence of authority, signatures, see 18 Okl.St. Ann. § 2006.

Library References

Limited Liability Companies ⇐14.
Westlaw Topic No. 241E.

§ 2–2007. Articles of organization or other articles to be delivered to Secretary of the Nation; filing and fees; cancellation

A. Two signed copies of the articles of organization or any articles of amendment or dissolution or of any decree of judicial amendment or dissolution shall be delivered to the Secretary of the Nation. A person who executes articles as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of the Nation finds that any articles do not conform to law, upon receipt of all filing fees required by law he shall:

1. Endorse on each copy the word “filed” and the day, month and year of the filing thereof;
2. File one copy in his office; and
3. Return the other copy to the person who filed it or his representative.

B. Upon the filing of articles of amendment or a decree of judicial amendment in the Office of the Secretary of the Nation, the articles of organization shall be amended as set forth therein and upon the effective date of articles of dissolution or a decree of judicial dissolution, the articles of organization are cancelled.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.

Oklahoma Statutes Annotated

Delivery of articles to Secretary of State, filing, time when effective, see 18 Okl.St. Ann. § 2007.

Library References

Limited Liability Companies ⇐14.
Westlaw Topic No. 241E.

§ 2–2008. Company name; restrictions

The name of each limited liability company as set forth in its articles of organization:

1. Shall contain either the words “limited liability company” or “limited company” or the abbreviations “LLC”, “LC”, “L.L.C.”, or “L.C.” The word “limited” may be abbreviated as “LTD.” and the word “Company” may be abbreviated as “CO.”; and
2. a. May not be the same as or indistinguishable from:

Title 3, § 2–2008

CORPORATIONS

(1) names upon the records in the Office of the Secretary of the Nation of then existing limited liability companies whether organized pursuant to the laws of this Nation or licensed or registered as foreign limited liability companies, or

(2) names upon the records in the Office of the Secretary of the Nation of corporations organized under the laws of this Nation or of foreign corporations registered in accordance with the laws of this Nation then existing or which existed at any time during the preceding three (3) years, or

(3) names upon the records in the Office of the Secretary of the Nation of limited partnerships formed under the laws of this Nation or of foreign limited partnerships registered in accordance with the laws of this Nation, or

(4) trade names, fictitious names, or other names reserved with the Secretary of the Nation.

b. The provisions of subparagraph a of this paragraph shall not apply if one of the following is filed with the Secretary of the Nation:

(1) the written consent of the other limited liability company, corporation, limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Secretary of the Nation, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Nation or be wound up, or

(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such name in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Conversion of business entity to limited liability company, see Title 3, § 2–42054.1.
Name of foreign limited liability company, use of fictitious name, see Title 3, § 2–2045.

Oklahoma Statutes Annotated

Foreign limited liability company, satisfying requirements of this section, see 18 Okl.St. Ann. § 2045.
Name of company, restrictions, see 18 Okl.St. Ann. § 2008.

Library References

Limited Liability Companies ◊4.
Westlaw Topic No. 241E.

§ 2–2009. Reservation of company name; application

A. The exclusive right to use a specified name for a domestic or foreign limited liability company, in good faith, may be reserved by:

1. A person who intends to organize a domestic limited liability company or a foreign limited liability company to be registered in this Nation and to adopt that name;

2. A domestic limited liability company or a foreign limited liability company registered in this Nation which proposes to adopt that name; or

3. A foreign limited liability company which intends to register in this Nation and adopt that name.

B. A person seeking to reserve a specified name shall file an application executed by the applicant with the Secretary of the Nation and pay the filing fee required by law. If the Secretary of the Nation finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of sixty (60) days.

C. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Secretary of the Nation a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Reservation and transfer of company name, see 18 Okl.St. Ann. § 2009.

Library References

Limited Liability Companies ↻4.
Westlaw Topic No. 241E.

§ 2–2010. Principal office; resident agent; changes

A. Every domestic limited liability company and registered foreign limited liability company doing business with this Nation shall continuously maintain within this Nation:

1. A registered office which may be, but need not be, the same as its principal place of business; and

2. A resident agent for service of process on the limited liability company that may be the domestic limited liability company itself, an individual resident of this Nation, or a domestic or qualified foreign corporation, limited liability company, or limited partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform the functions of a registered agent.

B. 1. A limited liability company may designate or change its resident agent, registered office, or principal office by filing with the Office of the Secretary of the Nation a statement authorizing the designation or change and signed by any manager.

2. A limited liability company may change the street address of its registered office by filing with the Office of the Secretary of the Nation a statement of the change signed by any manager.

3. A designation or change of a principal office or resident agent or street address of the registered office for a limited liability company under this subsection is effective when the Office of the Secretary of the Nation files the statement.

Title 3, § 2–2010

CORPORATIONS

C. 1. A resident agent who changes his or her street address in the Nation may notify the Office of the Secretary of the Nation of the change by filing with the Office of the Secretary of the Nation a statement of the change signed by the agent or on the agent's behalf.

2. The statement shall include:

- a. the name of the limited liability company for which the change is effective,
- b. the new street address of the resident agent, and
- c. the date on which the change is effective, if to be effective after the filing date.

3. If the new address of the resident agent is the same as the new address of the principal office of the limited liability company, the statement may include a change of address of the principal office if:

- a. the resident agent notifies the limited liability company of the change in writing, and
- b. the statement recites that the resident agent has done so.

4. Unless otherwise provided in the statement, the change of address of the resident agent or principal office is effective when the Office of the Secretary of the Nation files the statement.

D. 1. A resident agent may resign by filing with the Office of the Secretary of the Nation a counterpart or photocopy of the signed resignation.

2. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Registered office and agent, see 18 Okl.St. Ann. § 2010.

Library References

Limited Liability Companies ⇐15.
Westlaw Topic No. 241E.

§ 2–2011. Amendment of articles of organization

A. The articles of organization shall be amended when:

1. There is a change in the name of the limited liability company;
2. There is a false or erroneous statement in the articles of organization;
3. There is a change in the time as stated in the articles of organization for the cancellation of the limited liability company; or
4. The members desire to restate the articles of organization in their entirety or to make a change in any other statement or to add a statement in the articles of organization in order to accurately represent their agreement.

B. An amendment to the articles of organization of a limited liability company shall set forth:

1. The name of the limited liability company;

2. The date of filing the articles of organization; and
3. The amendment to the articles of organization.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Articles of organization, amendment, see 18 Okl.St. Ann. § 2011.

Library References

Limited Liability Companies ◊14.
Westlaw Topic No. 241E.

§ 2–2012. Correction of typographical or technical errors; articles of correction

A. If any document filed with the Office of the Secretary of the Nation under this act contains any typographical error, error of transcription, or other technical error or has been defectively executed, the document may be corrected by the filing of articles of correction.

B. Articles of correction shall set forth:

1. The title of the document being corrected;
2. The date that the document being corrected was filed; and
3. The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

C. Articles of correction may not make any other change or amendment which would not have complied in all respects with the requirements of this act at the time the document being corrected was filed.

D. Articles of correction shall be executed in the same manner in which the document being corrected was required to be executed.

E. Articles of correction may not:

1. Change the effective date of the document being corrected; or
2. Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document.

F. Notwithstanding that any instrument authorized to be filed with the Secretary of the Nation pursuant to the provisions of this act is, when filed inaccurately, defectively, or erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the Secretary of the Nation shall not be liable to any person for the preclearance for filing, or the filing and indexing of the instrument by the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Articles of correction, see 18 Okl.St. Ann. § 2012.

Library References

Limited Liability Companies ⇨14.
Westlaw Topic No. 241E.

§ 2–2013. Management; qualifications; number of managers

A. Except as otherwise provided in the articles of organization, operating agreement, or this act, a limited liability company shall be managed by or under the authority of one or more managers who may but need not be members.

B. The articles of organization or operating agreement may prescribe qualifications for managers.

C. The number of managers shall be specified in or fixed in accordance with the articles of organization or operating agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Managers, qualifications, powers, see 18 Okl.St. Ann. § 2013.

Library References

Limited Liability Companies ⇨40.
Westlaw Topic No. 241E.

§ 2–2014. Election and removal of managers

Unless otherwise provided in the articles of organization or operating agreement:

1. The election of managers shall be by majority vote of the members; and
2. Any or all managers may be removed, with or without cause, by the written consent of the members.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Managers, election, removal, resignation, see 18 Okl.St. Ann. § 2014.

Library References

Limited Liability Companies ⇨25, 41.
Westlaw Topic No. 241E.

§ 2–2015. Management without designated managers; provision

A. The articles of organization or operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

1. The members shall be deemed to be managers for purposes of applying provisions of the Muscogee (Creek) Nation Limited Liability Company Act, unless the context clearly requires otherwise;

2. The members shall have and be subject to all duties and liabilities of managers; and

3. A member signing on behalf of the limited liability company shall sign as a manager.

B. A member of a member-managed limited liability company may resign as a member in accordance with the operating agreement or, if the operating agreement does not provide for the member's resignation, upon notice to the limited liability company. When a member of a member-managed limited liability company resigns, the member shall cease to have the rights and duties of a member and shall become an assignee; provided that the profits and losses of the limited liability company shall continue to be allocated to the member and any binding commitments for contributions shall continue as if the member had not resigned. If the resignation violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning member. The member's resignation shall not constitute a withdrawal from the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Management of company without designated managers, resignation of member, see 18 Okl.St. Ann. § 2015.

Library References

Limited Liability Companies ⇨22.
Westlaw Topic No. 241E.

§ 2–2016. Manager's duties; good faith; reliance; liability

Subject to the provisions of Section 2–2018 of this Title:

1. A manager shall discharge his duties as a manager in good faith, with the care an ordinary prudent person in a like position could exercise under similar circumstances, and in the manner he reasonably believes to be in the best interests of the limited liability company;

2. In discharging his duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

a. one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,

b. legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or

c. a committee of managers of which he is not a member if the manager reasonably believes the committee merits confidence;

3. A manager is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph 2 of this section unwarranted;

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4. A manager is not liable for any action taken as a manager, or any failure to take any action, if he performed the duties of his office in compliance with this section; and

5. Except as otherwise provided in the articles of organization or operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by him of its property.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Managers, duties, good faith, liability, see 18 Okl.St. Ann. § 2016.

Library References

Limited Liability Companies ⇐40.
Westlaw Topic No. 241E.

§ 2–2017. Elimination or limitation of liability

A. Subject to subsection B of this section, the articles of organization or operating agreement may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 2–2016 of this Title; and

2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because he is or was a member or manager.

B. No provision permitted under subsection A of this section shall limit or eliminate the liability of a manager for:

1. Any breach of the manager’s duty of loyalty to the limited liability company or its members;

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Member or manager, limitation or elimination of liability, indemnification, creation of series or groups, see 18 Okl.St. Ann. § 2017.

Library References

Limited Liability Companies ⇐24, 40.
Westlaw Topic No. 241E.

§ 2–2018. Majority vote of managers

Except as otherwise provided in the articles of organization or operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting by managers, see 18 Okl.St. Ann. § 2018.

Library References

Limited Liability Companies ◊41.
Westlaw Topic No. 241E.

§ 2–2019. Managers as agents

A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection A of this section, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Manager as agent of limited liability company, unauthorized acts, property transactions, see 18 Okl.St. Ann. § 2019.

Transferred property, recovery, see 18 Okl.St. Ann. § 2019.1.

Library References

Limited Liability Companies ◊42.
Westlaw Topic No. 241E.

§ 2–2019.1. Transfer of title of property of the company

A. Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company.

B. Title to property of the limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, even if the name of the limited liability company is not indicated,

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may be transferred by an instrument of transfer executed by the persons in whose name title is held.

C. Property transferred under subsections A or B of this section may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under the Muscogee (Creek) Nation Statutes, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

D. Title to property of the limited liability company that is held in the name of one or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or the members by the person in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Title to property, transfer, see 18 Okl.St. Ann. § 2019.1.

Library References

Limited Liability Companies ⇄37.
Westlaw Topic No. 241E.

§ 2–2020. Voting rights of members

A. Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Except as otherwise provided in subsection D of this section or unless the context otherwise requires, references in the Muscogee (Creek) Nation Limited Liability Company Act to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as otherwise provided in subsection D of this section or in the articles of organization or operating agreement, a majority vote of the members shall be required to approve the following matters:

1. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company;
2. Merger of the limited liability company with another limited liability company or other business entity; and
3. An amendment to the articles of organization or operating agreement.

C. The articles of organization or operating agreement may alter the above voting rights and provide for any other voting rights of members.

D. Unless otherwise provided in the articles of organization or a written operating agreement, the unanimous vote or consent of the members shall be required to approve the following matters:

1. The dissolution of the limited liability company pursuant to paragraph 3 of Section 2–2037 of this Title; or

2. An amendment to the articles of organization or an amendment to a written operating agreement:

a. which reduces the term of the existence of the limited liability company,
b. which reduces the required vote of members to approve a dissolution, merger of sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company,

c. which permits a member or voluntarily withdraw from the limited liability company, or

d. which reduces the required vote of members to approve an amendment to the articles of organization or written operating agreement reducing the vote previously required on the matters described in this paragraph.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Members, voting rights, see 18 Okl.St. Ann. § 2020.

Library References

Limited Liability Companies ↻25.
Westlaw Topic No. 241E.

§ 2–2021. Records to be kept at principal place of business; access by members and managers

A. Unless otherwise provided in a written operating agreement, a limited liability company shall keep at its principal place of business the following:

1. A current and a past list of the full name and last-known mailing address of each member and manager;

2. Copies of records that would enable a member to determine the relative voting rights of the members;

3. A copy of the articles of organization, together with any amendments thereto;

4. Copies of the limited liability company’s federal, state and local income tax returns and financial statements, if any, for the three most recent years or, if such returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal state and local tax returns for such period;

5. Copies of any effective written operating agreements and all amendments thereto and copies of any written operating agreements no longer in effect; and

6. Unless provided in writing in an operating agreement, a writing setting out:

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CORPORATIONS

a. the amount of cash and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made, and

b. the events upon the happening of which the limited liability company is to be dissolved and its affairs wound up, and

c. any other information prepared pursuant to a requirement in an operating agreement.

B. A member, for any purpose reasonably related to the member's interest, may:

1. At the member's own expense, inspect and copy any limited liability company record upon reasonable request during ordinary business hours;

2. Obtain from time to time upon reasonable demand:

a. true and complete information regarding the state of the business and financial condition of the limited liability company,

b. promptly after becoming available, a copy of the limited liability company's state and local income tax returns for each year, and

c. other information regarding the affairs of the limited liability company as is just and reasonable; and

3. Have a formal accounting of the limited liability company's affairs whenever circumstances render it just and reasonable.

C. A manager, for any purpose reasonably related to his position, may inspect and copy any limited liability company records upon reasonable request during ordinary business hours.

D. Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Records required to be kept, member access to information, managers may inspect and copy records, see 18 Okl.St. Ann. § 2021.

Library References

Limited Liability Companies ⇌23, 25, 41.

Westlaw Topic No. 241E.

§ 2–2022. Liability of member or manager

A person who is a member or manager, or both, of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being such member or manager or both.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability solely as manager or member, see 18 Okl.St. Ann. § 2022.

Library References

Limited Liability Companies ◊27, 43.
Westlaw Topic No. 241E.

§ 2–2023. Forms of contribution by member

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

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Contribution of member, form, see 18 Okl.St. Ann. § 2023.

Library References

Limited Liability Companies ◊29.
Westlaw Topic No. 241E.

§ 2–2024. Written promise of contribution; performance; compromise; failure to perform; remedy

A. 1. Except as otherwise provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any written promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or other reason.

2. If a member does not make the required contribution of property or services, he is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value, as stated in the operating agreement, of the stated contribution that has not been made.

B. 1. The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous consent of the members.

2. A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

a. such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or

b. a duty to the creditor was breached in the making of the compromise.

C. An operating agreement may provide that the capital interest of a member who fails to make any contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's capital interest in the limited liability company, subordinating the defaulting member's capital interest in the limited liability

ty company to that of the nondefaulting members, a forced sale of the capital interest in the limited liability company, forfeiture of the capital interest in the limited liability company, the lending by the nondefaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's capital interest in the limited liability company by appraisal or by formula and redemption and sale of the member's capital interest in the limited liability company at that value, or other remedy or consequences.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignee of interest in limited liability company not released from liability to company under this section, see 18 Okl.St. Ann. § 2035.

Performance of obligations, compromise, remedies for failure to perform, see 18 Okl.St. Ann. § 2024.

Library References

Limited Liability Companies ◊29.
Westlaw Topic No. 241E.

§ 2–2025. Profits and losses; distributions

Except as otherwise provided in the operating agreement:

1. The profits and losses of a limited liability company shall be allocated among the members in proportion to their respective capital interests; and
2. Distributions of the limited liability company shall be made to the members in proportion to their right to share in the profits of the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Allocation of profits and losses, distributions, see 18 Okl.St. Ann. § 2025.

Library References

Limited Liability Companies ◊30.
Westlaw Topic No. 241E.

§ 2–2026. Distributions to members before withdrawal and dissolution

Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the dissolution and winding up of the limited liability company to the extent and at the times upon which the members agree or as provided in the operating agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distributions, time, see 18 Okl.St. Ann. § 2026.

Winding up of affairs, distribution of assets, see 18 Okl.St. Ann. § 2040.

Library References

Limited Liability Companies ◊30.
Westlaw Topic No. 241E.

§ 2–2027. Reserved**§ 2–2028. Form of distribution; asset in kind**

Except as otherwise provided in the operating agreement:

1. 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; and

2. No member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage which the member's interest in the limited liability company is of all of the interests in the limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution, cash, asset in kind, see 18 Okl.St. Ann. § 2028.

Library References

Limited Liability Companies ⇨30.
Westlaw Topic No. 241E.

§ 2–2029. Status of member and distribution

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution, status and rights of member, see 18 Okl.St. Ann. § 2029.

Library References

Limited Liability Companies ⇨30.
Westlaw Topic No. 241E.

§ 2–2030. Restrictions on distribution; determination of prohibited distributions; effect of distribution; indebtedness

A. A distribution may not be made if, after giving effect to the distribution:

1. The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

2. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

B. The limited liability company may base a determination that a distribution is not prohibited under subsection A of this section on:

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1. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

2. A fair valuation or other method that is reasonable in the circumstances.

C. Except as provided in subsection E of this section, the effect of a distribution under subsection A of this section is measured as of:

1. The date the distribution is authorized, if the payment occurs within one hundred twenty (120) days after the date of authorization; or

2. The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

D. A limited liability company's indebtedness to a member, incurred by reason of a distribution made in accordance with this section, is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

E. 1. If the terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection B of this section; and

2. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution, restrictions, effect on indebtedness, see 18 Okl.St. Ann. § 2030.

Library References

Limited Liability Companies ◊30.
Westlaw Topic No. 241E.

§ 2–2031. Wrongful distribution; liability; recovery action

If a member has received a distribution in violation of the operating agreement or Section 2–2030 of this Title, the member shall be liable to the limited liability company for the amount of the distribution wrongfully made. An action for the recovery of any wrongful distribution to a member must be brought within three (3) years from the date of the distribution.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Wrongful distribution, liability of member, action for recovery, see 18 Okl.St. Ann. § 2031.

Library References

Indians ◊508.
Westlaw Topic Nos. 209, 241E.
Limited Liability Companies ◊30.
C.J.S. Indians §§ 151 to 179.

§ 2-2032. Membership interest as personal property

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

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Membership interest, status, see 18 Okl.St. Ann. § 2032.

Library References

Limited Liability Companies ◊25.
Westlaw Topic No. 241E.

§ 2-2033. Assignability of membership interest

A. Unless otherwise provided in an operating agreement:

1. A membership interest is not transferable; provided, however, that a member may assign a membership interest in whole or in part;

2. An assignment of a membership interest does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;

3. An assignment entitles the assignee to receive any distribution or distributions to which the assignor was entitled to the extent assigned;

4. Unless the assignee of an interest in a limited liability company becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, unless the assignor is removed as a member either in accordance with the operating agreement or, after having assigned all of the membership interest, by an affirmative vote of the members who have not assigned their interests. The removal of an assignor shall not, by itself, cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

B. The operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and may make other provisions with respect to such certificates.

C. Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignment of membership interest, see 18 Okl.St. Ann. § 2033.

Library References

Limited Liability Companies ↻30.
Westlaw Topic No. 241E.

§ 2–2034. Judgment creditor; rights; exclusive remedy

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership 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 membership interest. This act does not deprive any member of the benefit of any exemption laws applicable to his membership interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Judgment creditor, rights and interests, see 18 Okl.St. Ann. § 2034.

Library References

Limited Liability Companies ↻30.
Westlaw Topic No. 241E.

§ 2–2035. Assignee of interest becoming member; rights and powers, restrictions and liabilities; assignor's liabilities; time of admission of member

A. An assignee of an interest in a limited liability company may become a member if and to the extent that:

1. The operating agreement provides; or
2. The members representing a majority of the capital interests which are not the subject of the assignment consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this act, Section 2–2000 et seq. of this Title; however, unless otherwise provided in writing in the operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of the assignor to make contributions as provided in Section 2–2024 of this Title, but shall not be liable for the obligations of the assignor under Section 2–2031 of this Title; however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from liability to the limited liability company under Sections 2–2024, 2–2031, and 2–2033 of this Title.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a

member when any assignee of the interest becomes a member with respect to the assigned interest.

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or
2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignee of interest in limited liability company, membership rights, powers, restrictions and liabilities, rights and liability of assignor, admission to membership directly in limited liability company, see 18 Okl.St. Ann. § 2035.

Library References

Limited Liability Companies ◊30.
Westlaw Topic No. 241E.

§ 2-2036. Events causing cessation of membership; withdrawal; death or incapacity

A. Unless the operating agreement specifically permits in writing the power to withdraw voluntarily, a member may not withdraw at any time. If the operating agreement specifically provides in writing the power to withdraw voluntarily, but the withdrawal occurs as a result of wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising the power to withdraw if such power is permitted in the operating agreement.

B. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee of the member's interest.

C. The operating agreement may provide for the expulsion of a member, with or without cause, which shall include reasonable provision for the distributable interest.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Event of dissociation defined as event that causes person to cease to be member as provided in this section, see 18 Okl.St. Ann. § 2001.

Withdrawal as member, rights of legal representative of deceased or incompetent member, expulsion of member, see 18 Okl.St. Ann. § 2036.

Library References

Limited Liability Companies ⇄18, 30.

Westlaw Topic No. 241E.

§ 2–2037. Dissolution and winding up

A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;
2. The occurrence of events specified in writing in the operating agreement;
3. The written consent of all of the members; or
4. Entry of a decree of judicial dissolution under Section 2–2038 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissolution, activities after dissolution, see 18 Okl.St. Ann. § 2037.

Dissolution of limited liability company pursuant to this section, filing articles of dissolution, see 18 Okl.St. Ann. § 2041.

Library References

Limited Liability Companies ⇄49.

Westlaw Topic No. 241E.

§ 2–2038. Dissolution upon application by member; decree

On application by or for a member, the Muscogee (Creek) Nation District Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Decree of dissolution, see 18 Okl.St. Ann. § 2038.

Library References

Limited Liability Companies ⇄49.

Westlaw Topic No. 241E.

§ 2–2039. Winding up of business or affairs; binding acts of managers; notice presumed

A. Except as otherwise provided in the articles of organization or operating agreement:

1. The business or affairs of the limited liability company may be wound up in one of the following ways:

- a. by the managers, or
- b. if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown, by the Muscogee (Creek) Nation District Court on application of any member, his legal representative, or assignee; and

2. The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

- a. prosecute and defend suits,
- b. settle and close the business of the limited liability company,
- c. dispose of and transfer the property of the limited liability company,
- d. discharge the liabilities of the limited liability company, and
- e. distribute to the members any remaining assets of the limited liability company.

B. Except as provided in subsections D and E of this section, after an event causing dissolution of the limited liability company any manager can bind the limited liability company:

1. By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

2. By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

C. The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of paragraph 2 of subsection B of this section.

D. An act of a manager or member that is not binding on the limited liability company pursuant to subsection B of this section is binding if it is otherwise authorized by the limited liability company.

E. An act of a manager or member that would be binding under subsection B or would be otherwise authorized but that is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Winding up business or affairs, ways, acts and transactions of member or manager, presumptive notice, see 18 Okl.St. Ann. § 2039.

Library References

Limited Liability Companies ⇄49.
Westlaw Topic No. 241E.

§ 2–2040. Distribution of assets upon winding up

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

1. Payment, or adequate provision for payment, shall be made to creditors, including to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company;
2. Except as provided in writing in the articles of organization or operating agreement, to members or former members in satisfaction of liabilities for distributions under Sections 2–2026 and 2–2027 of this Title; and
3. Except as provided in writing in the articles of organization or operating agreement, to members and former members first for the return of their contributions and second respecting their membership interests, in proportions in which the members share in distributions.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Winding up of affairs, distribution of assets, liability, see 18 Okl.St. Ann. § 2040.

Library References

Limited Liability Companies ◊49.
Westlaw Topic No. 241E.

§ 2–2041. Articles of dissolution; filing and contents

After the dissolution of the limited liability company, pursuant to Section 2–2037 of this Title, the limited liability company shall file articles of dissolution in the Office of the Secretary of the Nation upon payment of the filing fee required by Section 2–2055 of this Title, the articles of dissolution shall set forth:

1. The name of the limited liability company;
2. The date of filing of its articles of organization;
3. The reason for filing the articles of dissolution;
4. The effective date of the articles of dissolution if they are not to be effective upon the filing; and
5. Any other information the members or managers filing the certificate determine.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Articles of dissolution, see 18 Okl.St. Ann. § 2041.

Library References

Limited Liability Companies ◊49.
Westlaw Topic No. 241E.

§ 2–2042. Laws governing foreign limited liability company; rights and privileges; purposes

A. Subject to the Constitution of this Nation:

1. The laws of the Nation or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members; and

2. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this Nation.

B. A foreign limited liability company holding a valid registration in this Nation shall have no greater rights and privileges than a domestic limited liability company. The registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, laws governing, powers, rights and privileges, see 18 Okl.St. Ann. § 2042.

Library References

Limited Liability Companies ⇄50.
Westlaw Topic No. 241E.

§ 2–2043. Foreign limited liability company; registration

Before transacting business in this Nation, a foreign limited liability company shall register with the Office of the Secretary of the Nation. In order to register, a foreign limited liability company shall:

1. Pay to the Secretary of the Nation a registration fee required by Section 2–2056 of this Title;

2. Provide the Secretary of the Nation with an original certificate from the certifying officer of the jurisdiction of the foreign limited liability company's organization attesting to the foreign limited liability company's organization under the laws of such jurisdiction; and

3. Submit to the Office of the Secretary of the Nation an application in duplicate for registration as a foreign limited liability company, signed by a manager, member, or other person, and setting forth:

a. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this Nation,

b. the state or other jurisdiction and date of its organization,

c. the name and street address of a registered agent in this Nation which agent shall be an individual resident of this Nation, or a domestic or qualified foreign corporation, limited liability company, or limited liability partnership. Each registered agent shall maintain a business office identical with the registered office which is open during regular business hours to accept service of process and otherwise perform that functions of a registered agent. If an

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additional registered agent is designated, service of process shall be on that agent and not on the Secretary of the Nation,

d. a statement that the Office of the Secretary of the Nation is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed under subparagraph c of this paragraph, or if appointed, the agent’s authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence,

e. the address of the office required to be maintained in the state or Nation of its organization by the laws of that state or Nation or, if not so required, of the principal office of the foreign limited liability company, and

f. such additional information as may be necessary or appropriate in order to enable the Office of the Secretary of the Nation to determine whether such limited liability company is entitled to transact business in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, registration procedure, see 18 Okl.St. Ann. § 2043.

Library References

Limited Liability Companies ⇄50.
Westlaw Topic No. 241E.

§ 2–2044. Conforming application for registration

If the Office of the Secretary of the Nation finds that an application for registration conforms to the provisions of this act and all requisite fees have been paid, it shall:

1. Endorse on the applications the word “filed”, and the month, day, and year of the filing;
2. File in its office one copy of the application;
3. Issue a certificate of registration to transact business in this Nation; and
4. Return the certificate of registration, together with a copy of the application to the person who filed the application or his representative.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, duties of Secretary of State, see 18 Okl.St. Ann. § 2044.

Library References

Limited Liability Companies ⇄50.
Westlaw Topic No. 241E.

§ 2–2045. Name of foreign limited liability company; use of fictitious name

Subject to the provisions of Section 2–2008 of this Title, foreign limited liability company may register with the Secretary of the Nation under the name which it is registered in its jurisdiction or organization and that could be registered by a domestic limited liability company. If the name of a foreign

limited liability company does not satisfy the requirements of Section 2-2008 of this Title, the foreign limited liability company may file with the Secretary of the Nation a statement by its manager duly adopting a fictitious name that is available, and which satisfies the requirements of Section 2-2008 of this Title, which shall be used to the exclusion of its true name when transacting business within this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, name, see 18 Okl.St. Ann. § 2045.

Library References

Limited Liability Companies ↻50.
Westlaw Topic No. 241E.

§ 2-2046. Foreign limited liability company; correction certificate for false statements; filing

A. 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 inaccurate in any respect, the foreign limited liability company shall promptly file in the Office of the Secretary of the Nation a certificate, signed by a manager, member, or other person, correcting the statement and pay the fee provided for in Section 2-2055 of this Title.

B. A registered foreign limited liability company shall record any changes in its principal office, its registered agent, or the registered agent's address, by filing with the Office of the Secretary of the Nation statement of the change and paying the fee provided for in Section 2-2055 of this Title.

C. A foreign limited liability company authorized to transact business in this Nation shall promptly file a certificate, issued by the proper officer of the Nation or jurisdiction of its organization, attesting to the occurrence of a merger, in the Office of the Secretary of the Nation and pay the fee provided for in Section 2-2055 of this Title, whenever it is the surviving limited liability company and the merger:

1. Changes any statement in the application of registration of the foreign limited liability company; or
2. Involves any other foreign business entity authorized to transact business in this Nation.

D. If the merger changes any arrangements or other facts described in the application for registration of the surviving foreign limited liability company, it shall also comply with the provisions of this section; provided that it will not be required to pay an additional fee.

E. Whenever a foreign limited liability company authorized to transact business in this Nation ceases to exist because of a statutory merger or consolidation with a foreign business entity not qualified to transact business in this Nation, it shall comply with the provisions of Section 2-2047 of this Title.

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F. A registered agent of a foreign limited liability company may resign by filing with the Office of the Secretary of the Nation a copy of the resignation, signed and acknowledged by the agent, which contains a statement that notice of the resignation was given to the limited liability company at least thirty (30) days prior to the filing of the resignation by mailing or delivering the notice to the limited liability company at its address last known to the registered agent and specifying such address therein.

1. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

2. If a foreign limited liability company fails to obtain and designate a new registered agent prior to the expiration of the thirty (30) days after the filing by the registered agent of a resignation statement, the Secretary of the Nation shall be deemed to be the registered agent of such limited liability company.

G. If a limited liability company has no registered agent or the registered agent cannot be found, then service of process on the limited liability company may be made by serving the Secretary of the Nation as its agent as provided in the Muscogee (Creek) Nation Statutes.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, correction certificate, recording changes, see 18 Okl.St. Ann. § 2046.

Library References

Limited Liability Companies ◊50.
Westlaw Topic No. 241E.

§ 2–2047. Certificate of withdrawal; foreign limited liability company; execution

A. A foreign limited liability company authorized to transact business in this Nation may withdraw from the Nation upon procuring from the Office of the Secretary of the Nation a certificate of withdrawal. In order to procure such certificate, the foreign limited liability company shall file with the Office of the Secretary of the Nation an application for withdrawal and pay the fee provided for in Section 2–2056 of this act. The application for withdrawal shall set forth:

1. The name of the foreign limited liability company and the Nation or other jurisdiction under the laws of which it is organized;

2. That the foreign limited liability company is not transacting business in this Nation;

3. That the foreign limited liability company surrenders its certificate of registration to transact business in this Nation;

4. That the foreign limited liability company revokes the authority of its registered agent for service of process in this Nation and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this Nation during the time the foreign limited liability company was authorized to transact business in this Nation may thereafter be made on such

foreign limited liability company by service thereof upon the Office of the Secretary of the Nation; and

5. An address to which a person may mail a copy of any process against the foreign limited liability company.

B. The application for withdrawal shall be executed by the foreign limited liability company by one of its managers, members, or other persons, or, if the foreign limited liability company is in the hands of a receiver or trustee, by such receiver or trustee on behalf of the foreign limited liability company.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, certificate of withdrawal, see 18 Okl.St. Ann. § 2047.

Library References

Limited Liability Companies ◊50.
Westlaw Topic No. 241E.

§ 2–2048. Registration required to transact business in state; foreign limited liability company

A. A foreign limited liability company transacting business in this Nation may not maintain an action, suit, or proceeding in a court of this Nation until it has registered in this Nation as provided in this act.

B. The failure of a foreign limited liability company to register in this Nation does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this Nation.

C. A foreign limited liability company, by transacting business in this Nation without registration, appoints the Office of the Secretary of the Nation as its agent for service of process with respect to a cause of action arising out of the transaction of business in this Nation.

D. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of such company's having transacted business in this Nation without a valid certificate of registration.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, necessity of registration to transact business in state, see 18 Okl.St. Ann. § 2048.

Library References

Limited Liability Companies ◊50.
Westlaw Topic No. 241E.

§ 2–2049. Activities not considered transacting business; foreign limited liability company

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of the Muscogee (Creek) Nation Limited Liability Company Act:

1. Maintaining, defending, or settling any proceeding;
2. Holding meetings of its members or carrying on any other activities concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Nation before they become contracts;
7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages and security interest in property securing the debts;
9. Holding, protecting, renting, maintaining and operating real or personal property in this Nation so acquired;
10. Selling or transferring title to property in this Nation to any person; or
11. Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature.

B. For the purposes of this section, any foreign limited liability company which owns income-producing real or tangible personal property in this Nation, other than property exempted by subsection A of this section, will be considered transacting business in this Nation.

C. A person shall not be deemed to be doing business in this Nation solely by reason of being a member or manager of a domestic liability company or a foreign limited liability company.

D. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this Nation or to regulation under any other law of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, acts not constituting transacting business in state, see 18 Okl.St. Ann. § 2049.

Library References

Limited Liability Companies ⇄50.
Westlaw Topic No. 241E.

§ 2-2050. Action to restrain foreign limited liability company

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this Nation in violation of this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Foreign limited liability company, action to restrain transacting business in state, see 18 Okl.St. Ann. § 2050.

Library References

Limited Liability Companies ⇨50.
Westlaw Topic No. 241E.

§ 2-2051. Action brought by member to recover judgment; conditions

A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

1. Either:
 - a. management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right, or
 - b. management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of an operating agreement; and
2. The plaintiff has made demand on those managers or those members with such authority requesting that such managers or such members cause the limited liability company to sue in its own right; and
3. The members or managers with such authority have wrongfully refused in the exercise of their business judgment to bring the action or, after adequate time to consider the demand, have failed to respond to such demand; and
4. The plaintiff:
 - a. is a member of the limited liability company at the time of bringing the action, and
 - b. was a member of the limited liability company at the time of the transaction of which he complains, or his status as a member of the limited liability company thereafter developed upon him pursuant to the terms of the operating agreement from a person who was a member at such time; and
5. The plaintiff fairly and adequately represents the interests of the members in enforcing the rights of the limited liability company.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action to recover judgment, conditions, see 18 Okl.St. Ann. § 2051.

Library References

Limited Liability Companies ⇨48.
Westlaw Topic No. 241E.

§ 2-2052. Complaint in a derivative action

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by the managers or the

members who would otherwise have the authority to cause the limited liability company to sue in its own right.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Derivative action, complaint, see 18 Okl.St. Ann. § 2052.

Library References

Indians ◊511.

Westlaw Topic Nos. 209, 241E.

Limited Liability Companies ◊48.

C.J.S. Indians §§ 151 to 179.

§ 2–2053. Reasonable expenses in a derivative action; remittance of proceeds

A. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

B. In any action hereafter instituted in the right of any domestic or foreign limited liability company by a member or members thereof, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including attorneys' fees, incurred by them in the defense of such action.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Derivative action, expenses, disposition of proceeds, see 18 Okl.St. Ann. § 2053.

Library References

Limited Liability Companies ◊48.

Westlaw Topic No. 241E.

§ 2–2054. Agreement of merger or consolidation

A. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic or foreign limited liability companies or other business entities. As used in this section, "business entity" means a domestic or foreign corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited.

B. Unless otherwise provided in the articles of organization or the operating agreement, a merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by a majority of the members or, if there is more than one class or group of members, then by a majority of each class or group. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited liability company is merging or consolidating pursuant to this section, the domestic limited liability company or other business entity surviving or resulting in or from the merger or consolidation shall file articles of merger or consolidation with the Office of the Secretary of the Nation. The articles of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the limited liability companies or other business entities which are to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

3. The name of the surviving or resulting domestic limited liability company or other business entity;

4. The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;

5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited liability company or other business entity, upon request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate;

7. In the case of a merger, any amendments or changes in the articles of organization of the surviving domestic limited liability company that are to be effected by the merger;

8. In the case of a consolidation, that the articles of organization of the resulting domestic limited liability company shall be as set forth in an attachment to the articles of consolidation; and

9. If the surviving or resulting entity is not a domestic limited liability company or business entity formed or organized pursuant to the laws of this Nation, a statement that the surviving or resulting other business entity agrees to be served with process in this Nation in any action, suit, or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate; irrevocably appoints the Secretary of the Nation as its agent to accept service of process in any action, suit, or proceeding; and specifies the address to which process shall be mailed to the entity by the Secretary of the Nation.

D. Any failure to file the articles of merger or consolidation in connection with a merger or consolidation which was effective prior to September 1, 1992, shall not affect the validity or effectiveness of any such merger or consolidation.

E. A merger or consolidation shall be effective upon the filing with the Secretary of the Nation of articles of merger or consolidation, unless a future effective date or time is provided in the articles of merger or consolidation.

F. Articles of merger or consolidation shall act as articles of dissolution for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

G. Once any merger or consolidation is effective pursuant to this section, for all purposes of the laws of this Nation, all of the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated and all property, real, personal and mixed, and all debts due to each domestic limited liability company or other business entity, as well as all other things and causes of action belonging to each domestic limited liability company or other business entity shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each domestic limited liability company or other business entity that has merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this Nation, in any domestic limited liability company or other business entity shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of each domestic limited liability company or other business entity shall be preserved unimpaired. All debts, liabilities and duties of each domestic limited liability company or other business entity that has merged or consolidated shall thereafter attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against the surviving or resulting limited liability company or other entity to the same extent as if the debts, liabilities and duties had been incurred or contracted by the surviving or resulting limited liability company or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs pursuant to Section 2–2037 of this Title or pay its liabilities and distribute its assets pursuant to Section 2–2040 of this Title. [Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation, see 18 Okl.St.Ann. § 2054.

Library References

Limited Liability Companies ◊49.
Westlaw Topic No. 241E.

§ 2–2054.1. Conversion of business entity to limited liability company

A. As used in this section, the term “business entity” means a domestic corporation, partnership, whether general or limited, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a domestic limited liability company by complying with subsection H of this section and filing with the Secretary of the Nation in accordance with Section 2–2007 of this Title articles of conversion to a limited liability company that have been executed in accordance with

Section 2-2006 of this Title, to which shall be attached articles of organization that comply with Sections 2-2005 and 2-2008 of this Title and have been executed by one or more authorized persons in accordance with Section 2-2006 of this Title.

C. The articles of conversion to a limited liability company shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the articles of conversion to limited liability company; and
3. The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection B of this section.

D. Upon the filing in the Office of the Secretary of the Nation of the articles of conversion to a limited liability company and the articles of organization, the business entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of the Muscogee (Creek) Nation Limited Liability Company Act, except that notwithstanding Section 2-2004 of this Title, the existence of the limited liability company shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited liability company shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of this Nation, all of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to such business entity, as well as all other things and causes of action belonging to such business entity, shall be vested in the domestic limited liability company and shall thereafter be the property of the domestic limited liability company as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in such business entity shall not revert or be in any way impaired by reason of this act, but all rights of creditors and all liens upon any property of such business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of this Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited liability company. When a business entity has been converted to a limited liability company pursuant to this section, the limited liability company shall,

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for all purposes of the laws of this Nation, be deemed to be the same entity as the converting business entity.

H. Prior to filing the articles of conversion of a business entity to a limited liability company with the Office of the Secretary of the Nation, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the business entity and the conduct of its business or by applicable law, as appropriate, and an operating agreement shall be approved by the same authorization required to approve the conversion.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of a business entity to a limited liability company, see 18 Okl.St. Ann. § 2054.1.

Library References

Limited Liability Companies ◀49.
Westlaw Topic No. 241E.

§ 2–2055. Fees

The Secretary of the Nation shall charge and collect the following fees:

1. For filing the original articles of organization, a fee of one hundred dollars (\$100.00);
2. For filing amended, corrected or restated articles of organization, a fee of fifty dollars (\$50.00);
3. For filing articles of merger or consolidation and issuing a certificate of merger or consolidation or filing articles of conversion, a fee of one hundred dollars (\$100.00);
4. For filing articles of dissolution and issuing a certificate of cancellation, a fee of fifty dollars (\$50.00);
5. For filing a certificate of correction of statements in an application for registration of a foreign limited liability company, a fee of one hundred dollars (\$100.00);
6. For issuing a certificate for any purpose whatsoever, a fee of ten dollars (\$10.00);
7. For filing an application for reservation of a name, or for filing a notice of the transfer or cancellation of any name reservation, a fee of ten dollars (\$10.00);
8. For filing a statement of change of address of the principal office or resident agent, or both, or the resignation of a resident agent, a fee of twenty-five dollars (\$25.00);
9. For filing an application for registration as a foreign limited liability company, a fee of three hundred dollars (\$300.00);
10. For filing an application of withdrawal as provided in Section 2–2047 of this Title, a fee of one hundred dollars (\$100.00);

11. For any service of notice, demand, or process upon the Secretary of the Nation as resident agent of a limited liability company, a fee of twenty-five dollars (\$25.00), which amount may be recovered as taxable costs by the party to be sued, action, or proceeding causing such service to be made if such party prevails therein; and

12. For acting as the registered agent, a fee of forty dollars (\$40.00) shall be paid on July 1 each year to the Office of the Secretary of the Nation. All fees shall be properly accounted for and shall be paid into the Nation's Treasury monthly. All fees received by the Secretary of the Nation pursuant to the provisions of this section shall be paid to the credit of the General Fund for the Office of the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fees, see 18 Okl.St. Ann. § 2055.

Foreign limited liability company,

Dissolution or winding up, filing fee pursuant to this section, see 18 Okl.St. Ann. § 2041.

Transacting business in state, payment of registration fee required by this section, see 18 Okl.St. Ann. § 2043.

Library References

Limited Liability Companies ◊23.

Westlaw Topic No. 241E.

§ 2–2055.1. Revocation of certificate of revocation; penalty; return to active status

A limited liability company for which the Secretary of the Nation acts as the registered agent that fails to pay the registered agent fee by the due date as provided in paragraph 12 of Section 2–2055 of this Title shall be subject to the provisions of this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Failure to pay registered agent fees, see 18 Okl.St. Ann. § 2055.1.

Library References

Limited Liability Companies ◊23.

Westlaw Topic No. 241E.

§ 2–2055.2. Certificate for limited liability companies

A. Every domestic limited liability company and every foreign limited liability company registered to do business in this Nation shall file a certificate each year in the Office of the Secretary of the Nation which shall confirm it is an active business and include its principal place of business address.

B. The annual certificate shall be due on July 1 following the close of the calendar year until the dissolution of the articles of organization or the withdrawal of the foreign limited liability company has been filed with the Secretary of the Nation.

C. The Secretary of the Nation shall, at least sixty (60) days prior to July 1 of each year, cause to be mailed a notice of the annual certificate to each

domestic limited liability company and each foreign limited liability company required to comply with the provisions of this section in care of its registered agent; or, if there is no agent listed upon the records of the Secretary of the Nation, the last known principal place of business address of the limited liability company.

D. A domestic limited liability company or foreign limited liability company that neglects, refuses or fails to file the annual certificate within sixty (60) days after the date due shall cease to be in good standing as a domestic limited liability company or registered as a foreign limited liability company in this Nation.

E. Until dissolution or withdrawal, a domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered by reason of the failure to file the annual certificate with the Secretary of the Nation may be restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company that is registered in this Nation upon the filing of the annual certificate for each year for which the domestic limited liability company or foreign limited liability company neglected, refused or failed to file the annual certificate within three (3) years from the date it is due.

F. A domestic limited liability company that has ceased to be in good standing by reason of its neglect, refusal or failure to file an annual certificate with the Secretary of the Nation or pay the registered agent fee to the Secretary of the Nation shall remain a domestic limited liability company formed under this act until dissolution of its articles of organization. The Secretary of the Nation shall not accept for filing any certificate or articles, except a resignation of a registered agent when a successor registered agent is not being appointed, required or permitted by this act to be filed in respect to any domestic limited liability company or foreign limited liability company which has neglected, refused or failed to file an annual certificate, and shall not issue any certificate of good standing with respect to the domestic limited liability company or foreign limited liability company, unless or until the domestic limited liability company or foreign limited liability company shall have been restored to and have the status of a domestic limited liability company in good standing or a foreign limited liability company duly registered in this Nation.

G. A domestic limited liability company that has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in this Nation by reason of its neglect, refusal or failure to file an annual certificate or pay an annual registered agent fee to the Secretary of the Nation may not maintain any action, suit or proceeding in any court of this Nation until such domestic limited liability company or foreign limited liability company has been restored to and has the status of a domestic limited liability company or foreign limited liability company in good standing or duly registered in this Nation. An action, suit or proceeding may not be maintained in any court of this Nation by any successor or assignee of the domestic limited liability company or foreign limited liability company on any right, claim or demand arising out of the transaction of business by the domestic limited liability company after it has ceased to be in good standing or a foreign limited liability company that has ceased to be registered in this Nation until the

domestic limited liability company or foreign limited liability company, or any person that has acquired all or substantially all of its assets, has filed its annual certificate with the Secretary of the Nation or paid its registered agent fee to the Secretary of the Nation then due and payable, together with penalties.

H. The neglect, refusal or failure of a domestic limited liability company or foreign limited liability company to file an annual certificate or pay a registered agent fee to the Secretary of the Nation shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of the domestic limited liability company or foreign limited liability company or prevent the domestic limited liability company or foreign limited liability company from defending any action, suit or proceeding with any court of this Nation.

I. A member or manager of a domestic limited liability company or foreign limited liability company is not liable for the debts, obligations or liabilities of the domestic limited liability company or foreign limited liability company solely by reason of the neglect, refusal or failure of the domestic limited liability company or foreign limited liability company to file an annual certificate or pay a registered agent fee to the Secretary of the Nation or by reason of the domestic limited liability company or foreign limited liability company ceasing to be in good standing or duly registered.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Annual certificate for domestic limited liability company and foreign limited liability company, see 18 Okl.St. Ann. § 2055.2.

Library References

Limited Liability Companies ◊23.
Westlaw Topic No. 241E.

§ 2-2056. Petition to direct the execution and filing of articles or document

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this act may petition the Muscogee (Creek) Nation District Court in the county where the registered office of the limited liability company is located or, if no such address is on file with the Secretary of the Nation, to direct the execution and filing of the articles or other document. If the Court finds that it is proper for the articles or other document to be executed and filed and that there has been failure or refusal to execute and file such document, it shall order the Secretary of the Nation to file the appropriate articles or other document.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action to compel execution or filing of articles or other documents, see 18 Okl.St. Ann. § 2056.

Library References

Indians ◊507.
Limited Liability Companies ◊23.

Westlaw Topic Nos. 209, 241E.
C.J.S. Indians §§ 151 to 179.

§ 2–2057. Application to commerce

The provisions of this act shall apply to commerce with foreign Nations and among the several states and Nations only as permitted by law.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Application of Oklahoma Limited Liability Company Act to foreign and interstate commerce, see 18 Okl.St. Ann. § 2057.

Library References

Limited Liability Companies ⇄2.
Westlaw Topic No. 241E.

§ 2–2058. Rules of construction; applicable law

A. The rules that statutes in derogation of the common law are to be strictly construed shall have no application to the Muscogee (Creek) Nation General Corporation Act¹.

B. The law of estoppel shall apply to this act.

C. The law of agency shall apply under this act.

D. It is the policy of this act to give the maximum effect to the principle of freedom of contract and the the enforceability of operating agreements.

E. This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 3, § 1–1001 et seq.

Oklahoma Statutes Annotated

Rules of construction of Oklahoma Limited Liability Company Act, see 18 Okl.St. Ann. § 2058.

TITLE 3A. PARTNERSHIPS

TOHKALETVLKE

Chapter	Section
1. MUSCOGEE (CREEK) NATION PARTNERSHIP ACT	1-100
2. MUSCOGEE (CREEK) NATION LIMITED PARTNERSHIP ACT	2-141

CHAPTER 1. MUSCOGEE (CREEK) NATION PARTNERSHIP ACT

Subchapter
1. General Provisions
2. Nature of Partnership
3. Relations of Partners to Persons Dealing with Partnership
4. Relations of Partners to Each Other and to Partnership
5. Transferees and Creditors and Partner
6. Partner's Dissociation
7. Partner's Dissociation When Business Not Wound Up
8. Winding Up Partnership Business
9. Conversion and Merger
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SUBCHAPTER 1. GENERAL PROVISIONS

Section
1-100. Short title.
1-101. Definitions.
1-102. Knowledge and notice.
1-103. Effect of partnership agreement; nonwaivable provisions.
1-104. Supplemental principles of law.
1-105. Execution, filing, and recording of statements.
1-106. Governing law.

§ 1-100. Short title

Sections 1-100 through 1-1207 of this Title shall be known and may be cited as the "Muscogee (Creek) Nation Partnership Act."

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Oklahoma Partnership Act, short title, see 54 Okl.St. Ann. § 1-100.

§ 1-101. Definitions

As used in this act:

- (1) "Business" includes every trade, occupation, and profession.
- (2) "Debtor in bankruptcy" means a person who is the subject of:

Title 3A, § 1–101

PARTNERSHIPS

(i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) a comparable order under federal, state, or foreign law governing insolvency.

(3) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

(4) “Foreign limited liability partnership” means a partnership that:

(i) is formed under laws other than the laws of this Nation; and

(ii) has the status of a limited liability partnership under those laws.

(5) “Limited liability partnership” means a partnership that has filed a statement of qualification under this act or has a similar statement in effect in any other jurisdiction.

(6) “Nation” means the Muscogee (Creek) Nation.

(7) “Partnership” means an association of two or more persons to carry on as co-owners a business for profit formed under this act, predecessor law, or comparable law of another jurisdiction.

(8) “Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(9) “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) “Partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s transferable interest and all management and other rights.

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

(12) “Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(13) “Secretary of the Nation” means the Secretary of the Nation of the Muscogee (Creek) Nation.

(14) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) “Statement” means a statement of partnership authority, a statement of denial, a statement of dissociation, a statement of dissolution, a statement of merger, a statement of qualification, a statement of foreign qualification, or an amendment or cancellation of any of the foregoing under this act.

(14) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Limited partnerships, see 54 Okl.St. Ann. § 141 et seq.

Partnerships, definitions, see 54 Okl.St. Ann. § 1-101.

Registered limited liability partnership defined, see 54 Okl.St. Ann. § 1-1001.

§ 1-102. Knowledge and notice

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it; or

(3) has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

(1) comes to the person’s attention; or

(2) is duly delivered at the person’s place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual’s attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner’s knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Knowledge and notice, see 12A Okl.St. Ann. § 1-201; 54 Okl.St. Ann. § 1-102.

Library References

Notice ☞ 1 to 6.

Partnership ☞ 159.

Westlaw Topic Nos. 277, 289.

C.J.S. Notice §§ 2 to 9, 12 to 20.

C.J.S. Partnership §§ 139 to 140.

§ 1–103. Effect of partnership agreement; nonwaivable provisions

(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act¹ governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) vary the rights and duties this act except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict the right of access to books and record;

(3) eliminate the duty of loyalty under this act, but:

(i) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) all of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) unreasonably reduce the duty of care under this act;

(5) eliminate the obligation of good faith and fair dealing under this act, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) vary the power to dissociate as a partner under this act, except to require the notice under this act to be in writing;

(7) vary the right of a court to expel a partner based on events specified in of this act;

(8) vary the requirement to wind up the partnership business in cases specified in this act; or

(9) vary the law applicable to a limited liability partnership under this act; or

(10) restrict rights of third parties under this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 3A, § 1–100 et seq.

Oklahoma Statutes Annotated

Effect of partnership agreement, nonwaivable provisions, see 54 Okl.St. Ann. § 1–103.

Library References

Partnership ☞ 21, 22.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 9, 16.

§ 1–104. Supplemental principles of law

(a) Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

(b) If an obligation to pay interest arises under this act and the rate is not specified, the rate is that specified in Title 33 of the Muscogee (Creek) Nation Statutes.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Limited partnerships, rules for cases not provided for, see 54 Okl.St. Ann. § 169.
Supplemental principles of law, see 54 Okl.St. Ann. § 1–104.

Library References

Partnership ⇌75.
Westlaw Topic No. 289.
C.J.S. Partnership § 85.

§ 1–105. Execution, filing, and recording of statements

(a) A statement may be filed in the office of the Secretary of the Nation. A certified copy of a statement that is filed in an office in another state or Nation may be filed in the office of the Secretary of the Nation. Either filing has the effect provided in this act with respect to partnership property located in or transactions that occur in this Nation.

(b) A certified copy of a statement that has been filed in the Office of the Secretary of the Nation and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this act. A recorded statement that is not a certified copy of a statement filed in the Office of the Secretary does not have the effect provided for recorded statements in this act.

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate,

(d) A person authorized by this act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The county or court clerk recording transfers of real property may collect a fee for recording a statement.

(g) The Secretary of the Nation shall charge and collect the following fees:

Title 3A, § 1-105

PARTNERSHIPS

- (1) for filing a statement, a fee of one hundred dollars (\$100.00);
 - (2) for filing an amendment, cancellation, or dissolution, a fee of fifty dollars (\$50.00);
 - (3) for filing a statement of denial, a fee of twenty-five dollars (\$25.00);
 - (4) for filing a statement of disassociation, a fee of twenty-five dollars (\$25.00);
 - (5) for filing a statement of change of agent or office, resignation of agent, or change of chief executive office, a fee of twenty-five dollars (\$25.00);
 - (6) for filing a statement of conversion, a fee of one hundred dollars (\$100.00);
 - (7) for filing a statement of merger, a fee of fifty dollars (\$50.00);
 - (8) for filing a fictitious name certificate, a fee of fifty dollars (\$50.00), and for an amendment to the certificate, a fee of twenty-five dollars (\$25.00); and
 - (9) for reinstatement after revocation, a fee of twenty-five dollars (\$25.00).
- (h) A partnership name filed in a statement pursuant to this act may not be the same as or indistinguishable from the name of any other partnership, corporation, limited liability company or limited partnership, trade name or fictitious name, or other name reserved with or on file with the Secretary of the Nation.
- (i) The provisions of subparagraph h of this paragraph shall not apply if one of the following is filed with the Secretary of the Nation:
- (1) the written consent of the other partnership, corporation, limited liability company, limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Secretary of the Nation, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Nation or be wound up, or
 - (2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such partnership or holder of partnership name to the use of such name in this Nation.
- (j) Any signature on any instrument authorized to be filed with the Secretary of the Nation under any provision of this act may be by facsimile.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Execution, filing, and recording of statements, see 54 Okl.St. Ann. § 1-105.

Library References

- Partnership ⇌ 20 to 22.
- Westlaw Topic No. 289.
- C.J.S. Partnership §§ 8 to 9, 16.

§ 1-106. Governing law

(a) Except as otherwise provided in subsection (b) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this Nation governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Governing law, see 54 Okl.St. Ann. § 1-106.

Library References

Partnership ⌘2.
Westlaw Topic No. 289.
C.J.S. Partnership § 53.

SUBCHAPTER 2. NATURE OF PARTNERSHIP

Section

- 1-201. Partnership as entity.
- 1-202. Formation of partnership.
- 1-203. Partnership property.
- 1-204. When property is partnership property.

§ 1-201. Partnership as entity

(a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partnership as entity, see 54 Okl.St. Ann. § 1-201.

Library References

Partnership ⌘63.
Westlaw Topic No. 289.
C.J.S. Partnership § 68.

§ 1-202. Formation of partnership

(a) Except as otherwise provided in subsection (b) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this act, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this act.

(c) In determining whether a partnership is formed, the following rules apply:

Title 3A, § 1–202

PARTNERSHIPS

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Formation of partnership, see 54 Okl.St. Ann. § 1–202.
Partnership defined, see 68 Okl.St. Ann. § 202.

Library References

Partnership ⇨ 1 to 26.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 1 to 24, 41, 53.

§ 1–203. Partnership property

Property acquired by a partnership is property of the partnership and not of the partners individually.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partnership property, see 54 Okl.St. Ann. § 1–203.

Library References

Partnership ⇨ 67 to 69, 76.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 70 to 76, 86 to 87.

§ 1–204. When property is partnership property

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Ad valorem taxes, property listed by partner, see 68 Okl.St. Ann. § 2832.

Fraudulent transfers, insolvency, see 24 Okl.St. Ann. § 114.

Vehicle excise tax, transfer of vehicle transferred in course of organization or dissolution, see 68 Okl.St. Ann. § 2105.

When property is partnership property, see 54 Okl.St. Ann. § 1-204.

Library References

Partnership ⇌ 67 to 69, 76.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 70 to 76, 86 to 87.

**SUBCHAPTER 3. RELATIONS OF PARTNERS TO
PERSONS DEALING WITH PARTNERSHIP**

Section

1-301. Partner agent of partnership.

1-302. Transfer of partnership property.

1-303. Statement of partnership authority.

1-304. Statement of denial.

1-305. Partnership liable for partner's actionable conduct.

1-306. Partner's liability.

1-307. Actions by and against partnership and partners.

1-308. Liability of purported partner.

1-309. Security for payment of claims.

§ 1-301. Partner agent of partnership

Subject to the effect of a statement of partnership authority under this act:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the

partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Ad valorem taxes, property listed by partner, see 68 Okl.St. Ann. § 2832.
Partner agent of partnership, see 54 Okl.St. Ann. § 1-301.

Library References

Partnership ⇌ 125.
Westlaw Topic No. 289.
C.J.S. Partnership § 133.

§ 1-302. Transfer of partnership property

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under this act, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under this act and:

(1) as to a subsequent transferee who gave value for property transferred under paragraphs (1) and (2) of subsection (a) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under paragraph (3) of subsection (a) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that

the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property under subsection (b) of this section, from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fraudulent conveyances, insolvency, see 24 Okl.St. Ann. § 114.
Transfer of partnership property, see 54 Okl.St. Ann. § 1-302.

Library References

Partnership ⇌77.
Westlaw Topic No. 289.
C.J.S. Partnership § 88.

§ 1-303. Statement of partnership authority

(a) A partnership may file with the Secretary of the Nation a statement of partnership authority, which:

(1) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this Nation, if there is one; and

(iii) the name and mailing address of an agent appointed and maintained by the partnership for the purpose of subsection (b) of this section; or

(iv) the names and mailing addresses of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to this act and states the name of the partnership but does not contain all of the other information required by subsection (a) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) Except as otherwise provided in subsection (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is' conclusive in favor of a person who gives value without knowledge to the, contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for, recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) of this section, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five (5) years after the date on which the statement, or the most recent amendment, was filed with the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Statement of partnership authority, see 54 Okl.St. Ann. § 1–303.

Library References

Partnership ⇔ 160.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 137, 145.

§ 1–304. Statement of denial

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to this act may file with the Secretary of the Nation a statement of denial stating the name of the partnership and the fact that is being, denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Statement of denial, see 54 Okl.St. Ann. § 1–304.

Library References

Partnership ⇔ 133, 160.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 137, 145.

§ 1–305. Partnership liable for partner’s actionable conduct

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership’s business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partnership liable for partner’s actionable conduct, see 54 Okl.St. Ann. § 1–305.

Library References

Partnership ⇔ 153.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 168 to 170.

§ 1–306. Partner’s liability

(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person’s admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under this act.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partner’s liability, see 54 Okl.St. Ann. § 1–306.

Library References

Partnership ⇌165.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 167 to 168, 171.

§ 1-307. Actions by and against partnership and partners

- (a) A partnership may sue and be sued in the name of the partnership.
- (b) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.
- (c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.
- (d) A judgment creditor of a partner may not levy execution against the asset, of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under this act and:
 - (1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
 - (2) the partnership is a debtor in bankruptcy;
 - (3) the partner has agreed that the creditor need not exhaust partnership assets;
 - (4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
 - (5) liability is imposed on the partner by law or contract independent of the existence of the partnership.
- (e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions by and against partnership and partners, see 54 Okl.St. Ann. § 1-307.

Library References

Partnership ⇌191 to 223.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 184 to 221.

§ 1-308. Liability of purported partner

- (a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation,

either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b) of this section, persons who are not partners as to each other are not liable as partners to other persons.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fictitious co-partnership, see 21 Okl.St. Ann. § 1508.

Liability of purported partner, see 54 Okl.St. Ann. § 1-308.

Library References

Partnership ¶¶ 33, 125, 165.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 34 to 38, 40, 133, 167 to
168, 171.

§ 1-309. Security for payment of claims

(a) A limited liability partnership, or a foreign limited liability partnership transacting business in this Nation, shall provide security for claims against it based upon acts, errors, or omissions arising out of the conduct of the business of the partnership in the manner provided in subsection (b), (c), (d) or (e) of this section.

(b)(1) A limited liability partnership or foreign limited liability partnership is in compliance with this section if it maintains a policy or policies of insurance against liability imposed on it by law for damages arising out of claims of the type specified in subsection (a) of this section. The policy or policies of insurance may be issued on a claims-made or occurrence basis; provided, that the total aggregate limit of liability thereof equals or exceeds five hundred

thousand dollars (\$500,000.00). The impairment or exhaustion of such aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims shall not require the partnership to acquire additional insurance coverage for the policy period to which the impairment or exhaustion applies. Such policy or policies of insurance may be of a type reasonably available in the commercial insurance market and may be subject to such terms, conditions, exclusions, and endorsements as are typically contained in such policies.

(2) If the principal business activity of a limited liability partnership or foreign limited liability partnership is not the provision of professional services, the limited liability partnership or foreign limited liability partnership may comply with this section if it maintains a general liability insurance policy or policies in the aggregate amount of at least five hundred thousand dollars (\$500,000.00). The impairment or exhaustion of such aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims shall not require the partnership to acquire additional insurance coverage for the policy period to which the impairment or exhaustion applies. Such policy or policies of insurance may be of a type reasonably available in the commercial insurance market and may be subject to such terms, conditions, exclusions, and endorsements as are typically contained in such policies.

(3) A policy or policies of insurance maintained pursuant to this subsection may be subject to a deductible or self-insured retention not to exceed ten percent (10%) of the aggregate limit of liability specified in paragraphs (1) and (2) of this subsection; provided, however, that a deductible or self-insured retention may exceed such amount if the partnership maintains funds in the manner provided for in subsection (c) of this section in the amount of the difference between the actual deductible or self-insured retention and such amount.

(c)(1) A limited liability partnership or foreign limited liability partnership is in compliance with this section if it maintains funds specifically designated and segregated as security for the payment of liabilities imposed by law against the partnership or its partners arising out of claims of the type specified in subsection (a) of this section, in the aggregate amount of at least five hundred thousand dollars (\$500,000.00). The partnership remains in compliance with this section notwithstanding amounts paid from the designated and segregated funds in any six-month period in settling or discharging such claims; provided, that the amount of the designated and segregated funds is increased to at least five hundred thousand dollars (\$500,000.00) as of the first business day of the next six-month period. A limited liability partnership or foreign limited liability partnership is in compliance with this subsection if it:

- (i) maintains funds in the required amount in trust or in bank escrow in the form of cash, bank certificates of deposit or United States Treasury obligations,
- (ii) maintains in effect bank letters of credit in the required amount, or
- (iii) maintains in effect insurance or surety company bonds in the required amount.

(2) Notwithstanding the pendency of other claims against the partnership, a limited liability partnership or foreign limited liability partnership shall be deemed to be in compliance with this subsection if within thirty (30) days after the time that a claim is initially asserted through service of a summons, complaint or comparable pleading in a judicial or administrative proceeding, the partnership has designated and segregated funds in compliance with the requirement of paragraph (1) of this subsection.

(d) For purposes of satisfying the requirements of this section, a limited liability partnership or foreign limited liability partnership may aggregate security provided pursuant to subsections (b) and (c) of this section.

(e) Notwithstanding any other provision of this section, if a foreign limited liability partnership maintains liability insurance, designated and segregated funds, or any combination thereof pursuant to the laws or regulations of another jurisdiction, such liability insurance, designated and segregated funds, or combination thereof shall be deemed to satisfy this section if:

(1) The amount thereof is equal to or greater than the amount required pursuant to this section; or

(2) The amount thereof, plus any security maintained pursuant to subsection (b) or (c) of this section, is equal to or greater than the amount required pursuant to this section.

(f) Federal or state law, as applicable, shall determine whether the existence of the security required by subsection (b) or (e) of this section or the amount of such security may be revealed pursuant to the law of civil procedure governing discovery in civil cases or whether the existence or amount of that security may be admitted into evidence for consideration by a trier of fact during a civil proceeding.

(g) If a limited liability partnership or foreign limited liability partnership fails to comply with this section, the partners thereof shall be liable jointly for the debts, obligations and liabilities of the partnership arising from claims specified in subsection (a) of this section; provided, however, that the aggregate amount for which the partners are jointly liable shall be limited to the difference between the amount of security required to be maintained pursuant to this section and the amount of security actually maintained by the partnership.

(h) Notwithstanding any other provision of this section, if a limited liability partnership or foreign limited liability partnership is in substantial compliance with this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the partnership, the partnership shall be deemed to be in compliance with this section during the entire pendency of the proceeding. A partnership that has been the subject of such a proceeding and that conducts business after the proceeding has ended must thereafter comply with this section in order to maintain its status as a limited liability partnership or foreign limited liability partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Security for payment of claims, see 54 Okl.St. Ann. § 1-309.

Library References

Partnership 353 to 362.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 405 to 415, 419 to 421,
423.

**SUBCHAPTER 4. RELATIONS OF PARTNERS
TO EACH OTHER AND TO PARTNERSHIP**

Section

- 1-401. Partner's rights and duties.
- 1-402. Distributions in kind.
- 1-403. Partner's rights and duties with respect to information.
- 1-404. General standards of partner's conduct.
- 1-405. Actions by partnership and partners.
- 1-406. Continuation of partnership beyond definite term or particular undertaking.

§ 1-401. Partner's rights and duties

(a) Each partner is deemed to have an account that is:

(1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

PARTNERSHIP ACT

Title 3A, § 1-403

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under this act.¹

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

¹ Title 3A, § 1-100 et seq.

Oklahoma Statutes Annotated

Partner’s rights and duties, see 54 Okl.St. Ann. § 1-401.
Receivers, appointment in actions between partners, see 12 Okl.St. Ann. § 1551.

Library References

Partnership ⇔70 to 91. C.J.S. Partnership §§ 39, 41, 77 to 78, 80 to
Westlaw Topic No. 289. 97, 336, 340.

§ 1-402. Distributions in kind

A partner has no right to receive, and may not be required to accept, a distribution in kind.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distributions in kind, see 54 Okl.St. Ann. § 1-402.

Library References

Partnership ⇔70.
Westlaw Topic No. 289.
C.J.S. Partnership § 77.

§ 1-403. Partner’s rights and duties with respect to information

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) without demand, any information concerning the partnership’s business and affairs reasonably required for the proper exercise of the partner’s rights and duties under the partnership agreement or this act; and

(2) on demand, any other information concerning the partnership's business' and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Falsification of partnership books, see 21 Okl.St. Ann. § 1590.

Limited partners, inspection and copying of books, see 54 Okl.St. Ann. § 151.

Partner's rights and duties with respect to information, see 54 Okl.St. Ann. § 1-403.

Library References

Partnership ⇌ 80.

Westlaw Topic No. 289.

C.J.S. Partnership § 91.

§ 1-404. General standards of partner's conduct

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Falsification of partnership books, see 21 Okl.St. Ann. § 1590.
General standards of partner’s conduct, see 54 Okl.St. Ann. § 1–404.

Library References

Partnership ⇔70.
Westlaw Topic No. 289.
C.J.S. Partnership § 77.

§ 1–405. Actions by partnership and partners

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) enforce the partner’s rights under the partnership agreement;

(2) enforce the partner’s rights under this act, including:

(i) the partner’s rights under this act;

(ii) the partner’s right on dissociation to have the partner’s interest in the partnership purchased pursuant to this act or enforce any other right under this act; or

(iii) the partner’s right to compel a dissolution and winding up of the partnership business under this act or enforce any other right under this act; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions by partnership and partners, see 54 Okl.St. Ann. § 1–405.

Library References

Partnership ⇔102 to 124.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 108 to 129, 131 to 132.

§ 1–406. Continuation of partnership beyond definite term or particular undertaking

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners will remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Continuation of partnership beyond definite term or particular undertaking, see 54 Okl.St. Ann. § 1-406.

Library References

Partnership ⇔60.
Westlaw Topic No. 289.
C.J.S. Partnership § 65.

**SUBCHAPTER 5. TRANSFEREES AND
CREDITORS AND PARTNER**

Section

- 1-501. Partner not co-owner of partnership property.
- 1-502. Partner's transferable interest in partnership.
- 1-503. Transfer of partner's transferable interest.
- 1-504. Partner's transferable interest subject to charging order.

§ 1-501. Partner not co-owner of partnership property

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fraudulent conveyances, insolvency, see 24 Okl.St. Ann. § 114.
Homestead and exemptions, see 31 Okl.St. Ann. § 1 et seq.
Partner not co-owner of partnership property, see 54 Okl.St. Ann. § 1-501.

Library References

Partnership ⇔76.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 86 to 87.

§ 1-502. Partner's transferable interest in partnership

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partner's transferable interest in partnership, see 54 Okl.St. Ann. § 1-502.

Library References

Partnership ⇨224 to 227.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 104, 222 to 225.

§ 1-503. Transfer of partner's transferable interest

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) is permissible;
- (2) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
- (3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

- (1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
- (3) to seek a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Transfer of partner's transferable interest, see 54 Okl.St. Ann. § 1-503.

Library References

Partnership ⇨224 to 227.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 104, 222 to 225.

§ 1-504. Partner's transferable interest subject to charging order

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

- (1) by the judgment debtor;
- (2) with property other than partnership property, by one or more of the other partners; or
- (3) with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Homestead and exemptions, see 31 Okl.St. Ann. § 1 et seq.

Partner's transferable interest subject to charging order, see 54 Okl.St. Ann. § 1-504.

Library References

Partnership \Leftrightarrow 181, 224 to 227.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 104, 174, 178, 222 to 225.

SUBCHAPTER 6. PARTNER'S DISSOCIATION**Section**

- 1-601. Events causing partner's dissociation.
1-602. Partner's power to dissociate.
1-603. Effect of partner's dissociation.

§ 1-601. Events causing partner's dissociation

A partner is dissociated from a partnership upon the occurrence of any of the following events:

- (1) the partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;
- (2) an event agreed to in the partnership agreement as causing the partner's dissociation;

- (3) the partner's expulsion pursuant to the partnership agreement;
- (4) the partner's expulsion by the unanimous vote of the other partners if:
 - (i) it is unlawful to carry on the partnership business with that partner;
 - (ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
 - (iii) within ninety (90) days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
 - (iv) a partnership that is a partner has been dissolved and its business is being wound up;
- (5) on application by the partnership or another partner, the partner's expulsion by judicial determination because:
 - (i) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - (ii) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under this act; or
 - (iii) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- (6) the partner's:
 - (i) becoming a debtor in bankruptcy;
 - (ii) executing an assignment for the benefit of creditors;
 - (iii) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
 - (iv) failing, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;
- (7) in the case of a partner who is an individual:
 - (i) the partner's death;
 - (ii) the appointment of a guardian or general conservator for the partner; or
 - (iii) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- (8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest

in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Events causing partner's dissociation, see 54 Okl.St. Ann. § 1-601.

Library References

Partnership Ⓒ224, 243.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 222, 248 to 249, 251,
260, 265, 268 to 269, 271.

§ 1-602. Partner's power to dissociate

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will.

(b) A partner's dissociation is wrongful only if

(1) it is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows within ninety (90) days after another partner's dissociation by death or otherwise under this act or wrongful dissociation under this subsection;

(ii) the partner is expelled by judicial determination;

(iii) the partner is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partner's power to dissociate, wrongful dissociation, see 54 Okl.St. Ann. § 1-602.

Library References

Partnership Ⓒ224.
Westlaw Topic No. 289.
C.J.S. Partnership § 222.

§ 1-603. Effect of partner's dissociation

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Subchapter 8 of this act applies; otherwise, Subchapter 7 of this act applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in this act;

(2) the partner's duty of loyalty of this act terminates; and

(3) the partner's duty of loyalty under this act and duty of care under of this act continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Effect of partner's dissociation, see 54 Okl.St. Ann. § 1-603.

Library References

Partnership ⚡224.
Westlaw Topic No. 289.
C.J.S. Partnership § 222.

SUBCHAPTER 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

Section

- 1-701. Purchase of dissociated partner's interest.
- 1-702. Dissociated partner's power to bind and liability to partnership.
- 1-703. Dissociated partner's liability to other persons.
- 1-704. Statement of dissociation.
- 1-705. Continued use of partnership name.

§ 1-701. Purchase of dissociated partner's interest

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under this act, the partnership shall cause, dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under this act if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under this act, and all other amounts owing whether or not presently due, from the dissociated partner to the

partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by the following:

(1) a statement of partnership assets and liabilities as of the date of dissociation;

(2) the latest available partnership balance sheet and income statement, if any;

(3) an explanation of how the estimated amount of the payment was calculated; and

(4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section, or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to this act, to determine the buyout price of that partner's interest, any offsets under subsection (c) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If

deferred payment is authorized under subsection (h) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g) of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Purchase of dissociated partner's interest, see 54 Okl.St. Ann. § 1-701.

Library References

Partnership Ⓒ226, 227.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 104, 223 to 224.

§ 1-702. Dissociated partner's power to bind and liability to partnership

(a) For two (2) years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership bound by an act of the dissociated, partner which would have bound the partnership under this act before dissociation only if at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge or notice under this act.

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissociated partner's power to bind and liability to partnership, see 54 Okl.St. Ann. § 1-702.

Library References

Partnership Ⓒ235.1, 236.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 228, 232 to 233.

§ 1-703. Dissociated partner's liability to other persons

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b) of this section.

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a

transaction entered into by the partnership, or a surviving partnership under this act, within two (2) years after the partner's dissociation, only if the partner is liable for the obligation at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge or notice under this act.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Dissociated partner's liability to other persons, see 54 Okl.St. Ann. § 1-703.

Library References

Partnership ⇌236.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 228, 232 to 233.

§ 1-704. Statement of dissociation

(a) A dissociated partner or the partnership may file a statement of dissociation with the Secretary of the Nation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of this act.

(c) A person not a partner is deemed to have notice of the dissociation ninety (90) days after the statement of dissociation is filed.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Statement of dissociation, see 54 Okl.St. Ann. § 1-704.

Library References

Partnership ⇌224.
Westlaw Topic No. 289.
C.J.S. Partnership § 222.

§ 1-705. Continued use of partnership name

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Continued use of partnership name, see 54 Okl.St. Ann. § 1-705.

Library References

Partnership \Leftrightarrow 236.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 228, 232 to 233.

SUBCHAPTER 8. WINDING UP PARTNERSHIP BUSINESS

Section

- 1-801. Events causing dissolution and winding up of partnership business.
- 1-802. Partnership continues after dissolution.
- 1-803. Right to wind up partnership business.
- 1-804. Partner's power to bind partnership after dissolution.
- 1-805. Statement of dissolution.
- 1-806. Partner's liability to other partners after dissolution.
- 1-807. Settlement of accounts and contributions among partners.

§ 1-801. Events causing dissolution and winding up of partnership business

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

- (1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;
- (2) in a partnership for a definite term or particular undertaking:
 - (i) within ninety (90) days after a partner's dissociation by death or otherwise under this act or wrongful dissociation under this act, the express will of at least half of the remaining partners to wind up the partnership business for which purpose a partner's rightful dissociation constitutes the expression of that partner's will to wind up the partnership business;
 - (ii) the express will of all of the partners to wind up the partnership business; or
 - (iii) the expiration of the term or the completion of the undertaking;
- (3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;
- (4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety (90) days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;
- (5) on application by a partner, a judicial determination that:
 - (i) the economic purpose of the partnership is likely to be unreasonably frustrated;
 - (ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

Title 3A, § 1-801

PARTNERSHIPS

(iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(i) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Contract not to compete upon dissolution, see 15 Okl.St. Ann. § 219.

Events causing dissolution and winding up of partnership, see 54 Okl.St. Ann. § 1-801.

Partnership continues after dissolution, see 54 Okl.St. Ann. § 1-802.

Revivor of actions, dissolved partnerships, see 12 Okl.St. Ann. § 1082.

Sales tax, transfer upon dissolution as exempt transfer, see 68 Okl.St. Ann. § 1360.

Vehicle excise tax, transfer of vehicle transferred in course of organization or dissolution, see 68 Okl.St. Ann. § 2105.

Library References

Partnership ⇌ 259 to 276.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 302 to 317, 319.

§ 1-802. Partnership continues after dissolution

(a) Subject to subsection (b) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated.

In that event:

(1) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as, if dissolution had never occurred; and

(2) the rights of a third party accruing under this act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Library References

Partnership ⇌ 277 to 281.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 248, 318 to 323, 326,
347.

§ 1-803. Right to wind up partnership business

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business,

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership, settle disputes by mediation or arbitration, and perform other necessary acts.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Right to wind up partnership business, see 54 Okl.St. Ann. § 1-803.

Library References

Partnership \Leftrightarrow 277 to 295.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 248, 300, 318 to 332,
347.

§ 1-804. Partner's power to bind partnership after dissolution

A partnership is bound by a partner's act after dissolution that:

- (1) is appropriate for winding up the partnership business; or
- (2) would have bound the partnership this act before dissolution, if the other party to the transaction did not have notice of the dissolution.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partner's power to bind partnership after dissolution, see 54 Okl.St. Ann. § 1-804.

Library References

Partnership \Leftrightarrow 278.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 320, 322 to 323, 326.

§ 1-805. Statement of dissolution

(a) After dissolution, a partner who has not wrong fully dissociated may file with the Secretary of the Nation a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of this act and is a limitation on authority for the purposes of this act.

Title 3A, § 1-805

PARTNERSHIPS

(c) For the purposes of this act, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety (90) days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in this act in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Statement of dissolution, see 54 Okl.St. Ann. § 1-805.

Library References

Partnership Ⓒ288.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 300, 328 to 332.

§ 1-806. Partner's liability to other partners after dissolution

(a) Except as otherwise provided in this act, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under this act.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under this act by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Partner's liability to other partners after dissolution, see 54 Okl.St. Ann. § 1-806.

Library References

Partnership Ⓒ277, 278.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 318 to 320, 322 to 323,
326.

§ 1-807. Settlement of accounts and contributions among partners

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the

partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable.

(c) If a partner fails to contribute the full amount required under subsection (b) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under this act. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under this act.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Homestead and exemptions, see 31 Okl.St. Ann. § 1 et seq.

Receivers, appointment in actions between partners, see 12 Okl.St. Ann. § 1551.

Settlement of accounts and contributions among partners, see 54 Okl.St. Ann. § 1-807.

Library References

Partnership ⇌ 297.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 336 to 337.

SUBCHAPTER 9. CONVERSION AND MERGER

Section

1-901. Definitions.

1-902. Conversion of partnership to limited partnership.

1-903. Conversion of limited partnership to partnership.

1-904. Effect of conversion; entity unchanged.

1-905. Merger of partnerships.

1-906. Effect of merger.

1-907. Statement of merger.

1-908. Nonexclusive.

1-909 to 1-999. Reserved.

§ 1-901. Definitions

In this chapter:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership,

Title 3A, § 1-901

PARTNERSHIPS

(2) “Limited partner” means a limited partner in a limited partnership.

(3) “Limited partnership” means a limited partnership created under, the Muscogee (Creek) Nation Limited Partnership Act, Title 3A of the Muscogee (Creek) Nation Statutes, predecessor law, or comparable law of another jurisdiction.

(4) “Partner” includes both a general partner and a limited partner.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion and merger, definitions, see 54 Okl.St. Ann. § 1-901.

§ 1-902. Conversion of partnership to limited partnership

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) a statement that the partnership was converted to a limited partnership from a partnership;

(2) its former name; and

(3) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect. The limited partner’s liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Muscogee (Creek) Nation Limited Partnership Act, Section 1-301 et seq. of Title 3A of the Muscogee (Creek) Nation Statutes.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of organization other than partnership to domestic partnership, conversion of domestic partnership to another organization, see 54 Okl.St. Ann. § 1-902.

Library References

Partnership \S 352, 363.
Westlaw Topic No. 289.
C.J.S. Partnership $\S\S$ 406, 417 to 418, 427.

§ 1-903. Conversion of limited partnership to partnership

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in this act, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Filing of certificate of conversion, contents, see 54 Okl.St. Ann. § 1-903.

Library References

Partnership \S 20, 363.
Westlaw Topic No. 289.
C.J.S. Partnership $\S\S$ 8, 417, 427.

§ 1-904. Effect of conversion; entity unchanged

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Effect of conversion, entity unchanged, see 54 Okl.St. Ann. § 1-904.

Library References

Partnership \Leftrightarrow 20, 352, 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 8, 406, 417 to 418, 427.

§ 1-905. Merger of partnerships

(a) Pursuant to a plan of merger approved as provided in subsection (c) of this section, a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) the terms and conditions of the merger;

(5) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) the street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the Nation or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) the approval of the plan of merger by all parties to the merger, as provided in subsection (c) of this section;

(2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger of partnerships, see 54 Okl.St. Ann. § 1-905.

Library References

Partnership Ⓒ20, 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 8, 417, 427.

§ 1-906. Effect of merger

(a) When a merger takes effect:

(1) the separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The Secretary of the Nation is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of the Nation of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of the Nation shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) except as otherwise provided in this act, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in this act or in the Muscogee (Creek) Nation Limited Partnership Act, Section 1-301 et seq. of Title 3A of the Muscogee (Creek) Nation Statutes, of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased

under this act or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under this act by an act of a general partner dissociated under this subsection, and the partner is liable under this act for transactions entered into by the surviving entity after the merger takes effect.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Effect of merger, see 54 Okl.St. Ann. § 1-906.

Library References

Partnership \Leftrightarrow 20, 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 8, 417, 427.

§ 1-907. Statement of merger

(a) After a merger, the surviving partnership or limited partnership may file a statement with the Secretary of the Nation that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) the street address of the surviving entity's chief executive office and of an office in this Nation, if any;

(4) whether the surviving entity is a partnership or a limited partnership; and

(5) a statement that the plan of merger was approved and executed as required by law by each partnership or limited partnership which is to merge, and of the effective date or time of the merger if it is not to be effective upon the filing of the certificate of merger.

(c) Property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of this act, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held, in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to this act, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this

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section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d) of this section. [Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Statement of merger, see 54 Okl.St. Ann. § 1-907.

Library References

Partnership ⌘20, 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 8, 417, 427.

§ 1-908. Nonexclusive

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Nonexclusive, see 54 Okl.St. Ann. § 1-908.

Library References

Partnership ⌘20, 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 8, 417, 427.

§§ 1-909 to 1-999. Reserved

SUBCHAPTER 10. LIMITED LIABILITY PARTNERSHIP

Section

1-1000. Reserved.
1-1001. Nature and purpose; statement of qualification.
1-1002. Name.

§ 1-1000. Reserved

§ 1-1001. Nature and purpose; statement of qualification

(a) A limited liability partnership is a partnership under the laws of this Nation and may engage in any business in this Nation in which a partnership may engage including, but not limited to, the rendering of professional services as defined in the Muscogee (Creek) Nation Statutes or the rendering related professional services as defined in the Muscogee (Creek) Nation Statutes.

(b) A partnership may become a limited liability partnership pursuant to this section.

(c) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that

Title 3A, § 1-1001

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expressly considers obligations to contribute to the partnership, by the vote necessary to amend those provisions.

(d) After the approval required by subsection (c) of this section, a partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of the Nation.

The statement must contain:

- (1) the name of the partnership;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Nation, if any;
- (3) if the partnership does not have an office in this Nation, the name and street address of the partnership's agent for service of process;
- (4) a statement that the partnership elects to be a limited liability partnership; and
- (5) a deferred effective date, if any.

(e) The agent of a limited liability partnership for service of process must be an individual resident of this Nation, a domestic corporation, limited liability company, limited partnership, or limited liability partnership; or a foreign corporation, limited liability company, limited partnership, or limited liability partnership having a place of business and authorized to do business in this Nation.

(f) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to this act.

(g) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c) of this section.

(h) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(i) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Nature and purpose of limited liability partnerships, statement of qualification, see 54 Okl.St. Ann. § 1-1001.

Library References

Partnership ⇌ 349 to 376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 402 to 441.

§ 1-1002. Name

The name of a limited liability partnership must end with “Registered Limited Liability Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”, “RLLP”, or “LLP”.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Name of limited liability partnership, see 54 Okl.St. Ann. § 1-1002.

Library References

Partnership ⌘358.
Westlaw Topic No. 289.
C.J.S. Partnership § 415.

**SUBCHAPTER 11. FOREIGN LIMITED
LIABILITY PARTNERSHIP**

Section

- 1-1101. Law governing foreign limited liability partnership.
- 1-1102. Statement of foreign qualification.
- 1-1103. Effect of failure to qualify.
- 1-1104. Activities not constituting transacting business.
- 1-1105. Action by Attorney General.

§ 1-1101. Law governing foreign limited liability partnership

(a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this Nation.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this Nation as a limited liability partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Law governing foreign limited liability partnership, see 54 Okl.St. Ann. § 1-1101.

Library References

Corporations ⌘621(1).	Westlaw Topic Nos. 101, 209, 289.
Indians ⌘502.	C.J.S. Indians §§ 151 to 179.
Partnership ⌘349 to 376.	C.J.S. Partnership §§ 402 to 441.

§ 1-1102. Statement of foreign qualification

(a) Before transacting business in this Nation, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

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(1) the name of the foreign limited liability partnership which satisfies the requirements of the Nation, state or jurisdiction under whose law it is formed and, if different from the legal name of the partnership, the name under which the partnership will conduct business ending with “Registered Limited Liability Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”, “RLLP”, or “LLP”;

(2) the street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in this Nation, if any;

(3) if there is no office of the partnership in this Nation, the name and street address of the partnership’s agent for service of process; and

(4) a deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this Nation or other person authorized to do business in this Nation.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to this act.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Statement of foreign qualification, see 54 Okl.St. Ann. § 1-1102.

Library References

Partnership \approx 357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 1-1103. Effect of failure to qualify

(a) A foreign limited liability partnership transacting business in this Nation may not maintain an action or proceeding in this Nation unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this Nation.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this Nation without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this Nation without a statement of foreign qualification, the Secretary of the Nation is its agent for service of process with respect to a right of action arising out of the transaction of business in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Effect of failure to qualify, see 54 Okl.St. Ann. § 1-1103.

Library References

Partnership ⌘362.
Westlaw Topic No. 289.
C.J.S. Partnership § 414.

§ 1-1104. Activities not constituting transacting business

(a) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this article include:

- (1) maintaining, defending, or settling an action or proceeding;
- (2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Nation before they become contracts;
- (7) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transactions; and
- (10) transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this Nation of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this Nation.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Activities not constituting transacting business, see 54 Okl.St. Ann. § 1-1104.

Library References

Corporations ⌘592, 613, 621, 622. Westlaw Topic Nos. 101, 289.
Partnership ⌘357.

Title 3A, § 1-1104

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C.J.S. Corporations §§ 914 to 915, 926, 932,
940 to 947, 961 to 962, 964.
C.J.S. Partnership §§ 411 to 412.

§ 1-1105. Action by Attorney General

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this Nation in violation of this subchapter.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action by attorney general, see 54 Okl.St. Ann. § 1-1105.

Library References

Corporations ⌘613(7).
Partnership ⌘362.
Westlaw Topic Nos. 101, 289.

C.J.S. Corporations § 944.
C.J.S. Partnership § 414.

SUBCHAPTER 12. MISCELLANEOUS PROVISIONS

Section

1-1201. Uniformity of application and construction.
1-1202 to 1-1205. Blank.
1-1206. Applicability.
1-1207. Savings clause.

§ 1-1201. Uniformity of application and construction

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states and Nations enacting it.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Limited partnerships, rules of construction, see 54 Okl.St. Ann. § 168.
Uniformity of application and construction, see 54 Okl.St. Ann. § 1-1201.

§§ 1-1202 to 1-1205. Blank

§ 1-1206. Applicability

(a) Before November 1, 2007, the Muscogee (Creek) Nation Partnership Act governs only:

(1) a partnership or limited liability partnership formed on or after November 1, 2007, unless that partnership or limited liability partnership is continuing the business of a dissolved partnership or limited liability partnership; and

(2) a partnership or limited liability partnership formed before November 1, 1997 that elects, as provided by subsection (c) of this section, to be governed by the Muscogee (Creek) Nation Partnership Act.

(b) On and after November 1, 2007, the Muscogee (Creek) Nation Partnership Act governs all partnerships and limited liability partnerships.

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Title 3A, § 1-1207

(c) Before November 1, 2007, a partnership or limited liability partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by the Muscogee (Creek) Nation Partnership Act. The provisions of the Muscogee (Creek) Nation Partnership Act relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership or limited liability partnership within one (1) year preceding the election to be governed by the Muscogee (Creek) Nation Partnership Act only if the third party knows or has received a notification of the election to be governed by the Muscogee (Creek) Nation Partnership Act.

(d) Before November 1, 2007, a partnership or limited liability partnership continues to be governed by the law in effect prior to November 1, 2007. [Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Applicability, see 54 Okl.St. Ann. § 1-1206.

§ 1-1207. Savings clause

This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Savings clause, see 54 Okl.St. Ann. § 1-1207.

CHAPTER 2. MUSCOGEE (CREEK) NATION LIMITED PARTNERSHIP ACT

Section

- 2-141. The Muscogee (Creek) Nation Limited Partnership Act.
- 2-141.1. Terms defined.
- 2-142. Limited partnership.
- 2-143. Formation of limited partnership.
- 2-144. Business which limited partnership may carry on.
- 2-145. Contributions.
- 2-146. Surname; use of.
- 2-147. Certificate; false statement; liability of party.
- 2-148. Limited partner; liability.
- 2-149. Additional partners.
- 2-150. General partners; rights and powers.
- 2-151. Limited partner; rights.
- 2-152. Contributor to capital; mistake; renouncing interest.
- 2-153. General and limited partner; rights.
- 2-154. Limited partner; loan of money to partnership.
- 2-155. Agreement as to priority; stated in certificate.
- 2-156. Share of profits; restriction.
- 2-157. Contributions; receipt; limitations.
- 2-158. Liability of limited partner to partnership.
- 2-159. Interest of limited partner; personal property.
- 2-160. Interest assignable.
- 2-161. General partner; retirement, death or insanity; effect.
- 2-162. Death of limited partner; executor or administrator's rights.
- 2-163. Judgment creditor; court may charge interest of limited partner.
- 2-164. Dissolution; accounts; payment.
- 2-165. Certificate; cancellation; amendment.
- 2-166. Amendment of certificate; procedure.
- 2-167. Actions by or against partnership; contributor.
- 2-168. Statutes in derogation of common law; construction.
- 2-169. Law merchant; rules of law and equity.
- 2-170 to 2-176. Reserved.
- 2-177. Correction of statements.
- 2-178. Cancellation of registration.
- 2-179, 2-180. Reserved.
- 2-181. Governing provisions.
- 2-201 to 2-302. Reserved.
- 2-303. Name requirements.
- 2-304. Reserving exclusive right to use name.
- 2-305. Office and agent required to be maintained in Nation of limited partnership.
- 2-305.1. Changing location of registered office, agent; resignation of registered agent; service on Secretary of the Nation when no registered agent found.
- 2-306. Records required to be kept in limited partnership office.
- 2-307. Business of limited partnership.
- 2-308. Loan of money and transaction of business of partner with limited partnership.
- 2-309. Execution, filing, and contents of certificate of limited partnership; time of forming.
- 2-310. Certificate of limited partnership; amendment.
- 2-310.1. Agreement of merger or consolidation.
- 2-310.2. Conversion of certain entities to a limited partnership.

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- 2-310.3. Approval of conversion of a limited partnership.
- 2-311. Cancellation of certificate of limited partnership.
- 2-311.1. Annual certificate for domestic limited partnership and foreign limited partnership.
- 2-312. Certificate, execution of.
- 2-313. Failure or refusal to execute certificates; petition to direct execution.
- 2-314. Filing of certificate; Secretary of the Nation; requirements; fees.
- 2-315. Penalty for false statements in certificate or cancellation; damages.
- 2-316. Filing as notice.
- 2-317. Delivery or mailing of copy of certificate of limited partnership to each limited partner.
- 2-318. Becoming a limited partner.
- 2-319. Agreement to grant limited partners right to vote on per capita basis.
- 2-320. Liability of limited partner.
- 2-321. Person making contribution and erroneously, but in good faith believes to be limited partner; liability as general partner.
- 2-322. Rights of limited partner.
- 2-323. Admittance of additional general partners.
- 2-324. Person ceases to be general partner upon certain following events.
- 2-325. Rights, powers, and liabilities of general partner of limited partnership.
- 2-326. General partner; share in profits and losses; contributions.
- 2-327. Agreement to grant general partners right to vote on per capita basis.
- 2-328. Contribution of partner; form.
- 2-329. Promise to contribute; obligation.
- 2-330. Allocation of profits and losses of limited partnership.
- 2-331. Allocation of distributions of cash or other assets of limited partnership.
- 2-332. Right to receive distributions from limited partnership before withdrawal and before dissolution.
- 2-333. Withdrawal of general partner from limited partnership.
- 2-334. Withdrawal of limited partner from limited partnership.
- 2-335. Withdrawing partner entitled to receive distribution.
- 2-336. Allowable distributions.
- 2-337. Right of partner to remedies available to creditor.
- 2-338. Limitations on distribution to partner.
- 2-339. Return of contribution.
- 2-340. Partnership interest as personal property.
- 2-341. Partnership interest assignable.
- 2-342. Interest on unsatisfied amount of judgment charged to partnership interest.
- 2-343. Assignee may become limited partner.
- 2-344. Effect of death or incompetence of partner.
- 2-345. Dissolve and winding up of limited partnership.
- 2-346. Decree of dissolution by Muscogee (Creek) Nation District Court.
- 2-347. Winding up of limited partnership's affairs.
- 2-348. Distribution of assets upon winding up of limited partnership.
- 2-349. Foreign limited partnership; laws governing.
- 2-350. Registration of foreign limited partnerships.
- 2-350.1. Fee for acting as registered agent; penalty for failure to pay.
- 2-351. Filing and issuance of certificate of registration.
- 2-352. Foreign limited partnership registration; name in which to register.
- 2-353. Corrections of inaccurate statements in application.
- 2-353.1. Change of location of registered office or registered agent.
- 2-353.2. Resignation of registered agent of foreign limited partnership.
- 2-353.3. Appointment or designation of agent in case of resignation.
- 2-354. Registration cancellation.
- 2-355. Business transactions of foreign limited partnerships that do not register in Nation.
- 2-356. Action to restrain foreign limited partnership from transacting business in Nation.

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Section

- 2-357. Limited partner; right to bring action.
- 2-358. Derivative actions; plaintiffs.
- 2-359. Complaint in derivative action.
- 2-360. Award of expenses.
- 2-361. Applicability and construction.
- 2-362. Governing of prior limited partnerships.
- 2-363. Provisions governing cases not provided for in act.
- 2-364. Applicability and effective date.
- 2-365. No impairment to continued existence of existing limited partnership.

Oklahoma Statutes Annotated

Fraud in limited partnerships, see 21 Okl.St. Ann. § 1511.

§ 2-141. The Muscogee (Creek) Nation Limited Partnership Act

Sections 2-141 through 2-365 of this Title shall be known and may be cited as the Muscogee (Creek) Nation Limited Partnership Act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Oklahoma Revised Uniform Limited Partnership Act, citation, see 54 Okl.St. Ann. § 301.

Oklahoma Uniform Limited Partnership Act, short title, see 54 Okl.St. Ann. § 141.

§ 2-141.1. Terms defined

As used in the Muscogee (Creek) Nation Limited Partnership Act, unless the context otherwise requires:

1. “Certificate of limited partnership” means the certificate referred to in this title and the certificate as amended or restated;
2. “Contribution” means any cash, property, services rendered or promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner;
3. “Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in this title;
4. “Foreign limited partnership” means a partnership other than a domestic limited partnership and having as partners one or more general partners and one or more limited partners;
5. “General partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;
6. “Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;
7. “Limited partnership” and “domestic limited partnership” means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;
8. “Nation” means the Muscogee (Creek) Nation;
9. “Partner” means a limited or general partner;

10. “Partnership agreement” means any valid written or oral agreement of the partners as to the affairs of a limited partnership and the conduct of its business;

11. “Partnership interest” means a partner’s share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

12. “Person” means a natural person, partnership, domestic or foreign limited partnership, trust, estate, association or corporation;

13. “Secretary of the Nation” means the Muscogee (Creek) Nation Secretary of the Nation;

14. “State” means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Oklahoma Revised Limited Partnership Act, definitions, see 54 Okl.St. Ann. § 302.

§ 2-142. Limited partnership

A limited partnership is a partnership formed by two or more persons under the provisions of this act, and having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

General partners, rights, powers, restrictions and liabilities, see 54 Okl.St. Ann. § 150.
Liabilities of limited partner to partnership, see 54 Okl.St. Ann. § 158.
Limited partner as creditor of partnership, see 54 Okl.St. Ann. § 154.
Limited partnership defined, limited partners not bound, see 54 Okl.St. Ann. § 142.
Partnership defined, see 68 Okl.St. Ann. § 202.
Partnerships in general, see 54 Okl.St. Ann. § 1-100 et seq.
Person erroneously believing himself a limited partner, see 54 Okl.St. Ann. § 152.
Return of contribution of limited partner, see 54 Okl.St. Ann. § 157.
Same person as general partner and limited partner, see 54 Okl.St. Ann. § 153.

Library References

Partnership ⇌349.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 402 to 403.

§ 2-143. Formation of limited partnership

(a) Two or more persons desiring to form a limited partnership shall:

(1) Sign and swear to a certificate, which shall state:

(A) The name of the partnership.

(B) The character of the business.

(C) The location of the principal place of business and also, if such location is outside the Muscogee (Creek) Nation, the street address of the principal place of business within the Muscogee (Creek) Nation.

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(D) The name and place of residence of each member; general and limited partners being respectively designated.

(E) The term for which the partnership is to exist.

(F) The amount of cash and a description of the agreed value of the other property contributed by each limited partner.

(G) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.

(H) The time, if agreed upon, when the contribution of each limited partner is to be returned.

(I) The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.

(J) The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

(K) The right, if given, of the partners to admit additional limited partners.

(L) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

(M) The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner.

(N) The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) File for record the certificate in the Office of the Secretary of the Nation.

(b) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsection (a) of this section, and a fee of one hundred dollars (\$100.00) paid to the Secretary of the Nation. There shall be a fee of fifty dollars (\$50.00) for each filing of an amendment or cancellation for a limited partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignment of partnership interest, see 54 Okl.St. Ann. § 1-503.

Continuation of business, liability, see 54 Okl.St. Ann. § 1-705.

Distribution of assets after dissolution, see 54 Okl.St. Ann. § 1-807.

Formation of limited partnership, see 54 Okl.St. Ann. § 143.

Library References

Partnership \Leftrightarrow 352 to 359.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 405 to 413, 415, 418 to
419, 423.

§ 2-144. Business which limited partnership may carry on

A limited partnership may carry on any business which a partnership without limited partners may carry on, except that a limited partnership may not carry on business as a bank or domestic insurer.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Business which may be carried on, see 54 Okl.St. Ann. § 144.

Library References

Partnership ⌘351.5.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 402 to 403, 416.

§ 2-145. Contributions

The contributions of a limited partner may be cash or other property, but not services.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change in contribution, see 54 Okl.St. Ann. § 165.
Contributions of limited partner, see 54 Okl.St. Ann. § 145.
Priority of limited partner as to return of contribution, see 54 Okl.St. Ann. § 155.
Vehicle excise tax, transfer of vehicle transferred in course of organization or dissolution, see 68 Okl.St. Ann. § 2105.
Withdrawal or reduction of contribution, see 54 Okl.St. Ann. § 157.

Library References

Partnership ⌘355.
Westlaw Topic No. 289.
C.J.S. Partnership § 409.

§ 2-146. Surname; use of

(a) The surname of a limited partner shall not appear in the partnership name, unless:

- (1) It is also the surname of a general partner, or
- (2) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(b) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (a) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fictitious names, filing certificate, see 54 Okl.St. Ann. § 81 et seq.
Partnership name, see 54 Okl.St. Ann. § 146.

Library References

Partnership ⌘358.
Westlaw Topic No. 289.
C.J.S. Partnership § 415.

§ 2-147. Certificate; false statement; liability of party

If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false.

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- (a) At the time he signed the certificate, or
- (b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

False statements in certificate, see 54 Okl.St. Ann. § 147.
Fraud in limited partnerships, see 21 Okl.St. Ann. § 1511.

Library References

Partnership ⌘354.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 413.

§ 2–148. Limited partner; liability

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fraud in limited partnerships, see 21 Okl.St. Ann. § 1511.
Nature of partner's liability, see 54 Okl.St. Ann. § 1–306.
Liability of limited partner, see 54 Okl.St. Ann. § 148.

Library References

Partnership ⌘371.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 429, 431, 438.

§ 2–149. Additional partners

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of Section 2–166.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Admission of additional limited partners, see 54 Okl.St. Ann. § 149.

Library References

Partnership ⌘363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2–150. General partners; rights and powers

- (a) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific

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act by all the limited partners, a general partner or all of the general partners have no authority to:

- (1) Do any act in contravention of the certificate.
- (2) Do any act which would make it impossible to carry on the ordinary business of the partnership.
- (3) Confess a judgment against the partnership.
- (4) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.
- (5) Admit a person as a general partner.
- (6) Admit a person as a limited partner, unless the right so to do is given in the certificate.
- (7) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Ad valorem taxes, property listed by partner, see 68 Okl.St. Ann. § 2832.
Dissolution,

Continuation of business, liability, see 54 Okl.St. Ann. § 1-705.

Effect on authority of partner, see 54 Okl.St. Ann. § 1-802.

Fraud in limited partnerships, see 21 Okl.St. Ann. § 1511.

General partners, rights, powers, restrictions and liabilities, see 54 Okl.St. Ann. § 150.

Nature of partner's liability, see 54 Okl.St. Ann. § 1-306.

Partner as agent of partnership, see 54 Okl.St. Ann. § 1-301.

Receivers, appointment in actions between partners, see 12 Okl.St. Ann. § 1551.

Library References

Partnership \Leftrightarrow 353, 366.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 405, 407, 422 to 423,

425, 430, 432.

§ 2-151. Limited partner; rights

(a) A limited partner shall have the same rights as a general partner to:

(1) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

(2) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(3) Have dissolution and winding up by decree of court.

(b) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Books of partnership, see 54 Okl.St. Ann. § 1-403.

Dissolution by decree of court, see 54 Okl.St. Ann. § 1-801.

Falsification of partnership books, see 21 Okl.St. Ann. § 1590.

Information, duty of partners to render, see 54 Okl.St. Ann. § 1-403.

Title 3A, § 2–151

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Nature of partner's interest in partnership, see 54 Okl.St. Ann. § 1–502.
Receivers, appointment in actions between partners, see 12 Okl.St. Ann. § 1551.
Rights of limited partner, see 54 Okl.St. Ann. § 151.

Library References

Partnership \Leftrightarrow 367, 368. C.J.S. Partnership §§ 424, 426, 428, 431 to
Westlaw Topic No. 289. 432.

§ 2–152. Contributor to capital; mistake; renouncing interest

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the right of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Person erroneously believing himself a limited partner, see 54 Okl.St. Ann. § 152.

Library References

Partnership \Leftrightarrow 366. C.J.S. Partnership §§ 422 to 423, 425, 430,
Westlaw Topic No. 289. 432.

§ 2–153. General and limited partner; rights

(a) A person may be a general partner and a limited partner in the same partnership at the same time.

(b) A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Same person as general partner and limited partner, see 54 Okl.St. Ann. § 153.

Library References

Partnership \Leftrightarrow 366 to 368. C.J.S. Partnership §§ 422 to 426, 428, 430 to
Westlaw Topic No. 289. 432.

§ 2–154. Limited partner; loan of money to partnership

(a) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim:

- (1) Receive or hold as collateral security any partnership property, or
- (2) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(b) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (a) is a fraud on the creditors of the partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fraud in limited partnerships, see 21 Okl.St. Ann. § 1511.
Limited partner as creditor of partnership, see 54 Okl.St. Ann. § 154.

Library References

Partnership ¶367.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 426, 428, 432.

§ 2-155. Agreement as to priority; stated in certificate

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Priority as between several limited partners, see 54 Okl.St. Ann. § 155.

Library References

Partnership ¶354, 366, 367.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 413, 422 to 423,
425 to 426, 428, 430, 432.

§ 2-156. Share of profits; restriction

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Share of profits or compensation, see 54 Okl.St. Ann. § 156.

Library References

Partnership \S 366, 367.
Westlaw Topic No. 289.

C.J.S. Partnership $\S\S$ 422 to 423, 425 to 426,
428, 430, 432.

§ 2–157. Contributions; receipt; limitations

(a) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until:

(1) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

(2) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (b), and

(3) The certificate is canceled or so amended as to set forth the withdrawal or reduction.

(b) Subject to the provisions of paragraph (a) a limited partner may rightfully demand the return of his contribution:

(1) On the dissolution of a partnership, or

(2) When the date specified in the certificate for its return has arrived, or

(3) After he has given six (6) months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(c) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(d) A limited partner may have the partnership dissolved and its affairs wound up when:

(1) He rightfully but unsuccessfully demands the return of his contribution, or

(2) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (a)(1) and the limited partner would otherwise be entitled to the return of his contribution.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Return of contribution, see 54 Okl.St. Ann. § 157.

Library References

Partnership \S 376.
Westlaw Topic No. 289.
C.J.S. Partnership $\S\S$ 439 to 441.

§ 2–158. Liability of limited partner to partnership

(a) A limited partner is liable to the partnership:

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(1) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(b) A limited partner holds as trustee for the partnership:

(1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(2) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(c) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(d) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.


[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Fraud in limited partnerships, see 21 Okl.St. Ann. § 1511.

Liabilities of limited partner to partnership, see 54 Okl.St. Ann. § 158.

Library References

Partnership 366.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 422 to 423, 425, 430, 432.

§ 2-159. Interest of limited partner; personal property

A limited partner's interest in the partnership is personal property.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]


Oklahoma Statutes Annotated

Interest as personal property, see 54 Okl.St. Ann. § 159.

Limited partner's rights, see 54 Okl.St. Ann. § 151.

Nature of partner's interest, see 54 Okl.St. Ann. § 1-502.

Library References

Partnership 367.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 426, 428, 432.

§ 2-160. Interest assignable

(a) A limited partner's interest is assignable.

(b) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

Title 3A, § 2-160

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(c) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(d) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being hereunto empowered by the certificate, gives the assignee that right.

(e) An assignee becomes a substituted limited partner when the certificate is appropriately amended.

(f) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(g) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignee of partnership interest, see 54 Okl.St. Ann. § 1-503.
Assignments and substitutions, see 54 Okl.St. Ann. § 160.

Library References

Partnership ⇨363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2-161. General partner; retirement, death or insanity; effect

The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

- (a) Under a right so to do stated in the certificate, or
- (b) With the consent of all members.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions against partnerships after death of partner, see 12 Okl.St. Ann. § 1082.
Contract not to compete upon dissolution, see 15 Okl.St. Ann. § 219.
Dissolution of partnership, see 54 Okl.St. Ann. § 1-801.
Retirement, death or insanity of general partner, see 54 Okl.St. Ann. § 161.
Revivor of actions, dissolved partnerships, see 12 Okl.St. Ann. § 1082.
Sales tax, transfer upon dissolution as exempt transfer, see 68 Okl.St. Ann. § 1360.

Library References

Partnership ⇨363, 376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427, 439 to 441.

§ 2-162. Death of limited partner; executor or administrator's rights

(a) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such

power as the deceased had to constitute his assignee a substituted limited partner.

(b) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions against partnerships after death of partner, see 12 Okl.St. Ann. § 1082.
Death of limited partner, see 54 Okl.St. Ann. § 162.

Library References

Partnership \Leftrightarrow 363, 366.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 417, 422 to 423, 425,
427, 430, 432.

§ 2-163. Judgment creditor; court may charge interest of limited partner

(a) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(b) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(c) The remedies conferred by paragraph (a) shall not be deemed exclusive of others which may exist.

(d) Nothing in this act shall be held to deprive a limited partner of his statutory exemption.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Actions against partnerships after death of partner, see 12 Okl.St. Ann. § 1082.
Creditors of limited partner, remedies, see 54 Okl.St. Ann. § 163.
Fraudulent transfer, insolvency, see 24 Okl.St. Ann. § 114.
Homestead and exemptions, see 31 Okl.St. Ann. § 1 et seq.
Partner's interest subject to charging order, see 54 Okl.St. Ann. § 1-504.
Revivor of actions, dissolved partnerships, see 12 Okl.St. Ann. § 1082.

Library References

Partnership \Leftrightarrow 371.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 429, 431, 438.

§ 2-164. Dissolution; accounts; payment

(a) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(1) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(2) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

- (3) Those to limited partners in respect to the capital of their contributions.
- (4) Those to general partners other than for capital and profits.
- (5) Those to general partners in respect to profits.
- (6) Those to general partners in respect to capital.

(b) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Order of payment of liabilities on dissolution, see 54 Okl.St. Ann. § 164.

Library References

Partnership Ⓒ376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 439 to 441.

§ 2-165. Certificate; cancellation; amendment

(a) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(b) A certificate shall be amended when:

- (1) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.
- (2) A person is substituted as a limited partner.
- (3) An additional limited partner is admitted.
- (4) A person is admitted as a general partner.
- (5) A general partner retires, dies or becomes insane, and the business is continued.
- (6) There is a change in the character of the business of the partnership.
- (7) There is a false or erroneous statement in the certificate.
- (8) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.
- (9) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or
- (10) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cancellation or amendment of certificate, see 54 Okl.St. Ann. § 165.

Library References

Partnership ⌘354.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 413.

§ 2-166. Amendment of certificate; procedure

(a) The writing to amend a certificate shall:

(1) Conform as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(2) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed by all members.

(c) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (a) and (b) as a person who must execute the writing refuses to do so, may petition the district court of the judicial district wherein he resides, to direct a cancellation or amendment thereof.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so it shall order the Secretary of the Nation to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(e) A certificate is amended or canceled when there is filed for record in the office of the Secretary of the Nation where the certificate is recorded:

(1) A writing in accordance with the provisions of paragraph (a), or (b) or

(2) A certified copy of the order of court in accordance with the provisions of paragraph (d).

(f) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this act.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Additional partners, admission upon filing amendment to original certificate, see Title 3A, § 2-149.

Oklahoma Statutes Annotated

Instruments and proceedings to cancel or amend certificates, see 54 Okl.St. Ann. § 166.

Library References

Partnership ⌘354.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 413.

§ 2–167. Actions by or against partnership; contributor

A contributor, unless he is a general partner, is not a proper party, to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Parties to proceedings against partnership, see 54 Okl.St. Ann. § 167.
Revivor of actions, dissolved partnerships, see 12 Okl.St. Ann. § 1082.

Library References

Partnership ⇨375.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 436 to 437.

§ 2–168. Statutes in derogation of common law; construction

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

(b) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states and Nations which enact it.

(c) This act shall not be so construed as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action on proceedings begun or right accrued before this act takes effect.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Application of Uniform Partnership Act to limited partnerships, see 54 Okl.St. Ann. § 1–101.
Interpretation and construction, see 54 Okl.St. Ann. § 168.
Partnerships, rules of construction, see 54 Okl.St. Ann. § 1–1201.

Library References

Indians ⇨109. C.J.S. Indians §§ 42 to 44.
Partnership ⇨351. C.J.S. Partnership § 404.
Westlaw Topic Nos. 209, 289.

§ 2–169. Law merchant; rules of law and equity

In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cases not provided for, see 54 Okl.St. Ann. § 169.

Library References

Partnership ⇨351.
Westlaw Topic No. 289.
C.J.S. Partnership § 404.

§§ 2–170 to 2–176. Reserved

Oklahoma Statutes Annotated

Partnerships formed under prior laws, see 54 Okl.St. Ann. § 170.

§ 2–177. Correction of statements

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the Office of the Secretary of the Nation a certificate, signed and sworn to by a general partner, correcting such statement and shall pay to the Secretary of the Nation a fee of one hundred dollars (\$100.00).

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Correction of statements, fee, see 54 Okl.St. Ann. § 177.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2–178. Cancellation of registration

A foreign limited partnership may cancel its registration by filing with the Secretary of the Nation a certificate of cancellation signed and sworn to by a general partner, and paying a cancellation fee in an amount of one hundred dollars (\$100.00). A cancellation shall not terminate the authority of the Secretary of the Nation to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cancellation of registration, see 54 Okl.St. Ann. § 178.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§§ 2–179, 2–180. Reserved

§ 2–181. Governing provisions

In any case not provided for in the Muscogee (Creek) Nation Limited Partnership Act, the provisions of the Muscogee (Creek) Nation Revised Limited Partnership Act¹ govern.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 3A, § 2–301 et seq.

Oklahoma Statutes Annotated

Application, see 54 Okl.St. Ann. § 181.

Library References

Partnership ⚡351.
Westlaw Topic No. 289.
C.J.S. Partnership § 404.

§§ 2–201 to 2–302. Reserved

§ 2–303. Name requirements

The name of each limited partnership as set forth in its certificate of limited partnership:

1. Shall contain the words “limited partnership” or the abbreviations “L.P.” or “LP”;

2. May not contain the name of a limited partner unless:

a. it is also the name of a general partner or the corporate name of a corporate general partner, or

b. the business of the limited partnership had been carried on under that name before the admission of that limited partner; and

3. a. May not be the same as or indistinguishable from:

(1) names upon the records in the Office of the Secretary of the Nation of then existing limited partnerships whether organized pursuant to the laws of this Nation or registered as foreign limited partnerships in this Nation, or

(2) names upon the records in the Office of the Secretary of the Nation of corporations organized under the laws of this Nation then existing or which existed at any time during the preceding three (3) years, or

(3) names upon the records in the Office of the Secretary of the Nation of foreign corporations registered in accordance with the laws of this Nation then existing or which existed at any time during the preceding three (3) years, or

(4) trade names or fictitious names filed with the Secretary of the Nation, or

(5) corporate, limited liability company or limited partnership names reserved with the Secretary of the Nation, or

(6) names of then existing limited liability companies whether organized pursuant to the laws of this Nation or registered as foreign limited liability companies in this Nation.

b. The provisions of subparagraph a of this paragraph shall not apply if one of the following is filed with the Secretary of the Nation:

(1) The written consent of the other limited partnership, corporation, limited liability company or holder of the trade name, fictitious name or reserved corporate, limited liability company or limited partnership name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the

records of the Secretary of the Nation, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the Nation or be wound up, or

(2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited partnership or holder of a limited partnership name to the use of such name in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Foreign limited partnership registration, name in which to register, see Title 3A, § 2-352.

Oklahoma Statutes Annotated

Name, see 54 Okl.St. Ann. § 303.

Library References

Partnership ⌘358.
Westlaw Topic No. 289.
C.J.S. Partnership § 415.

§ 2-304. Reserving exclusive right to use name

A. The exclusive right to the use of a name may be reserved by:

1. Any person intending to organize a limited partnership under this act and to adopt that name;
2. Any domestic limited partnership or any foreign limited partnership registered in this Nation which intends to adopt that name;
3. Any foreign limited partnership intending to register in this Nation and adopt that name; and
4. Any person intending to organize a foreign limited partnership and intending to have it registered in this Nation and adopt that name.

B. A person seeking to reserve a specified name shall file an application executed by the applicant with the Secretary of the Nation and pay a filing fee of ten dollars (\$10.00). If the Secretary of the Nation finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of sixty (60) days. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Secretary of the Nation a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Reservation of name, see 54 Okl.St. Ann. § 304.

Library References

Partnership ⌘358. Westlaw Topic No. 289.

C.J.S. Partnership § 415.

§ 2-305. Office and agent required to be maintained in Nation of limited partnership

Each domestic limited partnership shall continuously maintain in this Nation:

1. An office, which may, but need not be a place of its business in this Nation, at which shall be kept the records required by Section 2-306 of this Title to be maintained; and

2. An agent for service of process on the limited partnership, which agent may be the domestic limited partnership itself, an individual resident of this Nation, a domestic corporation, limited partnership, limited liability company; or a foreign corporation, limited partnership or limited liability company authorized to do business in this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Specified office and agent, see 54 Okl.St. Ann. § 305.

Library References

Partnership Ⓒ357.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 411 to 412.

§ 2-305.1. Changing location of registered office, agent; resignation of registered agent; service on Secretary of the Nation when no registered agent found

A. A domestic limited partnership may change the location of its registered office in this Nation at any time as it may see fit. This change may be made by filing in the office of the Secretary of the Nation a certificate, signed by a general partner, showing the change. At the time of filing of any such certificate, a fee in the amount of twenty-five dollars (\$25.00) shall be paid to the Secretary of the Nation.

B. A domestic limited partnership may change its registered agent at any time as it may see fit. Such change may be made by filing in the office of the Secretary of the Nation a certificate, signed by a general partner and acknowledged by a notary public, showing the change. At the time of filing of any such certificate, a fee in the amount of twenty-five dollars (\$25.00) shall be paid to the Secretary of the Nation.

C. The registered agent of a limited partnership may resign without appointing a successor by filing in the name of the limited partnership a certificate with the Secretary of the Nation; but such resignation shall not become effective until thirty (30) days after each certificate is filed. There shall be included in the certificate a statement of such registered agent, if an individual, or of the president, a vice-president, or the secretary thereof, if a corporation, that at least thirty (30) days prior to the date of the filing of the certificate, due notice of the resignation of the registered agent was sent by certified or registered mail to the limited partnership for which such registered agent was

acting, at the principal office thereof, if known to the registered agent or, if not, to the last-known address of the attorney or other individual at whose request the registered agent was appointed for such corporation.

D. After receipt of the notice of the resignation of its registered agent provided for in subsection C of this section, the limited partnership for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning in the same manner as provided for in subsection B of this section for change of registered agent. If such limited partnership, being a limited partnership of this Nation, fails to obtain and designate a new registered agent prior to the expiration of the period of thirty (30) days after the filing by the registered agent of the certificate of resignation, the Secretary of the Nation shall be deemed to be the registered agent of the limited partnership until a new registered agent is designated. The Office of the Secretary of the Nation shall charge the fee prescribed by Section 2-350.1 of this Title for acting as registered agent.


E. If a limited partnership has no registered agent or the registered agent cannot be found, then service on the limited partnership may be made by serving the Secretary of the Nation as its agent.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change in location of registered office, change in registered agent, resignation of registered agent, service on limited partnership without registered agent, see 54 Okl.St. Ann. § 305.1.

Library References

Partnership  357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2-306. Records required to be kept in limited partnership office

A. Each limited partnership shall keep the following at the office required pursuant to Section 2-305 of this Title:

1. A current list of the full name and last-known business address of each partner, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;
2. A copy of the certificate of limited partnership and all certificates of amendment thereto together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
3. Copies of the limited partnership's federal and state income tax returns and reports, if any, for the three (3) most recent years;
4. Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three (3) most recent years; and
5. Unless contained in a written partnership agreement, a writing setting out:
 - a. the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

Title 3A, § 2–306

PARTNERSHIPS

b. the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

d. any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

B. Records kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Allocation of profits and losses of limited partnership, see Title 3A, § 2–330.
Promise to contribute, obligation, see Title 3A, § 2–329.

Oklahoma Statutes Annotated

Records to be kept, see 54 Okl.St. Ann. § 306.

Library References

Partnership Ⓔ361.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 420 to 421.

§ 2–307. Business of limited partnership

A limited partnership may carry on any business that a partnership without limited partners may carry on, except that a limited partnership may not carry on business as a bank or domestic insurer.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Nature of business, see 54 Okl.St. Ann. § 307.

Library References

Partnership Ⓔ351.5.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 402 to 403, 416.

§ 2–308. Loan of money and transaction of business of partner with limited partnership

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Business transactions of partner with the partnership, see 54 Okl.St. Ann. § 308.

Library References

Partnership Ⓒ366.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 422 to 423, 425, 430,
432.

§ 2–309. Execution, filing, and contents of certificate of limited partnership; time of forming

A. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the Office of the Secretary of the Nation. The certificate shall set forth:

1. The name of the limited partnership;
2. The street address of the office and the name and street address of the agent for service of process as required pursuant to Section 2–305 of this Title;
3. The name and the business address of each general partner;
4. The term of the existence of the limited partnership which may be perpetual; and
5. Any other matters the general partners determine to include therein.

B. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the Office of the Secretary of the Nation or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Certificate of limited partnership, see 54 Okl.St. Ann. § 309.

Library References

Partnership Ⓒ354, 357, 359.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 406, 408, 411 to 413,
419.

§ 2–310. Certificate of limited partnership; amendment

A. A certificate of limited partnership is amended by filing a certificate of amendment in the Office of the Secretary of the Nation. The certificate shall set forth:

1. The name of the limited partnership;
2. The date of filing the certificate; and
3. The amendment to the certificate.

B. Within thirty (30) days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

1. The admission of a new general partner;
2. The withdrawal of a general partner; or
3. The continuation of the business pursuant to Section 2–345 of this Title after an event of withdrawal of a general partner.

C. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other

facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

D. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

E. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection B of this section if the amendment is filed within the thirty-day period specified in subsection B of this section.

F. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Amendment to certificate, see 54 Okl.St. Ann. § 310.

Library References

Partnership \Leftrightarrow 354.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 408, 413.

§ 2-310.1. Agreement of merger or consolidation

A. Pursuant to an agreement of merger or consolidation, a domestic limited partnership may merge or consolidate with or into one or more domestic limited partnerships or other business entities, formed or organized under the laws of this Nation, any other state or Nation, or the District of Columbia, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. As used in this section, “other business entity” means a corporation, a business trust, a common law trust, or an unincorporated business including a partnership, whether general or limited, but excluding a domestic limited partnership.

B. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

C. If a domestic limited partnership is merging or consolidating pursuant to this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation with the Secretary of the Nation. The certificate of merger or consolidation shall state:

1. The name and jurisdiction of formation or organization of each of the domestic limited partnerships or other business entities which is to merge or consolidate;

2. That an agreement of merger or consolidation has been approved and executed by each of the domestic limited partnerships or other business entities which is to merge or consolidate;

3. The name of the surviving or resulting domestic limited partnership or other business entity;

4. The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

5. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited partnership or other business entity, and shall state the address thereof;

6. That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting domestic limited partnership or other business entity, upon request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

7. If the surviving or resulting entity is not a domestic limited partnership or corporation organized pursuant to the laws of this Nation, a statement that such surviving or resulting other business entity agrees it may be served with process in this Nation in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge or consolidate, irrevocably appointing the Secretary of the Nation as its agent to accept service of process in any such action, suit or proceeding, and specifying the address to which a copy of such process shall be mailed to the entity by the Secretary of the Nation.

D. Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which was effective prior to September 1, 1990, shall not affect the validity or effectiveness of any such merger or consolidation.

E. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the Secretary of the Nation of a certificate of merger or consolidation.

F. A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation.

G. When any merger or consolidation shall have become effective pursuant to this section for all purposes of the laws of this Nation, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business

entities shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this Nation, in any of such domestic limited partnerships and other business entities shall not revert or be in any way impaired by reason of this section, but all rights of creditors and all liens upon any property of any said domestic limited partnerships and other business entities shall be preserved unimpaired. All debts, liabilities and duties of each of the domestic limited partnerships and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced against the limited partnership or other entity to the same extent as if said debts, liabilities and duties had been incurred or contracted by the limited partnership or other entity. Unless otherwise agreed, a merger or consolidation of a domestic limited partnership, including a domestic limited partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require such domestic limited partnership to wind up its affairs pursuant to the Muscogee (Creek) Nation Statutes or pay its liabilities and distribute its assets pursuant to the Muscogee (Creek) Nation Statutes.

H. At the time of filing a merger or consolidation, a fee in the amount of one hundred dollars (\$100.00) shall be paid to the Secretary of the Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Merger or consolidation, see 54 Okl.St. Ann. § 310.1.

Library References

Partnership ⇌ 363.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 417, 427.

§ 2-310.2. Conversion of certain entities to a limited partnership

A. As used in this section, the term “business entity” means a domestic corporation, general partnership, limited liability company, business trust, common law trust, or other unincorporated association.

B. Any business entity may convert to a domestic limited partnership by complying with subsection H of this section and filing with the Secretary of the Nation in accordance with Section 2-314 of this Title a certificate of conversion to limited partnership that has been executed in accordance with Section 2-312 of this Title, to which shall be attached a certificate of limited partnership that complies with Section 2-309 of this Title and has been executed in accordance with Section 2-312 of this Title.

C. The certificate of conversion to limited partnership shall state:

1. The date on which the business entity was first formed;
2. The name of the business entity immediately prior to the filing of the certificate of conversion to limited partnership;

3. The name of the limited partnership as set forth in its certificate of limited partnership filed in accordance with subsection B of this section; and

4. The future effective date or time, which shall be a date or time certain, of the conversion to a limited partnership if it is not to be effective upon the filing of the certificate of conversion to limited partnership and the certificate of limited partnership.

D. Upon the filing with the Secretary of the Nation the certificate of conversion to limited partnership and the certificate of limited partnership or upon the future effective date or time of the certificate of conversion to limited partnership and the certificate of limited partnership, the business entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of the Muscogee (Creek) Nation Revised Limited Partnership Act¹, except that notwithstanding Section 2-309 of this Title, the existence of the limited partnership shall be deemed to have commenced on the date the business entity was formed.

E. The conversion of any business entity into a domestic limited partnership shall not be deemed to affect any obligations or liabilities of the business entity incurred prior to its conversion to a domestic limited partnership, or the personal liability of any person incurred prior to such conversion.

F. When any conversion shall have become effective under this section, for all purposes of the laws of this Nation, all of the rights, privileges and powers of the business entity that has converted, and all property, real, personal and mixed, and all debts due to the business entity, as well as all other things and causes of action belonging to the business entity, shall be vested in the domestic limited partnership and shall thereafter be the property of the domestic limited partnership as they were of the business entity that has converted, and the title to any real property vested by deed or otherwise in the business entity shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of the business entity shall be preserved unimpaired, and all debts, liabilities and duties of the business entity that has converted shall thenceforth attach to the domestic limited partnership, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

G. Unless otherwise agreed or otherwise provided by any laws of this Nation applicable to the converting business entity, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the business entity and shall constitute a continuation of the existence of the converting business entity in the form of a domestic limited partnership. When a business entity has been converted to a limited partnership pursuant to this section, the limited partnership shall, for all purposes of the laws of this Nation, be deemed to be the same entity as the converting business entity.

H. Prior to filing a certificate of conversion to limited partnership with the Secretary of the Nation, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the business entity and the

conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided that in any event, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a general partner of the limited partnership.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

¹ Title 3A, § 2–301 et seq.

Oklahoma Statutes Annotated

Conversion of a business entity to a limited partnership, see 54 Okl.St. Ann. § 310.2.

Library References

Partnership Ⓒ363.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 417, 427.

§ 2–310.3. Approval of conversion of a limited partnership

A domestic limited partnership may convert to a corporation, general partnership, limited liability company, business trust, common law trust, or other unincorporated association organized, formed or created under the laws of this Nation, upon the authorization of the conversion in accordance with this section. If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the limited partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger or consolidation that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval:

1. By all general partners; and
2. By the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding the foregoing, in addition to any other authorization required by this section, if the entity into which the limited partnership is to convert does not afford all of its interest holders protection against personal liability for the debts of the entity, the conversion must be authorized by any and all partners who would be exposed to personal liability.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Conversion of a limited partnership to a business entity, see 54 Okl.St. Ann. § 310.3.

Library References

Partnership ⌘363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2-311. Cancellation of certificate of limited partnership

A. A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or at any time there are no limited partners, or as provided in subsection B of this section, or upon the filing of a certificate of merger or consolidation if the limited partnership is not the surviving or resulting entity in a merger or consolidation, or upon the conversion of a domestic limited partnership approved in accordance with Section 2-310.3 of this Title. The cancellation of the certificate of limited partnership shall not affect the limited liability of the limited partners nor the rights and responsibilities of the partners as set forth in this act, in the certificate of limited partnership or in the partnership agreement during the period of winding up and prior to termination of the partnership. A certificate of cancellation shall be filed in the Office of the Secretary of the Nation to accomplish the cancellation of a certificate of limited partnership or upon the conversion of a domestic limited partnership approved in accordance with this act and shall set forth:

1. The name of the limited partnership;
2. The date of filing of its certificate of limited partnership;
3. The reason for filing the certificate of cancellation;
4. The effective date, which shall be a date certain, of cancellation if it is not to be effective upon the filing of the certificate; and
5. In the case of the conversion of a domestic limited partnership, the name of the entity to which the domestic limited partnership has been converted; and
6. Any other information the general partners filing the certificate determine.

B. The certificate of limited partnership of a domestic limited partnership shall be deemed to be canceled if the limited partnership shall fail to file an annual certificate provided in this act or the registered agent fee to the Secretary of the Nation due under Section 2-350.1 of this Title for a period of three (3) years from the date it is due, the cancellation to be effective on the third anniversary of the due date.

C. On or before October 31 of each calendar year, the Secretary of the Nation shall publish in at least one newspaper of general circulation in this Nation a list of those domestic limited partnerships whose certificates of limited partnership were canceled on July 1 of the calendar year to subsection B of this section.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Fee for acting as registered agent, penalty for failure to pay, see Title 3A, § 2-350.1.

Oklahoma Statutes Annotated

Cancellation of certificate, see 54 Okl.St. Ann. § 311.

Library References

Partnership \Leftrightarrow 354, 360, 376.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 408, 413, 419, 439 to
441.

§ 2-311.1. Annual certificate for domestic limited partnership and foreign limited partnership

A. Every domestic limited partnership and every foreign limited partnership registered to do business in this Nation shall file a certificate each year in the Office of the Secretary of the Nation which shall confirm it is an active business and include its current mailing address.

B. The annual certificate shall be due on July 1 following the close of the calendar year until the cancellation of the articles of organization.

C. The Secretary of the Nation shall, at least sixty (60) days prior to July 1 of each year, cause to be mailed a notice of the annual certificate to each domestic limited partnership and each foreign limited partnership required to comply with the provisions of this section in care of its registered agent; or, if there is no agent listed upon the records of the Secretary of the Nation, the last known mailing address of the limited partnership.

D. A domestic limited partnership or foreign limited partnership that neglects, refuses or fails to file the annual certificate within sixty (60) days after the date due shall cease to be in good standing as a domestic limited partnership or registered as a foreign limited partnership in this Nation.

E. Until cancellation, a domestic limited partnership that has ceased to be in good standing or a foreign limited partnership that has ceased to be registered by reason of the failure to file the annual certificate with the Secretary of the Nation may be restored to and have the status of a domestic limited partnership in good standing or a foreign limited partnership that is registered in this Nation upon the filing of the annual certificate for each year for which the domestic limited partnership or foreign limited partnership neglected, refused or failed to file the annual certificate within three (3) years from the date it is due.

F. A domestic limited partnership that has ceased to be in good standing by reason of its neglect, refusal or failure to file an annual certificate with the Secretary of the Nation or pay the registered agent fee to the Secretary of the Nation shall remain a domestic limited partnership formed under this act until cancellation of its articles of organization. The Secretary of the Nation shall not accept for filing any certificate or articles, except a certificate of resignation of a registered agent when a successor registered agent is not being appointed, required or permitted by this act to be filed in respect to any domestic limited partnership or foreign limited partnership which has neglected, refused or failed to file an annual certificate, and shall not issue any certificate of good standing with respect to the domestic limited partnership or foreign limited partnership, unless or until the domestic limited partnership or foreign limited partnership shall have been restored to and have the status of a domestic

limited partnership in good standing or a foreign limited partnership duly registered in this Nation.

G. A domestic limited partnership that has ceased to be in good standing or a foreign limited partnership that has ceased to be registered in this Nation by reason of its neglect, refusal or failure to file an annual certificate or pay an annual registered agent fee to the Secretary of the Nation may not maintain any action, suit or proceeding in any court of this Nation until such domestic limited partnership or foreign limited partnership has been restored to and has the status of a domestic limited partnership or foreign limited partnership in good standing or duly registered in this Nation. An action, suit or proceeding may not be maintained in any court of this Nation by any successor or assignee of the domestic limited partnership or foreign limited partnership on any right, claim or demand arising out of the transaction of business by the domestic limited partnership after it has ceased to be in good standing or a foreign limited partnership that has ceased to be registered in this Nation until the domestic limited partnership or foreign limited partnership, or any person that has acquired all or substantially all of its assets, has filed its annual certificate with the Secretary of the Nation or paid its registered agent fee to the Secretary of the Nation then due and payable, together with penalties.

H. The neglect, refusal or failure of a domestic limited partnership or foreign limited partnership to file an annual certificate or pay a registered agent fee to the Secretary of the Nation shall not impair the validity on any contract, deed, mortgage, security interest, lien or act of the domestic limited partnership or foreign limited partnership or prevent the domestic limited partnership or foreign limited partnership from defending any action, suit or proceeding with any court of this Nation.

I. A limited partner of a domestic limited partnership or foreign limited partnership is not liable as a general partner of the domestic limited partnership or foreign limited partnership solely by reason of the neglect, refusal or failure of the domestic limited partnership or foreign limited partnership to file an annual certificate or pay a registered agent fee to the Secretary of the Nation or by reason of the domestic limited partnership or foreign limited partnership ceasing to be in good standing or duly registered.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Annual certificate for domestic limited partnership and foreign limited partnership; reinstatement, see 54 Okl.St. Ann. § 311.1.

Library References

Partnership Ⓒ357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2–312. Certificate, execution of

A. Each certificate required by Sections 2–309 through 2–317 of this Title to be filed in the Office of the Secretary of the Nation shall be executed in the following manner:

Title 3A, § 2–312

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1. An original certificate of limited partnership must be signed by all general partners;
 2. A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;
 3. A certificate of cancellation must be signed by all general partners;
 4. A certificate, certificate of amendment, or certificate of cancellation signed on behalf of a corporation shall be signed by the president or by a vice-president and shall not be required to be attested or sealed; and
 5. Signatures on any certificate need not be acknowledged.
- B. Any person may sign a certificate by an attorney-in-fact but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.
- C. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.
- D. Any signature on any instrument authorized to be filed with the Secretary of the Nation under any provisions of this act may be a facsimile.
- [Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Execution of certificates, see 54 Okl.St. Ann. § 312.

Library References

Partnership ⇨354.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 413.

§ 2–313. Failure or refusal to execute certificates; petition to direct execution

If a person required pursuant to Section 2–312 of this Title to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal, may petition the Muscogee (Creek) Nation District Court where the office required by Section 2–305 of this Title is located to direct execution of the certificate. If the Court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of the Nation to record an appropriate certificate.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Execution of certificate by judicial act, see 54 Okl.St. Ann. § 313.

Library References

Partnership ⇨354.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 413.

§ 2-314. Filing of certificate; Secretary of the Nation; requirements; fees

A. Two signed copies of the certificate of limited partnership of any certificates of amendment, correction, or cancellation or of any judicial decree of amendment or cancellation, and of any certificate of merger or consolidation, any restated certificate, and any certificate of conversion to limited partnership shall be delivered to the Secretary of the Nation. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of the Nation finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Secretary of the Nation shall:

1. Endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;
2. File one duplicate original in his office; and
3. Return the other duplicate original to the person who filed it or his representative.

B. Upon the filing of a certificate of amendment or judicial decree of amendment in the Office of the Secretary of the Nation, the certificate of limited partnership shall be amended as set forth therein and upon the effective date of a certificate of cancellation or a judicial decree of amendment, the certificate of limited partnership is canceled.

C. The following fees shall be paid to the Secretary of the Nation:

1. For filing a certificate of limited partnership, a fee of one hundred dollars (\$100.00); and
2. For filing an amendment to a certificate of limited partnership or a certificate of cancellation, merger, consolidation or conversion, or any other certificate or document for which a fee is not otherwise specified under the Revised Limited Partnership Act a fee of fifty dollars (\$50.00).

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Filing of certificates in office of Oklahoma Secretary of State, see 54 Okl.St. Ann. § 314.

Library References

Partnership ⇌357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2-315. Penalty for false statements in certificate or cancellation; damages

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

1. Any person who executes the certificate or causes another to execute it on his behalf with knowledge that the statement was false at the time the certificate was executed;
2. Any general partner who knew or should have known that the statement was false at the time the certificate was executed; and

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3. Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed thus making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate or to file a petition for its cancellation or amendment pursuant to Section 2–313 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability for false statement in certificate, see 54 Okl.St. Ann. § 315.

Library References

Indians ⇌535.

Partnership ⇌354.

Westlaw Topic Nos. 209, 289.

C.J.S. Indians §§ 151 to 179.

C.J.S. Partnership §§ 408, 413.

§ 2–316. Filing as notice

The fact that a certificate of limited partnership is on file in the Office of the Secretary of the Nation is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Notice, see 54 Okl.St. Ann. § 316.

Library References

Partnership ⇌357.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 411 to 412.

§ 2–317. Delivery or mailing of copy of certificate of limited partnership to each limited partner

Upon the return by the Secretary of the Nation pursuant to Section 2–314 of this Title of a certificate marked “Filed”, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate to each limited partner unless the partnership agreement provides otherwise.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Delivery of certificates to limited partners, see 54 Okl.St. Ann. § 317.

Library References

Partnership ⇌354, 366.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 408, 413, 422 to 423, 425, 430, 432.

§ 2–318. Becoming a limited partner

A. A person becomes a limited partner:

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1. at the time the limited partnership is formed; or
2. at any later time specified in the records of the limited partnership for becoming a limited partner.

B. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

1. In the case of a person acquiring a partnership interest other than by assignment of such interest from a partner, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

2. In the case of an assignee of a partnership interest of a partner:

- a. who has the power, as provided in Section 2-343 of this Title, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power, or

- b. who does not have the power as provided in Section 2-343 of this Title to grant the assignee the right to become a limited partner, upon the consent of all other partners as provided in Section 2-343 of this Title.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Becoming limited partner, additional limited partners, see 54 Okl.St. Ann. § 318.

Library References

Partnership ⇨353, 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 405, 407, 417, 423, 427.

§ 2-319. Agreement to grant limited partners right to vote on per capita basis

Subject to the provisions of Section 2-320 of this Title, the partnership agreement may grant to all or a specified group of the limited partners the right to vote on a per capita or other basis upon any matter.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting, see 54 Okl.St. Ann. § 319.

Library References

Partnership ⇨368.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 424, 431.

§ 2-320. Liability of limited partner

A. Except as provided in subsection D of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited

partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

B. A limited partner does not participate in the control of the business within the meaning of subsection A of this section, solely by doing one or more of the following:

1. Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

2. Consulting with and advising a general partner with respect to the business of the limited partnership;

3. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership, or acting as endorser of its obligations, or providing collateral for its borrows;

4. Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

5. Requesting or attending a meeting of partners;

6. Proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

a. the dissolution and winding up of the limited partnership or continuation of the business of the limited partnership upon the occurrence of any event which otherwise requires the winding up and termination of its affairs,

b. the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership,

c. the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business,

d. a change in the nature of the business,

e. the admission or removal of a general partner,

f. the admission or removal of a limited partner,

g. a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners,

h. an amendment to the partnership agreement or certificate of limited partnership,

i. matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners, or

j. any other matter required by law or regulation to be submitted to a vote of limited partners;

7. Winding up the limited partnership pursuant to Section 2-347 of this Title; or

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8. Exercising any right or power permitted to limited partners under the Muscogee (Creek) Nation Limited Partnership Act and not specifically enumerated in this subsection.

C. The enumeration in subsection B of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

D. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subparagraph a of paragraph 2 of Section 2-303 of this Title, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability to third parties, see 54 Okl.St. Ann. § 320.

Library References

Partnership \Leftrightarrow 371.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 429, 431, 438.

§ 2-321. Person making contribution and erroneously, but in good faith believes to be limited partner; liability as general partner

A. Except as provided in subsection B of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

1. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
2. Withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of the Nation a certificate declaring withdrawal pursuant to this section.

B. A person who makes a contribution of the kind described in subsection A of this section, is liable as a general partner to any third party who transacts business with the enterprise:

1. before the person withdraws and an appropriate certificate is filed to show withdrawal, or
2. before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Person erroneously believing himself limited partner, see 54 Okl.St. Ann. § 321.

Library References

Partnership ⌘371.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 429, 431, 438.

§ 2–322. Rights of limited partner

Each limited partner has the right to:

1. Upon reasonable notification inspect and copy any of the partnership records required to be maintained pursuant to Section 2–306 of this Title; and
2. Obtain from the general partners from time to time upon reasonable demand true and full information regarding the state of the business and financial condition of the limited partnership, a copy of the limited partnership’s federal and state income tax returns for each year promptly after becoming available and other information regarding the affairs of the limited partnership as is just and reasonable.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Information, see 54 Okl.St. Ann. § 322.

Library References

Partnership ⌘371.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 429, 431, 438.

§ 2–323. Admittance of additional general partners

After the filing of a limited partnership’s original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Admission of additional general partners, see 54 Okl.St. Ann. § 323.

Library References

Partnership ⌘363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2–324. Person ceases to be general partner upon certain following events

A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in Section 2–333 of this Title;
2. The general partner is removed as a general partner in accordance with the partnership agreement;

3. Unless otherwise provided in writing in the partnership agreement, the general partner:

- a. makes an assignment for the benefit of creditors,
- b. files a voluntary petition in bankruptcy,
- c. is adjudicated a bankrupt or insolvent,
- d. files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief pursuant to any statute, law, or regulation,
- e. files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature, or
- f. seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

4. Unless otherwise provided in writing in the partnership agreement, one hundred twenty (120) days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief pursuant to any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any such stay, the appointment is not vacated;

5. In the case of a general partner who is a natural person:

- a. his death, or
- b. the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

6. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust but not merely the substitution of a new trustee;

7. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership except as otherwise provided in the partnership agreement;

8. In the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; or

9. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Events of withdrawal, see 54 Okl.St. Ann. § 324.

Library References

Partnership Ⓒ363.
 Westlaw Topic No. 289.
 C.J.S. Partnership §§ 417, 427.

§ 2–325. Rights, powers, and liabilities of general partner of limited partnership

A. Except as provided in this act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

B. Except as provided in this act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

General powers and liabilities, see 54 Okl.St. Ann. § 325.

Library References

Partnership Ⓒ366.
 Westlaw Topic No. 289.

C.J.S. Partnership §§ 422 to 423, 425, 430,
 432.

§ 2–326. General partner; share in profits and losses; contributions

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers and is subject to the restrictions and liabilities of a general partner and, except as provided in the partnership agreement, also has the powers and is subject to the restrictions of a limited partner to the extent of his participation in the partnership as a limited partner.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Contributions by a general partner, see 54 Okl.St. Ann. § 326.

Library References

Partnership Ⓒ366.
 Westlaw Topic No. 289.

C.J.S. Partnership §§ 422 to 423, 425, 430,
 432.

§ 2–327. Agreement to grant general partners right to vote on per capita basis

The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Voting by general partner, see 54 Okl.St. Ann. § 327.

Library References

Partnership Ⓔ366.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 422 to 423, 425, 430,
432.

§ 2–328. Contribution of partner; form

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

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Form of contribution, see 54 Okl.St. Ann. § 328.

Library References

Partnership Ⓔ355.
Westlaw Topic No. 289.
C.J.S. Partnership § 409.

§ 2–329. Promise to contribute; obligation

A. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

B. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value as stated in the partnership records required to be kept pursuant to Section 2–306 of this Title of the stated contribution that has not been made.

C. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability for contribution, see 54 Okl.St. Ann. § 329.

Library References

Partnership Ⓒ355.
Westlaw Topic No. 289.
C.J.S. Partnership § 409.

§ 2–330. Allocation of profits and losses of limited partnership

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 2–306 of this Title, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Sharing of profits and losses, see 54 Okl.St. Ann. § 330.

Library References

Partnership Ⓒ349, 366, 367. C.J.S. Partnership §§ 402 to 403, 422 to 423,
Westlaw Topic No. 289. 425 to 426, 428, 430, 432.

§ 2–331. Allocation of distributions of cash or other assets of limited partnership

Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 2–306 of this Title, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Sharing of distributions, see 54 Okl.St. Ann. § 331.

Library References

Partnership Ⓒ349, 364, 366, 367. C.J.S. Partnership §§ 402 to 403, 422 to 426,
Westlaw Topic No. 289. 428, 430, 432.

§ 2–332. Right to receive distributions from limited partnership before withdrawal and before dissolution

Except as provided in Sections 2–332 through 2–339 of this Title, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up

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thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Interim distributions, see 54 Okl.St. Ann. § 332.

Library References

Partnership \Leftrightarrow 349, 364, 366, 367.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 402 to 403, 422 to 426,
428, 430, 432.

§ 2-333. Withdrawal of general partner from limited partnership

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Withdrawal of general partner, see 54 Okl.St. Ann. § 333.

Library References

Partnership \Leftrightarrow 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2-334. Withdrawal of limited partner from limited partnership

Unless the partnership agreement specifically permits in writing the power to withdraw voluntarily, a limited partner may not withdraw at any time. If the partnership agreement specifically provides in writing the power to withdraw voluntarily, but the withdrawal occurs as a result of wrongful conduct of the limited partner, a limited partner's voluntary withdrawal shall constitute a breach of the partnership agreement and the limited partnership may recover from the withdrawing limited partner damages as are caused by such wrongful withdrawal. The limited partnership may offset its damages against the amount otherwise distributable to the limited partner, in addition pursuing any remedies provided for the partner agreement or otherwise available under applicable law. The limited partnership shall not, however, be entitled to any equitable remedy that would prevent limited partner from exercising the power to withdraw if such power is permitted in the partnership agreement.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Withdrawal of limited partner, see 54 Okl.St. Ann. § 334.

Library References

Partnership \Leftrightarrow 363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2–335. Withdrawing partner entitled to receive distribution

Except as provided in Sections 2–332 through 2–339 of this Title, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he or she is entitled under the partnership agreement. If not otherwise provided in the partnership agreement, the withdrawing general partner is entitled to receive, within a reasonable time after withdrawal, the value of his or her interest as a general partner of the limited partnership as of the date of withdrawal based upon his or her right to share in distributions from the limited partnership with respect to his or her interest as a general partner. If the partnership agreement permits a limited partner to withdraw pursuant to Section 2–334 of this Title, but does not provide for a distribution upon such withdrawal, the withdrawing limited partner is entitled to receive, within a reasonable time after withdrawal, the value of his or her interest as a limited partner of the limited partnership as of the date of withdrawal based upon his or her right to share in distributions from the limited partnership with respect to his or her interest as a limited partner.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution upon withdrawal, see 54 Okl.St. Ann. § 335.

Library References

Partnership Ⓒ364, 376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 424, 439 to 441.

§ 2–336. Allowable distributions

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution in kind, see 54 Okl.St. Ann. § 336.

Library References

Partnership Ⓒ364.
Westlaw Topic No. 289.
C.J.S. Partnership § 424.

§ 2-337. Right of partner to remedies available to creditor

At the time a partner becomes entitled to receive a distribution, he has the status of and is entitled to all remedies available to a creditor of the limited partnership with respect to the distribution.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Right to distribution, see 54 Okl.St. Ann. § 337.

Library References

Partnership Ⓒ364, 370.

Westlaw Topic No. 289.

C.J.S. Partnership §§ 424 to 425, 437.

§ 2-338. Limitations on distribution to partner

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership other than liabilities to partners on account of their partnership interests exceed the fair value of the partnership assets.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Limitations on distribution, see 54 Okl.St. Ann. § 338.

Library References

Partnership Ⓒ364.

Westlaw Topic No. 289.

C.J.S. Partnership § 424.

§ 2-339. Return of contribution

A. If a partner has received the return of any part of his contribution without violation of the partnership agreement or this act, he is liable to the limited partnership for a period of one (1) year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

B. If a partner has received the return of any part of his contribution in violation of the partnership agreement or this act, he is liable to the limited partnership for a period of six (6) years thereafter for the amount of the contribution wrongfully returned.

C. A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value as set forth in the partnership records required to be kept pursuant to Section 2-306 of this Title, of his contribution which has not been distributed to him. For purposes of this subsection only, a partner's share of the fair value of the net assets of the limited partnership shall be based on his proportionate part of the total capital contributions paid by all partners as of the date of any distribution to such partner.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Liability upon return of contribution, see 54 Okl.St. Ann. § 339.

Library References

Partnership Ⓒ355, 364, 366.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 409, 422 to 425, 430,
432.

§ 2–340. Partnership interest as personal property

A partnership interest is personal property.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Nature of partnership interest, see 54 Okl.St. Ann. § 340.

Library References

Partnership Ⓒ367.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 426, 428, 432.

§ 2–341. Partnership interest assignable

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Assignment of partnership interest, see 54 Okl.St. Ann. § 341.

Library References

Partnership Ⓒ367, 376.
Westlaw Topic No. 289.

C.J.S. Partnership §§ 426, 428, 432, 439 to
441.

§ 2–342. Interest on unsatisfied amount of judgment charged to partnership interest

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's partnership interest. This act does not deprive any partner of the benefit of any exemption laws applicable to his or her partnership interest.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Rights of creditor, see 54 Okl.St. Ann. § 342.

Library References

Partnership Ⓒ371.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 429, 431, 438.

§ 2-343. Assignee may become limited partner

A. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

1. The assignor gives the assignee that right in accordance with authority described in the partnership agreement; or
2. All other partners consent.

B. An assignee who has become a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and this act. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Sections 2-328 through 2-339 of this Title. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

C. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership pursuant to Sections 2-315 and 2-329 of this Title.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Cross References

Becoming a limited partner, see Title 3A, § 2-318.

Oklahoma Statutes Annotated

Right of assignee to become limited partner, see 54 Okl.St. Ann. § 343.

Library References

Partnership Ⓒ363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2-344. Effect of death or incompetence of partner

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust or other entity that is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Power of estate of deceased or incompetent partner, see 54 Okl.St. Ann. § 344.

Library References

Partnership ⌘363.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 417, 427.

§ 2–345. Dissolve and winding up of limited partnership

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

1. At the time specified in the certificate of limited partnership;
2. Upon the happening of events specified in writing in the partnership agreement;
3. Written consent of all partners or such lesser number as may be provided in the partnership agreement;
4. An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not required to be wound up by reason of any event of withdrawal, if, within ninety (90) days after the withdrawal, all remaining partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
5. Entry of a decree of judicial dissolution pursuant to Section 2–346 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Nonjudicial dissolution, see 54 Okl.St. Ann. § 345.

Library References

Partnership ⌘376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 439 to 441.

§ 2–346. Decree of dissolution by Muscogee (Creek) Nation District Court

On application by or for a partner, the Muscogee (Creek) Nation District Court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Judicial dissolution, see 54 Okl.St. Ann. § 346.

Library References

Partnership ⌘376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 439 to 441.

§ 2-347. Winding up of limited partnership's affairs

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if no general partners remain, the limited partners may wind up the limited partnership's affairs; but the district court may order wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Winding up, see 54 Okl.St. Ann. § 347.

Library References

Partnership Ⓒ376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 439 to 441.

§ 2-348. Distribution of assets upon winding up of limited partnership

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

1. To creditors, including partners who are creditors, to the extent permitted by law in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners pursuant to Section 2-332 or 2-335 of this Title;
2. Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions pursuant to Section 2-332 or 2-335 of this Title; and
3. Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests in the proportions in which the partners share in distributions.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Distribution of assets, see 54 Okl.St. Ann. § 348.

Library References

Partnership Ⓒ376.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 439 to 441.

§ 2-349. Foreign limited partnership; laws governing

Subject to the Constitution and laws of this Nation:

1. The laws of jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and
2. A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Law governing foreign limited partnerships, see 54 Okl.St. Ann. § 349.

Library References

Partnership ⇌ 349, 350.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 402 to 404.

§ 2–350. Registration of foreign limited partnerships

A. Before transacting business in or with this Nation, a foreign limited partnership shall register with the Secretary of the Nation. In order to register, a foreign limited partnership shall:

1. Pay to the Secretary of the Nation a registration fee in the amount of three hundred dollars (\$300.00);

2. Provide the Secretary of the Nation with a certificate from the certifying officer of the jurisdiction of the foreign limited partnership's organization attesting to the foreign limited partnership's organization under the laws of such jurisdiction; and

3. Submit to the Secretary of the Nation in duplicate, an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

a. the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this Nation,

b. the jurisdiction and date of its formation,

c. the name and street address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this Nation, a domestic corporation, limited partnership, limited liability company or a foreign corporation, limited partnership, or limited liability company authorized to do business in this Nation,

d. a statement that the Secretary of the Nation is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subparagraph c of this paragraph or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence,

e. the address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited partnership,

f. the name and business address of each general partner, and

g. the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this Nation is canceled or withdrawn.

B. A foreign limited partnership or a partnership, a limited liability company, a business or other trust or association or corporation formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws

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Title 3A, § 2–351

of any state or Nation shall not be deemed to be doing business in this Nation solely by reasons of its being a partner in a domestic limited partnership or foreign limited partnership doing business in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Registration, see 54 Okl.St. Ann. § 350.

Library References

Partnership ⌘354, 357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 411 to 413.

§ 2–350.1. Fee for acting as registered agent; penalty for failure to pay

Each domestic and foreign limited partnership for which the Secretary of the Nation acts as registered agent, shall pay a fee of one hundred dollars (\$100.00) on or before July 1 of each year to the Office of the Secretary of the Nation for deposit in the General Fund for the Nation. Failure to pay the registered agent fee by the due date shall subject the limited partnership to the provisions of Section 2–311 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Cross References

Resignation of registered agent, Secretary of the Nation as acting agent, fee, see Title 3A, § 2-305.1.

Oklahoma Statutes Annotated

Registered agent fees, see 54 Okl.St. Ann. § 350.1.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2–351. Filing and issuance of certificate of registration

A. If the Secretary of the Nation finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

1. Endorse on the application the word “Filed”, and the month, day and year of the filing thereof;
2. File in his office a duplicate original of the application; and
3. Issue a certificate of registration to transact business in this Nation.

B. The certificate of registration and a duplicate original of the application shall be returned to the person who filed the application or his representative.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Issuance of registration, see 54 Okl.St. Ann. § 351.

Library References

Partnership ⌘354, 357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 408, 411 to 413.

§ 2–352. Foreign limited partnership registration; name in which to register

Subject to the provisions of Section 2–303 of this Title, a foreign limited partnership may register with the Secretary of the Nation under the name which it is registered in its jurisdiction of organization and that could be registered by a domestic limited partnership. If the name of a foreign limited partnership does not satisfy the requirements of Section 2–303 of this Title, the foreign limited partnership may file with the Secretary of the Nation a statement by its general partner duly adopting a fictitious name that is available, and which satisfies the requirements of Section 2–303 of this Title, which shall be used to the exclusion of its true name when transacting business within this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Name of foreign limited partnership, see 54 Okl.St. Ann. § 352.

Library References

Partnership ⌘358.
Westlaw Topic No. 289.
C.J.S. Partnership § 415.

§ 2–353. Corrections of inaccurate statements in application

A. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the Office of the Secretary of the Nation a certificate, signed by a general partner, correcting the statement. At the time of filing of the certificate, a fee in the amount of one hundred dollars (\$100.00) shall be paid to the Secretary of the Nation; provided however, for a certificate solely reflecting a change of mailing address, the fee shall be ten dollars (\$10.00).

B. A foreign limited partnership authorized to transact business in this Nation shall promptly file a certificate, issued by the proper officer of the Nation or jurisdiction of its organization, attesting to the occurrence of a merger, in the Office of the Secretary of the Nation and pay the fee provided for in subsection A of this section, whenever the foreign limited partnership is the surviving foreign limited partnership and the merger:

1. Changes any statement in the application of registration of the foreign limited partnership; or
2. Involves any other foreign business entity authorized to transact business in this Nation.

C. If the merger changes any arrangements or other facts described in the application for registration of the surviving foreign limited partnership, it shall also comply with subsection A of this section; provided, that it shall not be required to pay an additional fee.

D. Whenever a foreign limited partnership authorized to transact business in this Nation ceases to exist because of a statutory merger or consolidation with a foreign business entity not qualified to transact business in this Nation, it shall comply with the provisions of Section 2-354 of this Title.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Changes and amendments, see 54 Okl.St. Ann. § 353.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2-353.1. Change of location of registered office or registered agent

A foreign limited partnership may change the location of its registered office or its registered agent in this Nation at any time as it may see fit. Such change may be made by filing in the Office of the Secretary of the Nation a certificate, signed by a general partner, detailing the change or changes. At the time of filing of any such certificate, a fee in the amount of twenty-five dollars (\$25.00) shall be paid to the Secretary of the Nation.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Change in location of registered office or agent, see 54 Okl.St. Ann. § 353.1.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2-353.2. Resignation of registered agent of foreign limited partnership

The registered agent of a foreign limited partnership may resign without appointing a successor by filing in the name of the limited partnership a certificate with the Secretary of the Nation; but such resignation shall not become effective until thirty (30) days after each certificate is filed. There shall be included in the certificate a statement of such registered agent, if an individual, or of the president, a vice-president, or the secretary thereof, if a corporation, that at least thirty (30) days prior to the date of the filing of the certificate, due notice of the resignation of the registered agent was sent by certified or registered mail to the limited partnership for which such registered agent was acting, at the principal office thereof, if known to the registered agent or, if not, to the last-known address of the attorney or other individual at whose request the registered agent was appointed for such corporation. At the

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time of the filing of any such certificate, a fee in the amount of twenty-five dollars (\$25.00) shall be paid to the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Resignation of registered agent, see 54 Okl.St. Ann. § 353.2.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2–353.3. Appointment or designation of agent in case of resignation

If a registered agent resigns or an agent was not appointed in the application for registration, a foreign limited partnership may appoint or designate a registered agent and street address of its registered office at anytime. The appointment or designation shall be made in the same manner as prescribed in Section 2–353.1.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Appointment or designation of agent in case of resignation, see 54 Okl.St. Ann. § 353.3.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2–354. Registration cancellation

A foreign limited partnership may cancel its registration by filing with the Secretary of the Nation a certificate of cancellation signed by a general partner and paying a cancellation fee in the amount of one hundred dollars (\$100.00). A cancellation does not terminate the authority of the Secretary of the Nation to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this Nation, and must include the address to which the Secretary of the Nation may mail any service of process against the limited partnership that may be served upon the Secretary of the Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cancellation of registration, see 54 Okl.St. Ann. § 354.

Library References

Partnership ⌘357.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412.

§ 2–355. Business transactions of foreign limited partnerships that do not register in Nation

A. A foreign limited partnership transacting business in or with this Nation may not maintain any action, suit or proceeding in any court of this Nation until it has registered in this Nation.

B. The failure of a foreign limited partnership to register in this Nation does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit or proceeding in any court of this Nation.

C. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this Nation without registration.

D. A foreign limited partnership, by transacting business in this Nation without registration, appoints the Secretary of the Nation as its agent for service of process with respect to causes of action arising out of the transaction of business in this Nation.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Transaction of business without registration, see 54 Okl.St. Ann. § 355.

Library References

Partnership ⌘357, 375.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412, 436 to 437.

§ 2–356. Action to restrain foreign limited partnership from transacting business in Nation

The Attorney General for the Muscogee (Creek) Nation may bring an action to restrain a foreign limited partnership from transacting business in this Nation in violation of Sections 2–349 through 2–355 of this Title.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Action by Attorney General, see 54 Okl.St. Ann. § 356.

Library References

Partnership ⌘357, 375.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 411 to 412, 436 to 437.

§ 2–357. Limited partner; right to bring action

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Right of action, see 54 Okl.St. Ann. § 357.

Library References

Partnership ⌘370.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 425, 437.

§ 2–358. Derivative actions; plaintiffs

In a derivative action, the plaintiff must be a partner at the time of bringing the action. He must also have been a partner at the time of the transaction of which he complains or his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Proper plaintiff, see 54 Okl.St. Ann. § 358.

Library References

Partnership ⌘370.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 425, 437.

§ 2–359. Complaint in derivative action

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

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Pleading, see 54 Okl.St. Ann. § 359.

Library References

Partnership ⌘370.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 425, 437.

§ 2–360. Award of expenses

If a derivative action is successful in whole or in part or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses including reasonable attorney’s fees and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Expenses, see 54 Okl.St. Ann. § 360.

Library References

Partnership ⌘370.
Westlaw Topic No. 289.
C.J.S. Partnership §§ 425, 437.

§ 2–361. Applicability and construction

This act shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states and Nations enacting it.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Construction and application, see 54 Okl.St. Ann. § 361.

§ 2–362. Governing of prior limited partnerships

A. Limited partnerships organized under any statute of this Nation prior to November 1, 2007, shall be governed under law in effect prior to such date, except that the provisions of Section 2–312 of this Title shall apply to the filing of amendments to certificates or cancellations of certificates of limited partnerships organized under law in effect prior to November 1, 2007.

B. Neither the validity of any limited partnership heretofore organized, nor the limited liability of limited partners of any such limited partnership, shall be affected as a result of the fact that any certificate of limited partnership, amended certificate of limited partnership or certificate of cancellation of limited partnership heretofore filed with the Secretary of the Nation was not sworn to by any or all partners or was signed or sworn to by a duly authorized agent or attorney-in-fact.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Prior limited partnerships, see 54 Okl.St. Ann. § 362.

Library References

Partnership ⌘351.
Westlaw Topic No. 289.
C.J.S. Partnership § 404.

§ 2–363. Provisions governing cases not provided for in act

In any case not provided for in this act, the provisions of the Muscogee (Creek) Nation Partnership Act govern.

[Added by NCA 07–112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Cases not provided for, see 54 Okl.St. Ann. § 363.

Library References

Partnership ⌘350.
Westlaw Topic No. 289.
C.J.S. Partnership § 404.

Title 3A, § 2-364

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§ 2-364. Applicability and effective date

This act shall become effective January 1, 2008, and shall apply to all domestic limited partnerships formed thereafter and to all foreign limited partnerships filing for certificates after such effective date regardless of when formed.

[Added by NCA 07-112, § 6, eff. May 2, 2007.]

Oklahoma Statutes Annotated

Effective date, see 54 Okl.St. Ann. § 364.

§ 2-365. No impairment to continued existence of existing limited partnership

The amendment of any statutory provision by this act does not impair, or otherwise affect, the continued existence of a limited partnership existing on November 1, 2007, nor does the amendment of any existing statutory provision by this act impair any contract or affect any right accrued before November 1, 2007.

Oklahoma Statutes Annotated

Savings clause, see 54 Okl.St. Ann. § 365.

TITLE 4. BURIAL/CEMETERIES

HERRICKV/HOPELKV

Chapter	Section
1. BURIAL ASSISTANCE; GRAVE PREPARATION ASSISTANCE.	1-101
2. TRIBAL CEMETERIES.	2-101

CHAPTER 1. BURIAL ASSISTANCE; GRAVE PREPARATION ASSISTANCE

Section
1-101. Burial assistance.
1-102. Preparation of graves.
1-103. Grave digging assistance program.
1-104. Funeral expenses for original allottees.

§ 1-101. Burial assistance

A. Findings. The National Council finds that:

1. Many families of deceased Tribal members are not in a financial position to meet the rising costs associated with funeral expenses.
2. The Muscogee (Creek) Nation has a duty to assist the families of Tribal citizens in funeral expenses, grave digging services, and providing food for funerals.

B. Guidelines.

1. The eligibility requirements shall be:
 - a. The deceased is (i) an enrolled Muscogee (Creek) Indian who can verify his or her citizenship with a certified Tribal enrollment card or (ii) a non-enrolled Creek under one year of age who would otherwise be eligible to enroll; and
 - b. Proof of death is verified in writing, by the funeral home.
2. A payment of two thousand dollars (\$2,000.00) after the verification of citizenship shall be remitted to the funeral home performing the services for a deceased, provided that said amount shall not exceed the burial cost. In the event that the burial cost is less than two thousand dollars (\$2,000), the funeral home performing the services for the deceased shall only receive the amount of the burial cost.
3. The responsible party shall be eligible for a two hundred dollars (\$200.00) food voucher to be used for wake and/or other family church related dinners associated with the funeral.
4. Application must be made within six months from date of death by the responsible party.
5. Enrolled Muscogee (Creek) Indians who are eligible for Bureau of Indian Affairs (BIA) Burial Assistance may receive additional assistance from the

Title 4, § 1–101

BURIAL/CEMETERIES

Tribal Burial Assistance Program in the event there are insufficient funds in the BIA program or the Burial Program is deleted from the Federal Budget. The responsible party must apply for this assistance and comply with the requirements for the BIA Burial Assistance Program. The additional assistance will be given based on the amount the applicant is eligible to receive according to BIA guidelines.

[NCA 01–158, §§ 1, 3, eff. Oct. 1, 2001; amended by NCA 02–085, § 1, approved May 30, 2002; NCA 03–158, § 1, approved Sept. 2, 2003; NCA 03–182, § 1 approved Nov. 3, 2003; NCA 05–233, § 1, eff. Sept. 30, 2005.]

Cross References

Budget, burial assistance, see Title 37, § 2–133.

§ 1–102. Preparation of graves

With the approval of a budget and program guidelines by the Tribal Affairs Committee, the National Council hereby authorizes the Principal Chief to expend ten thousand dollars (\$10,000.00) for expenses related to the preparation of graves for Tribal citizens. The administration of this Program shall be under the authority of the Deputy Director of Tribal Affairs.

[NCA 99–29, § 104, approved Aug. 3, 1999.]

Cross References

Budget, grave preparation expenses, see Title 37, § 2–121.

§ 1–103. Grave digging assistance program

1. Services. The Tribal Driveways Program shall provide grave digging services to eligible Tribal citizens to assist them with the hardship of burying a loved family member, unless the family’s chosen cemetery has restrictions or covenants prohibiting outside persons or entities from digging graves.

2. Eligibility requirements shall be as follows:

a. The deceased individual must be an enrolled member of the Muscogee (Creek) Nation with membership verified by a certified Tribal enrollment card or a non-enrolled Creek under one (1) year of age whose parent is an enrolled member of the Muscogee (Creek) Nation when proof of death is verified in writing by the funeral home.

b. The individual must be buried within the territorial jurisdiction of the Muscogee (Creek) Nation.

3. Guidelines, applications, and approvals:

a. The applicant for services shall complete the “Grave Digging Assistance Application” provided by the Burial Assistance Program.

b. The applicant must fill out the application completely and provide a copy of the Tribal enrollment card for the deceased individual to be considered for grave digging services. Failure to provide all necessary information may delay the application process.

c. The Burial Assistance Program shall forward completed applications to the Tribal Driveways Program.

d. Selection for services shall be made by the Tribal Driveways Program Supervisor and the Deputy Director of Tribal Affairs or his designee. A decision to grant or deny an application shall be based on information contained in the application and current funding available to the Tribal Driveways Program.

[NCA 01-158, §§ 1, 3, eff. Oct. 1, 2001; amended by NCA 02-085, § 1, approved May 30, 2002; NCA 03-118 § 1, 2, eff. Sept. 2, 2003; NCA 03-158, § 1, approved Sept. 2, 2003; NCA 03-182, § 1, eff. Nov. 3, 2003.]

§ 1-104. Funeral expenses for original allottees

A. Findings. The National Council finds that:

1. There are only thirteen (13) of the original twelve thousand thirty-nine (12,029) Muscogee (Creek) Nation citizens whose names appeared on the final rolls of the 1906 Dawes Commission still living.

2. These remaining Original Allottees hold a special place within the Muscogee (Creek) Nation.

3. The Muscogee (Creek) Nation desires to help pay for the funeral expenses of the remaining Original Allottees, in appreciation of their unique status to the Nation.

4. The requested special appropriation would enable the Muscogee (Creek) Nation Social Services Department to pay a portion of the funeral expenses of the remaining thirteen (13) Original Allottees, not to exceed five thousand and no/100 dollars (\$5,000.00) per each individual original allottee's funeral.

B. Appropriation. The sum of sixty five thousand and no/100 dollars (\$65,000.00) is hereby appropriated from the Bingo Revenue Fund Account for the implementation of this Act. All Tribal funds appropriated by implementation of this Act shall carry forward until fully expended; provided that if any Tribal funds appropriated by implementation of this Act remain unexpended after the passing of the last Original Allottee the funds shall be returned to the Tribal Treasury for future appropriation by the National Council.

C. Authorization. The National Council hereby authorizes the Principal Chief to expend the sum of sixty five thousand and no/100 dollars (\$65,000.00) from the Bingo Revenue Fund Account to pay a portion of the funeral expenses of the remaining Original Allottees, not to exceed five thousand and no/100 dollars (\$5,000.00) for each Original Allottee's funeral.

D. Accountability. To receive funeral services funding after the passing of the Original Allottee, the Original Allottee's family shall contact the Muscogee (Creek) Nation Social Services Department to obtain an application for services. The Original Allottee's family shall complete the application and return it to the Social Services Department, along with a copy of the Original Allottee's burial contract which shall contain the name of the funeral home conducting the services and the amount requested. The Social Services Department shall verify that the funeral home is providing funeral services for the Original Allottee and the amount. The Social Services Department shall request payment from the Office of the Controller who shall make payment directly to the funeral home providing the services, either (a) for the actual amount of the funeral not to exceed five thousand dollars (\$5,000) or (b) five

Title 4, § 1–104

BURIAL/CEMETERIES

thousand dollars (\$5,000). Any funeral costs exceeding five thousand dollars (\$5,000.00) shall be the responsibility of the Original Allottee's family. The Original Allottee's family is allowed to collect either the five thousand dollars (\$5,000) provided to Original Allottees under this Act or the two thousand dollars (\$2,000.00) provided to Tribal citizens under the Burial Assistance Program, but may not receive services from both. No financial obligations shall be incurred without prior approval by the Controller.

[NCA 03–183, §§ 1–5, approved Sept. 30, 2003; amended by NCA 03–236, § 1, approved Dec. 29, 2003.]

Library References

Indians ⇄210, 222.
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to
72, 180.

CHAPTER 2. TRIBAL CEMETERIES

Section

2-101. Location/legal description.

2-102. Qualifications.

2-103. Authorization.

Historical and Statutory Notes

NCA 95-153, § 101, provides:

“Findings: The National Council finds that:

“A. The Muscogee Nation provides for its deceased enrolled citizens respectful funeral-related services.

“B. Many citizens, upon their death, do not have a readily available burial plot for their remains.

“C. A tribal cemetery will relieve the survivors of a severe financial burden.

“D. A tribal cemetery will allow for the continuation of various traditions of the Muscogee people.”

The following guidelines are attached to NCA 95-153:

“FUNERAL ASSISTANCE

“1. Requirements -

“a) Statement from funeral home with the signature of the funeral home director.

“b) Deceased Citizenship Card.

“2. Assistance -

“a) Up to \$1,000;

“b) Grant shall be sent to funeral home;

“c) The Creek Nation will retrocede on any account, up to six (6) months, with proof of payment.

“d) An individual who has responsibility for the deceased should fill a claim within 6 (6) months of death.

“2. Food for Funeral -

“a) Individual responsible for funeral expenses or authorizing representative may apply for food;

“b) A food voucher of \$100—made out to a food vendor (grocery store);

“c) Any expenses over \$100 is the responsibility of the designated individual;

“d) In case of weekend—contact Lighthorse office.”

§ 2-101. Location/legal description

Twenty acres or two ten-acre plots shall be designated in the following manner as a cemetery:

A. McIntosh District:

Ten acres in the W1/2 NE 1/4 of Section 36-T9N-R13E, McIntosh County, Oklahoma.

B. Okmulgee District:

Ten acres in the NW 1/4 NE 1/4 of Section 19 or SW 1/4 SE 1/4 of Section 18 both in T13N-R13E, Okmulgee County, Oklahoma.

[NCA 95-153, § 103, passed Dec. 16, 1995, returned unsigned, eff. on Jan. 5, 1996.]

Oklahoma Statutes Annotated

Cemetery corporations, surveys and plats, see 8 Okl.St. Ann. § 4.

§ 2-102. Qualifications

Qualifications for a burial plot shall be the same as the qualifications for the Tribal Burial Program administered by Social Services program (See Attached Tribal Burial Program Guidelines) with the addition of the following guideline:

The surviving spouse of an enrolled Creek citizen, if the surviving spouse is an enrolled member of a federally-recognized Tribe or possesses a CDIB card.

[NCA 95-153, § 104, passed Dec. 16, 1995, returned unsigned, eff. on Jan. 5, 1996.]

Title 4, § 2-103

BURIAL/CEMETERIES

§ 2-103. Authorization

The National Council hereby authorizes the Principal Chief to initiate implementation of this project to include, but not limited to, the following: location of suitable sites on Tribal land for Tribal cemeteries; coordination with the County Commissioners to provide access on section lines cited herein; to utilize Tribal programs (Road Services) to clear site(s) and to construct and maintain roads to cemetery sites.

[NCA 95-153, § 105, passed Dec. 16, 1995, returned unsigned, eff. on Jan. 5, 1996.]

Oklahoma Statutes Annotated

Indian lands reserved for rural cemeteries, title to county commissioners in trust, conveyance to cemetery corporations, see 8 Okl.St. Ann. § 81.

Library References

Indians ☞ 144, 216.

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53, 59.

**TITLE 5. CEREMONIAL
GROUNDS/CHURCHES
PASKOFA/MEKUSVPA CUKO**

Chapter	Section
1. PROTECTION AND PRESERVATION OF CEREMONIAL SITES.	1-101
2. FINANCIAL ASSISTANCE.	2-101
3. DAY OF PRAYER.	3-101

**CHAPTER 1. PROTECTION AND PRESERVATION
OF CEREMONIAL SITES**

Section
1-101. Purpose of chapter.
1-102. Acquisition of sites.
1-103. Acquisition of access to sites.
1-104. Sanctity ensured.
1-105. Ceremonial traditional religion.

United States Code Annotated

Traditional religions, protection and preservation, see 42 U.S.C.A. § 1996.

§ 1-101. Purpose of chapter

The purpose of this chapter shall be to fortify protection and preservation by law, the cultural traditions and ceremonial sites of the Muscogee (Creek) people.

[NCA 90-44, § 102, approved May 29, 1990.]

Library References

Indians ☞144.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 50, 53.

§ 1-102. Acquisition of sites

A. This chapter, for the duration of the sovereign powers of the Muscogee (Creek) Nation, shall provide the Principal Chief, or designee and the Speaker of the National Council or his designee the power to negotiate for purchase of accommodating acreage on which ceremonial sites are located. A law of authorization shall be enacted for this purpose in each individual case.

B. The Creek Nation Realty shall be responsible for assessing a fair market value, providing right of ways, easements, surveys, and land descriptions for recommendations to the National Council and Principal Chief.

C. The Creek Nation Realty, with the National Council Committee on Tribal Affairs shall be responsible for drafting and finalizing the appropriate land

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CEREMONIAL GROUNDS/CHURCHES

lease and/or option to purchase agreement to accommodate the uniqueness of this chapter.

D. Upon purchase, ceremonial lands shall be put into trust status. All leases for purposes of this chapter shall be made for no less than twenty-five (25) years and shall abide by the provisions of this chapter.

[NCA 90–44, § 102, approved May 29, 1990.]

Library References

Indians ☞144, 210, 216.
Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53, 57 to 59, 66 to 72.

§ 1–103. Acquisition of access to sites

A. In the case of access to located nonfunctional historic ceremonial sites only, this chapter shall provide the Speaker of the National Council, the authority to designate members of the National Council and Tribal members to arrange and deliberate with the owner or owners (heirs), certain preliminaries toward an agreement of access which may be specific to their situation. Upon the agreement of these parties, the Principal Chief shall finalize by approving the agreement of access, right of way, and easement within ten (10) days of receipt. Upon occasion that the approval is not achieved within ten (10) days of receipt, the agreement shall acquire approved status.

B. The Creek Nation Realty, with the National Committee on Tribal Affairs shall be responsible for drafting and finalizing the appropriate access, right of way, and easement agreement to accommodate the uniqueness of this chapter.

[NCA 90–44, § 102, approved May 29, 1990.]

Library References

Indians ☞144, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 50, 53, 59.

§ 1–104. Sanctity ensured

A. In ensuring the sanctity of the ceremonial grounds and its religion it shall be the function of the Creek Nation government to acquire ceremonial lands and access to such, which shall be stated by future laws and shall refer to this chapter.

B. This chapter ensures the sanctity of ceremonial grounds, when purchased by the Muscogee (Creek) Nation to be held in trust, and shall by lease agreement leave exclusive control of those ceremonial grounds to their specific authorities.

C. The Muscogee (Creek) Nation shall not infringe upon, control, sell, or otherwise handle matters of the land or tenure of the ceremonial grounds leased or held in trust or historic ceremonial grounds other than assistance in certain improvements which shall be with the agreement of the stated ceremonial grounds' specific authorities or heirs of the land and the agreement shall reflect this provision.

[NCA 90–44, § 102, approved May 29, 1990.]

Library References

Indians ⇨144.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 46 to 50, 53.

§ 1–105. Ceremonial traditional religion

A. This chapter shall be the legal basis by which the Muscogee (Creek) Nation shall, upon request, provide help, encouragement or assistance for the continuance of the Muscogee Ceremonial Traditional Religion.

1. Ceremonial Ground Maintenance

Each Ceremonial Ground will receive six thousand and no/100 dollars (\$6,000.00) every four (4) years beginning with fiscal year 2011 for the purchase of tools, equipment and miscellaneous expenses related to the continued safe and healthy environmental maintenance of each respective ceremonial ground. The amount of ninety-six thousand and no/100 dollars (\$96,000.00) shall be included in the comprehensive annual budget beginning with FY 2011 and every four (4) years thereafter for this purpose. Funding provided in this legislation for periods beginning with FY 2011 will be determined by the Office of the Controller, and shall be based upon availability of funds.

B. This chapter shall by law establish authority to the appropriate Muscogee (Creek) Nation agency to create a unique archive for the purpose of gathering thorough data and information which is specific to the different ceremonial grounds.

C. To accommodate recognition of the ceremonial sites that are non-functional or other historical archaeological sites, the National Council shall authorize the Principal Chief to create by legislation an Historical Preservation Board.

D. The Muscogee National Council hereby establishes this chapter as a precedent to preserve the traditional heritage of the Muscogee people by this chapter which by further legislation may add to or amend this chapter to preserve the Ceremonial Grounds and its religion.

[NCA 90–44, § 102, approved May 29, 1990; amended by NCA 07–095, § 3, eff. April 9, 2007.]

Cross References

Budget, grant program for churches and ceremonial grounds, see Title 37, § 2–118.

Library References

Indians ⇨144, 210.
 Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53, 57 to 59, 66 to 72.

CHAPTER 2. FINANCIAL ASSISTANCE

Subchapter

1. Grant Program for Churches and Ceremonial Grounds
2. Green Corn Ceremonial Assistance

SUBCHAPTER 1. GRANT PROGRAM FOR CHURCHES AND CEREMONIAL GROUNDS

Section

- 2-101. Findings.
- 2-102. Purpose.
- 2-103. Grant award requirements and restrictions.
- 2-104. Funding request.

Historical and Statutory Notes

NCA 97-07, § 101, provides:

“Findings: The National Council finds that:

“A. There is a need for an orderly planned program of assistance to Muscogee (Creek) Nation Churches and Ceremonial Grounds.

“B. Due to the aging process, growth, and lack of maintenance, many Churches and Ceremonial Grounds are in great need of maintenance, repair or larger more improved facilities.

“C. It has long been a priority of the Muscogee (Creek) Nation to provide assistance to Churches and Ceremonial Grounds with the monies available.

“D. Due to the large number of request from churches and Ceremonial Grounds for assistance and the inability of the Muscogee (Creek) Nation to finance all the needy projects, a plan must be established to identify and help the most needy.”

Cross References

Budget, Churches and Ceremonial Grounds Grant Program, see Title 37, § 2-118.

§ 2-101. Findings

The National Council finds that:

A. There is a need for a thorough assistance program for Muscogee (Creek) Nation Traditional churches and ceremonial grounds.

B. Due to numerous factors, many churches and ceremonial grounds are in great need of maintenance, repair and/or larger more improved facilities.

C. Due to the increase in assistance requests from churches and ceremonial grounds and the inability to finance all requests, a comprehensive assistance plan must be established to identify and help the most needy.

[NCA 97-07, § 104, approved Jan. 28, 1997; amended by NCA 00-28, § 103, approved March 29, 2000; added by NCA 07-203, § 1, eff. Jan. 2, 2008.]

Historical and Statutory Notes

Former sections:

Former § 2-101, related to funding requests, was added by NCA 97-07, § 104; amended by NCA 00-28, § 103.

Library References

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-102. Purpose

The purpose of this subchapter is to establish a comprehensive assistance grant program to aid churches and ceremonial grounds.

[NCA 97-07, § 104, approved Jan. 28, 1997; amended by NCA 00-28, § 104, approved March 29, 2000; added by NCA 07-203, § 2, eff. Jan. 2, 2008.]

Historical and Statutory Notes

Former sections:

Former § 2-102, related to unexpended funds, was added by NCA 97-07, § 104; amended by NCA 00-28, § 104.

Library References

Indians ☞210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-103. Grant award requirements and restrictions

All grant awards shall be subject to the following requirements and restrictions:

A. Each Muscogee (Creek) Nation Traditional church fifty (50) years or older or churches that can provide documentation demonstrating eighty percent (80%) of membership are Tribal Citizens and each of the sixteen (16) established ceremonial grounds which are located within the Nation's jurisdictional boundaries shall be eligible to submit an application for one of the following six grant awards:

- (1) Grant Award 1 is available once per fiscal year beginning October 1 and shall not exceed \$5,000.
- (2) Grant Award 2 shall be in the amount of \$5,001 to \$10,000. Applicant shall not be eligible to receive a grant award for the next 2 fiscal years.
- (3) Grant Award 3 shall be in the amount of \$10,001 to \$20,000. Applicant shall not be eligible to receive a grant award for the next 4 fiscal years.
- (4) Grant Award 4 shall be in the amount of \$20,001 to \$30,000. Applicant shall not be eligible to receive a grant award for the next 6 fiscal years.
- (5) Grant Award 5 shall be in the amount of \$30,001 to \$40,000. Applicant shall not be eligible to receive a grant award for the next 8 fiscal years.
- (6) Grant Award 6 shall be in the amount of \$40,001 to \$50,000. Applicant shall not be eligible to receive a grant award for the next 10 fiscal years.

B. Each application shall be on a form provided by the National Council, and at a minimum shall include an itemized budget and designate the Church Pastor, Ceremonial Ground Mekko or authorized representative to receive payment if the application is approved.

C. The Community Services and Cultural Committee of the National Council shall review all qualified applications. All applications will be considered

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fairly, taking into consideration availability of funds and giving priority based on the urgency and severity of need.

D. The grant award limitation set forth in paragraphs (2), (3), (4), (5) and (6) of this subsection A of this section may be waived in the event that the Community Services and Cultural Committee determines that repairs or renovations to the property of a church or ceremonial ground are necessary due to damage caused by a natural disaster.

E. The Community Services and Cultural Committee shall provide the Principal Chief with a copy of each application for a grant that has been approved by the Committee. Upon signature of the application by the Principal Chief, the Controller shall pay the grant award to the Church Pastor, Ceremonial Ground Mekko or authorized representative.

F. Each grant recipient shall expend funds in accordance with the approved grant budgets.

G. Each grant recipient shall submit the following records for expenditures of a grant award within thirty (30) days of completion of the awarded assistance project: invoices or receipts with proof of payment evidenced by cancelled checks or other bank records. All records shall be provided to the Controller of the Muscogee (Creek) Nation. Each grant recipient shall return any unexpended grant funds to the Controller for deposit in the Tribal Treasury.

H. In the event that a grant recipient does not turn in records as required by subsection G of this section, said grant recipient shall not be eligible to receive Comprehensive Assistance Grant Program funds for a period of five (5) years from the date of the original award.

I. In the event that a grant recipient expends funds not in accordance with the awarded Comprehensive Assistance Grant Program award, said Grant recipient shall not be eligible to receive Comprehensive Assistance Grant Program funds for a period of ten (10) years from the date of the original award. In addition during that time period, said grant recipient shall not receive any financial assistance from the National Council and the Nation may seek full restitution of any and all funds received.

[NCA 97-07, § 106, as amended by NCA 01-160, § 3, approved Sept. 7, 2001; amended by NCA 01-184, § 1, returned unsigned, eff. Oct. 13, 2001; NCA 01-213, § 1, approved Dec. 26, 2001; added by NCA 07-203, § 3, eff. Jan. 2, 2008.]

Historical and Statutory Notes

Former sections: 97-07, § 106; amended by NCA 01-160, § 3; Former § 2-103, related to grant award requirements and restrictions, was added by NCA 01-184, § 1; NCA 01-213, § 1.

Library References

Indians ⇄210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72.

§ 2-104. Funding request

All funding requests from churches fifty (50) years or older or churches that can provide documentation demonstrating eighty percent (80%) of membership

are Tribal Citizens and the sixteen (16) established ceremonial grounds shall only be addressed through the Comprehensive Assistance Grant Program. Any emergency request not qualifying for the Comprehensive Assistance Grant Program shall be referred to the Community Services and Cultural Committee to be considered, subject to the availability of funds.

[Added by NCA 07-203, § 4, eff. Jan. 2, 2008.]

SUBCHAPTER 2. GREEN CORN CEREMONIAL ASSISTANCE

Section

2-201. Disbursement of funds.

2-202. Release of funds.

2-203. Accountability.

Historical and Statutory Notes

NCA 02-082, §§ 1-101, 2, provide:

“Section 1-101. Findings: The National Council finds that:

“A. Ceremonial Grounds of the Muscogee (Creek) Nation have been in existence since immortal.

“B. There have been many changes of the Ceremonial Grounds.

“C. Some changes are the results of relocations or creations of new or sister Ceremonial Grounds.

“D. To preserve the Traditional and Cultural aspect of the Muscogee (Creek) Nation is in compliance with Article II, Section 5 of the Constitution of the Muscogee (Creek) Nation.

“E. The Muscogee (Creek) Nation shall provide monetary assistance to each Muscogee (Creek) and Yuchi Ceremonial Ground for their Annual Green Corn Ceremonies.

“F. The amount of Twenty Two Thousand, Five Hundred Dollars and No/100 (\$22, 500.00) was appropriated for the current fiscal year within the Special Appropriations section of the Comprehensive Annual Budget.

“Section Two. Purpose. The purpose of this Act is to provide monetary assistance to the campers of the listed Ceremonial Grounds for their purchase of food at their Green Corn Ceremonies.”

Cross References

Budget, Green Corn Ceremonial Assistance, see Title 37, § 2-109.

§ 2-201. Disbursement of funds

Green Corn Ceremonial and Supportive Ceremonial Assistance funds shall be initially disbursed by the Principal Chief or his designee. Checks shall be in the amount of five thousand and no/100 dollars (\$5,000.00) per ceremonial grounds which shall be disbursed equally among camps of the ceremonial grounds for the duration of their season by the person(s) authorized by the ceremonial ground. The annual appropriation for the Green Corn Ceremonial and Supportive Ceremonial Assistance shall be established at eighty thousand and no/100 dollars (\$80,000.00) beginning with the FY 2007 Comprehensive Annual Budget and annually thereafter.

[NCA 02-082, § 3, approved May 30, 2002; amended by NCA 07-074, § 2, eff. April 9, 2007.]

Library References

Indians ◊139, 144, 210.
Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53 to 55, 57 to 59,
66 to 72.

Title 5, § 2–202

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§ 2–202. Release of funds

A letter of request for release of funds shall be submitted to the Principal Chief from the Office of the National Council. Each ceremonial ground shall submit an application stating the names of the Mekko and the Treasurer or persons authorized to receive the checks commencing on the first of March of each year. The check shall be made out in the name of the ceremonial ground.

[NCA 02–082, § 4, approved May 30, 2002; amended by NCA 07–074, § 3, eff. April 9, 2007.]

Library References

Indians ☞ 139, 144, 210.
Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53 to 55, 57 to 59,
66 to 72.

§ 2–203. Accountability

The Mekko of each ceremonial ground shall be held accountable for all funds appropriated pursuant to this subchapter by submitting to the Office of the Controller receipts verifying the amount of funding allocated to their respective ceremonial ground. Failure to comply may prohibit a ceremonial ground from receiving future Tribal funds.

[NCA 02–082, § 5, approved May 30, 2002; amended by NCA 09–212, § 2, approved Dec. 7, 2009.]

CHAPTER 3. DAY OF PRAYER

Section

- 3-101. Declaration of Day of Prayer.
- 3-102. Coordination.
- 3-103. Expenditure of funds.

Cross References

Budget, Day of Prayer, see Title 37, § 2-125.

§ 3-101. Declaration of Day of Prayer

The Muscogee (Creek) Nation hereby declares a day in April of each year as a “Day of Prayer” with the specific day being announced yearly.

[NCA 00-55, § 103, approved March 27, 2000.]

§ 3-102. Coordination

The Principal Chief shall designate who shall coordinate the special occasion each year.

[NCA 00-55, § 103, approved March 27, 2000.]

§ 3-103. Expenditure of funds

Receipts for expenditure of the funds shall be presented to the Principal Chief within thirty (30) days after the designated Day of Prayer.

[NCA 00-55, § 103, approved March 27, 2000.]

**TITLE 6. CHILDREN AND
FAMILY RELATIONS
HOPUETAKE HVTVM
CUKOHVMECVLKE
EMPVLSVLKE**

Chapter	Section
1. CHILDREN.....	1-101
2. FAMILY RELATIONS—MARRIAGE.	2-101
3. PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT.	3-101
4. ORGANIZED INDIAN YOUTH COUNCILS—TRIBAL CHAR- TERS.....	4-101
5. GUARDIAN AND WARD.....	5-101
6. MUSCOGEE (CREEK) NATION CHILD SUPPORT ENFORCE- MENT CODE.	6-101
7. PATERNITY DETERMINATION CODE.	7-101

CHAPTER 1. CHILDREN

Subchapter

1. Purpose; Definitions; General Provisions
2. Children and Family Services Administration
3. Jurisdiction and Venue
4. Procedure, Generally
5. Abuse and Neglect Reporting Requirements; Central Registry
6. Search Warrants; Custody or Detention
7. Adjudication
8. Disposition
9. Termination of Parental Rights
10. Adoptions
11. Foster Care

United States Code Annotated

Indian Child Protection and Family Violence Prevention Act, see 25 U.S.C.A. § 3201 et seq.
Indian Child Welfare Act, see 25 U.S.C.A. § 1901 et seq.

**SUBCHAPTER 1. PURPOSE; DEFINITIONS;
GENERAL PROVISIONS**

Section

- 1-101. Purpose.
- 1-102. Definitions; general.
- 1-103. Definitions; family and custodial relationships.
- 1-104. Definitions; courts and agencies.
- 1-105. Definitions; types of children's needs requiring court intervention.
- 1-106. Definitions; placement facilities.

Section

- 1-107. Role of the Prosecutor in juvenile proceedings.
 1-108. District Court.
 1-109. Place of sitting.

§ 1-101. Purpose

The purpose of this chapter is to:

- A. Secure for each child subject to this chapter such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Nation and society in general;
- B. Preserve and strengthen the ties between the child and his Nation whenever possible;
- C. Preserve and strengthen family ties whenever possible, and strengthen and improve the home and its environment when necessary; and
- D. Remove a child from the custody of his parents and Indian custodians only when his welfare and safety or the protection of the public would otherwise be endangered; and
- E. Secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his Nation and society in general.

[NCA 01-126, § 102, approved Aug. 9, 2001.]

Library References

- Indians ⇄132.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 150, 152, 154 to 176.

§ 1-102. Definitions; general

Unless the context otherwise requires, as used in this chapter the following terms shall be defined as follows:

- A. Adjudicatory hearing.** “Adjudicatory hearing” means a hearing to determine whether the allegations of a petition alleging a child to be deprived, in need of supervision, in need of treatment or delinquent filed pursuant to this title are supported by the evidence.
- B. Adult.** “Adult” means a person eighteen (18) years of age or over; except that any person alleged to have committed a delinquent act before he became eighteen (18) years of age shall be considered a child under this chapter for the purpose of adjudication and disposition of the delinquent act.
- C. Child.** “Child” means any unmarried person who is under age eighteen (18) and is either: (1) a member of an Indian tribe; or (2) eligible for membership in an Indian tribe.
- D. Child custody proceedings.**
1. “Child custody proceedings” shall mean and include:
 - a. “Foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the

parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

b. "Termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

c. "Preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

d. "Adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

2. Such term or terms shall include custody proceedings involving delinquent or alleged delinquent children, but shall not include a placement based on an award in a divorce proceeding of custody to one of the parents.

E. Commit. "Commit" means to transfer legal custody.

F. Custody. "Custody" means legal and physical guardianship of the person.

G. Deprivation of custody. "Deprivation of custody" means the transfer of custody by the Court from a parent or a previous legal custodian to another person, agency, or institution.

H. Detention. "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending Court disposition or a Court order for placement or commitment.

I. Dispositional hearing. "Dispositional hearing" means a hearing, held after an adjudicating hearing has found a child to be deprived, neglected, in need of supervision, or delinquent in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

J. Expert witness. An "expert witness" means one of the following persons providing expert testimony on a topic related to his field of expertise:

1. A member of the child's Tribe who is knowledgeable about the child's Tribe's family values, practices and customs, provided that such qualifications shall be established by consideration of the following factors: the age of the expert witness, whether he is fluent in the language of the child's Tribe, whether he has resided within the territorial jurisdiction of the child's Tribe for a significant period of time, the extent of his involvement in Indian church activities, stomp ground ceremonies, band activities and other cultural activities within the Nation, testimony by other members of the child's Tribe that he is recognized as being knowledgeable about the child's Tribe's family values, practices and customs, and other similar factors;

2. A lay expert witness having substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's Tribe;

3. A licensed physician;

4. A qualified mental health professional; or

5. A professional person having substantial education and experience in the area of his or her specialty.

K. Guardianship of the person. “Guardianship of the person” means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:

1. The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment;
2. The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child;
3. The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents;
4. The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and
5. The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child.

L. Handicapped child. “Handicapped child” means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

M. Indian country. “Indian country” means any real property that is within the Nation’s political jurisdiction as defined in Article I, Section 2 of the 1979 Muscogee (Creek) Nation Constitution and that is: (1) owned by any Indian subject to restrictions against alienation; (2) held in trust by the United States for the benefit of any Indian; (3) held in trust by the United States for the benefit of the Muscogee (Creek) Nation; (4) any original unallotted fee land owned by the Muscogee (Creek) Nation prior to allotment, including without limitation the Mackey Sandbar site; or (5) any other real property which otherwise constitutes Indian country as that term is defined in 18 U.S.C. § 1151.

N. Muscogee (Creek) child. “Muscogee (Creek) child” means any person under the age of eighteen (18) years, who is either (1) a member of the Muscogee (Creek) Nation, or (2) who is eligible for membership in the Muscogee (Creek) Nation.

O. Muscogee (Creek) household. A “Muscogee (Creek) household” is a home in which at least one head of the household is a member of the Muscogee (Creek) Nation, or eligible for membership in the Tribe.

P. Nation. “Nation” means the Muscogee (Creek) Nation of Oklahoma.

Q. Protective supervision. “Protective supervision” means a legal status created by court order under which the child is permitted to remain in his own home under the supervision of the District Court through the child welfare worker during the period during which treatment is being provided to the family by the agency designated by the Court.

R. Qualified mental health professional. “Qualified mental health professional” means a person having specific training and current experience in the

mental health testing, examination, evaluation and diagnosis of children and adolescents and who either: holds at least a master’s degree in a mental health field and is employed under the classification of a Psychological Assistant or Social Worker II or above by the state as a provider of mental health services or possesses a current, valid Oklahoma license in a mental health field or permission to practice by a licenser board in a mental health field.

S. Residual parental rights and responsibilities. “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after legal custody, or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child’s religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.

T. Termination of parental rights or termination of parent-child legal relationship. “Termination of parental rights” or “termination of the parent-child legal relationship” means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child’s right to inherit from the parent whose rights have been terminated.

U. Transfer proceeding. “Transfer proceeding” means any proceeding in the Court to grant, accept, or decline transfer of any children’s case from or to the courts of any Indian Nation or state whenever such transfer is authorized by Tribal, federal, or state law.

[NCA 01–126, § 103, approved Aug. 9, 2001.]

Cross References

Legal custody, guardianship, see Title 6, § 1–814.

§ 1–103. Definitions; family and custodial relationships

The following definitions shall be followed in all child custody proceedings in the Nation’s District Court, and are also hereby recognized as the official law of the Muscogee (Creek) Nation in all state child custody proceedings involving children of members of the Muscogee (Creek) Nation or children who are members of the Muscogee (Creek) Nation and who are subject to the federal Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. and the Oklahoma Indian Child Welfare Act, 10 O.S. § 40 et seq. in such state court proceedings:

A. Adoptive extended family member. A person shall be recognized as an adoptive member of the child’s extended family if such person would come within the terms of the definitions of said extended family members set forth in this section by virtue of a lawful adoption accomplished in one of the following ways:

1. Pursuant to order of a state court or of a Tribal Court, including the Nation’s District Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or
2. Pursuant to custom of an Indian Nation, including customs regarding clan memberships, provided that the person claiming to be an adoptive mem-

ber of the child's extended family pursuant to Tribal custom shall have the burden of proof of establishing the fact of his adoptive relationship with he child's family, and such proof must include the testimony of at least one qualified expert witness knowledgeable about said customs.

B. Aunt. "Aunt" means a person who, by blood or marriage, is:

1. A female sibling of the biological parents; or
2. A female cousin of the biological parents; or
3. Any other person, who, by virtue of an adoption either of herself or a member of her family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as an aunt in accordance with paragraph 1 or 2 of this subsection.

C. Brother. "Brother" means a person who is:

1. Any male sibling; or
2. Any other person, who, by virtue of an adoption either of himself or a member of his family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as a brother in accordance with this subsection.

D. Brother-in-law. "Brother-in-law" means the husband of a sister by blood or marriage.

E. Cousin. "Cousin" means the child of an aunt or uncle; or the child of the child of an aunt or uncle.

F. Extended family member. "Extended family member" shall mean a person who has reached the age of eighteen (18) and who is the Indian child's:

1. Grandparent;
2. Aunt or uncle;
3. Brother or sister;
4. Fellow clan member;
5. Niece or nephew; or
6. First or second cousin.

G. Grandparent. "Grandparent" means a person who is:

1. A biological grandparent; or
 2. The brothers and sisters of a biological grandparent, and their spouses;
- or

3. A biological great-grandparent; or
4. Any other person, who, by virtue of an adoption either of himself or a member of his family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as an aunt in accordance with paragraphs 1 or 2 of this subsection.

H. Indian custodian. "Indian custodian" means any Indian person who has legal custody of an Indian child pursuant to the following type of authorization:

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1. Pursuant to order of a state court or of a Tribal Court, including the Nation's District Court, provided that said Court possessed jurisdiction over the child sufficient to issue such order; or

2. Pursuant to authorization by a parent who has transferred the temporary physical care, custody, and control over the child to such person, provided that said authorization need not be in writing, and may be established by testimony regarding verbal statements by the parent, habits and practices of the parent and the person claiming to be an Indian custodian regarding custody of the child, and proof of any other factors relevant to the person's status as an Indian custodian; or

3. Pursuant to customs of the Tribe of which the child is a member, based upon testimony of at least one qualified expert witness knowledgeable about said customs.

I. Nephew. "Nephew" means the male child of a brother, sister, brother-in-law, or sister-in-law, by blood, marriage, or adoption or custom.

J. Niece. "Niece" means the female child of a brother, sister, brother-in-law, or sister-in-law, by blood, marriage, adoption, or custom.

K. Parent. "Parent" means:

1. Any biological parent of an Indian child, not including an unwed father, unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath unless paternity has been established by judicial action; or

2. Any person who has lawfully adopted an Indian child pursuant to order of a state court or of a Tribal Court, including the District Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or

3. Any person who has adopted a child pursuant to custom, common law or tradition of an Indian Nation.

L. Sister. "Sister" means:

1. Any female sibling, or

2. Any other person, who, by virtue of an adoption either of herself or a member of her family is an "adoptive extended family member" as defined by subsection A of this section and who qualifies as a sister in accordance with paragraphs 1 or 2 of this subsection.

M. Sister-in-law. "Sister-in-law" means the wife of a brother by blood or by marriage.

N. Stepparent. "Stepparent" means a person married to a biological parent, but who is not a biological parent of the child.

O. Uncle. "Uncle" means a person who, by blood or marriage, is:

1. A male sibling of the biological parents; or

2. A male cousin of the biological parents; or

3. Any other person, who, by virtue of an adoption either of himself or a member of his family is an "adoptive extended family member" as defined by

subsection A of this section and who qualifies as an uncle in accordance with paragraphs 1 or 2 of this subsection.

[NCA 01–126, § 104, approved Aug. 9, 2001.]

Cross References

Placement preferences, see Title 6, § 1–811.

§ 1–104. Definitions; courts and agencies

A. Child placement agency. “Child placement agency” means an agency designed for the care or placement of children licensed or approved pursuant to law of the Nation, or, if outside the Nation’s jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

B. Child protection worker. “Child protection worker” means the person who is responsible for the investigation of child abuse and neglect for Indian children subject to the District Court’s jurisdiction and referral of cases to the Prosecutor for filing, and for periodic reports and recommendations to the District Court regarding children placed in foster care by the District Court.

C. Child treatment worker. “Child welfare worker” means the person who is responsible for providing culturally oriented preventive and treatment services to at-risk Indian families, including education of the Indian community on child protection issues; and providing care and protection to Muscogee (Creek) children removed from their homes through advocacy of the Indian Child Welfare Act in state court, conduct of placement home studies and placement recommendations to the state court and the District Court, supervision of children placed by the District Court in the legal custody of the Muscogee (Creek) Nation Children and Family Services Administration, reports to the state court and the District Court, and maintenance of a Tribal foster care program.

D. Children and Family Services Administration (CFSA). “Children and Family Services Administration” or “CFSA” means the Children and Family Services Administration of the Muscogee (Creek) Nation.

E. District Court. “District Court” means the Muscogee (Creek) Nation District Court.

F. Law enforcement agency. “Law enforcement agency” means a law enforcement agency of the Nation, the Bureau of Indian Affairs, a municipality, a county sheriff or a state agency.

G. Lighthouse Police. “Lighthouse Police” means the law enforcement agency of the Muscogee (Creek) Nation.

H. Receiving agency. “Receiving agency” means the department or law enforcement agency first receiving a report of alleged child abuse.

[NCA 01–126, § 104–A, approved Aug. 9, 2001; amended by NCA 06–059, § 1, approved May 8, 2006.]

§ 1–105. Definitions; types of children’s needs requiring court intervention

A. Abused child. “Abused child” means a child who is the subject of an act or omission by a parent, guardian or custodian in one of the following

categories which seriously threatens the health or welfare of the child, provided that persons investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates:

1. Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any kind, subdural hematoma, soft tissue swelling, or death, and such condition or death is at variance with the degree or type of such condition arising from accidental or natural causes, or circumstances indicate that such condition or death may not be the product of an accidental or natural causes; or
2. Any case in which a child is subject to serious emotional damage, based on findings by a qualified expert witness who is a psychiatrist or psychologist; or
3. Any case in which a child is subject to sexual assault or molestation; or
4. Any case in which the child's parents, legal guardians or custodians have allowed another to abuse the child without taking lawful means to stop such abuse and prevent it from recurring.

B. Child in need of supervision. "Child in need of supervision" means any child:

1. Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or
2. Who is willfully and voluntarily absent from his home without the consent of his parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
3. Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school for ten (10) or more days or parts of days within a semester or for four (4) or more days or parts of days within a four (4) week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance.

C. Child in need of treatment.

1. "Child in need of treatment" means a child who has a demonstrable mental illness and as a result of that mental illness:
 - a. Can be expected within the near future to intentionally or unintentionally seriously physically injure himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or
 - b. Is unable to attend to those of his basic needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic needs in the recent past. A determination regarding the ability of the child to attend to his basic needs shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to attend to said needs.

2. The term "child in need of treatment" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or

drugs or who is truant or sexually active unless the child also meets the criteria of a child in need of treatment pursuant to the definitions contained herein.

D. Delinquent child. “Delinquent child” means a child who:

1. Has violated any lawful order of the Court made pursuant to this chapter or has violated any federal law, law of the Nation, or state law, except traffic laws and hunting and fishing laws; or
2. Has habitually violated any traffic, hunting, or fishing laws.

E. Deprived child, dependent child, neglected child. “Deprived child,” “dependent child” or “neglected child” means a child who is the subject of an act or omission by a parent, guardian or custodian in one of the following categories which threatens the health or welfare of the child, provided that persons investigating reports of child neglect shall take into account accepted child rearing practices of the culture in which the child participates:

1. A child who is for any reason destitute or homeless; or
2. A child who does not have the proper parental care or guardianship through the actions or omissions of a parent, guardian or custodian; or
3. A child whose home is an unfit place for the child by reason of neglect, cruelty or depravity on the part of his parents, legal guardian or other person in whose care the child may be, including but not limited to an abused child; or
4. A child whose parent, guardian, or custodian has allowed another to mistreat or abuse the child without taking lawful means to stop such maltreatment or abuse and prevent it from recurring; or
5. A child whose parent, guardian, or legal custodian has abandoned the child without intent to return, or who had placed him informally and without benefit of Tribal custom with any other person, and/or has not contributed to the support of the child or maintained personal contact with the child for a period in excess of twelve (12) months.
6. A child who is a handicapped child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated non-handicapped or handicapped children, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child; or
7. A child who is, due to improper parental care and guardianship, absent from school for ten (10) or more days or parts of days within a semester or for four (4) or more days or parts of days within a four (4) week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance.

[NCA 01–126, § 105, approved Aug. 9, 2001.]

§ 1–106. Definitions; placement facilities

A. Child care center. “Child care center” means an institution or facility designed for the care of children licensed or approved pursuant to law of the

Nation, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

B. Emergency shelter home. "Emergency shelter home" means a foster home licensed by the Muscogee (Creek) Nation Children and Family Services Administration (CFSA) and designated primarily for time-limited emergency placements, usually lasting no longer than thirty (30) days for any child.

C. Family foster home or foster home. "Family foster home" or "foster home" means a home where care is provided to a total of not more than ten (10) children at any given time, including children who are not foster children, in a family type setting, licensed or approved pursuant to law of the Nation, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

D. Group care facilities. "Group care facilities" means places other than family care homes or child care centers providing care for small groups of children.

E. Halfway house. "Halfway house" means group care facilities for children who have been placed on probation or parole by virtue of being adjudicated delinquent or in need of supervision under this chapter.

F. Shelter. "Shelter" means a facility for the temporary care of a child in physically unrestricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.

G. Special services home. A "special services home" means a foster home licensed by the CFSA and able to provide extraordinary care or services, by virtue of training, experience, and/or special skills.

[NCA 01-126, § 106, approved Aug. 9, 2001.]

§ 1-107. Role of the Prosecutor in juvenile proceedings

The Prosecutor shall act on behalf of the people of the Muscogee (Creek) Nation for the protection of the child in all state and Tribal Court child custody proceedings subject to the Juvenile Code. The CFSA is primarily responsible for the protection of children in state and Tribal custody; however, the Prosecutor shall be responsible for the legal proceedings in deprived actions for Tribal courts and state courts, in accordance with § 1-205 of this Title. CFSA may request legal advice or representation in other matters. The Prosecutor shall assist the CFSA pursuant to the requirements of the Juvenile Code, but shall exercise independent professional judgments related to the protection of the child. If a conflict of interest should arise between CFSA staff and the child or between elected officials and the child, the Prosecutor's foremost obligations shall be to uphold the law for the protection of the child.

[NCA 01-126, § 110, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

Library References

Indians ⇄640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Title 6, § 1–108

CHILDREN

§ 1–108. District Court

The District Court shall be the Muscogee (Creek) Nation District Court or its Juvenile Division. The Chief Judge shall appoint the Judge or Judges who may act as the District Court, including Special Judges.

[NCA 01–126, § 111, approved Aug. 9, 2001.]

Cross References

District Court, generally, see Title 26, § 2–101 et seq.

Library References

Indians ⇄401.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–109. Place of sitting

The District Court shall sit in the same place the District Court sits, provided, that the Juvenile Division, in a transfer proceeding or where otherwise necessary and expedient in the interest of justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States.

[NCA 01–126, § 112, approved Aug. 9, 2001.]

Cross References

Terms and location of court, rules and procedures, see Title 27, App. 1, Rule 3.

Library References

Indians ⇄401.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 2. CHILDREN AND FAMILY SERVICES ADMINISTRATION

Section

- 1–201. Muscogee (Creek) Nation Children and Family Services Administration.
- 1–202. Contracts and cooperative agreements.
- 1–203. General authority and duties.
- 1–204. Proceedings in District Court.
- 1–205. State court proceedings.
- 1–206. Multi-Disciplinary Team.
- 1–207. Manager.

§ 1–201. Muscogee (Creek) Nation Children and Family Services Administration

The Muscogee (Creek) Nation Children and Family Services Administration (CFSA) is an agency of the Muscogee (Creek) Nation of Oklahoma subject to the fiscal and administrative supervision of the Executive Office of the Muscogee (Creek) Nation.

[NCA 01–126, § 107, approved Aug. 9, 2001.]

Cross References

Executive Office, see Title 16, § 1–101 et seq.

Library References

Indians ☞132.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150, 152, 154 to 176.

§ 1–202. Contracts and cooperative agreements

The Principal Chief is authorized to approve and execute all federal contracts related to funding of the CFSA, and to execute cooperative agreements with the State of Oklahoma, provided that said cooperative agreements are first approved by the National Council.

[NCA 01–126, § 107, approved Aug. 9, 2001.]

Cross References

Applications for financial assistance, see Title 37, § 2–501 et seq.

Library References

Indians ☞132, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 59, 150, 152, 154 to 176.

§ 1–203. General authority and duties

The CFSA shall be responsible for the following:

- A. Providing culturally oriented preventive and treatment services to at-risk Indian families within the jurisdiction of the Nation, including parenting skills training and education of the Indian community on child protection issues;
- B. Conducting home studies and preparing reports for purposes of foster care licensing and recommendations relating to potential adoptive parents;
- C. Issuing foster care licenses and supervision of foster care families;
- D. Negotiating cooperative agreements between the Nation and other states or tribes relating to provision of services to Indian children and their families, provided that said agreements shall not be effective unless approved by the National Council and executed by the Principal Chief;
- E. Cooperating with other social services agencies in order to ensure the best possible protection of Indian children and their families; and
- F. Exercising all other duties consistent with this title.

[NCA 01–126, § 108, approved Aug. 9, 2001.]

Cross References

Adoptions, generally, see Title 6, § 1–1001 et seq.
Foster care, see Title 6, § 1–1101 et seq.

Library References

Indians ☞132.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150, 152, 154 to 176.

§ 1-204. Proceedings in District Court

The CFSA shall be responsible for the protection of Indian children subject to the jurisdiction of the District Court. In performing these duties, the CFSA shall have authority to engage in the following activities:

A. Investigation of all reports or complaints regarding Indian children located within the territorial boundaries of the Muscogee (Creek) Nation and domiciled on Indian country or otherwise subject to the jurisdiction of the Muscogee (Creek) Nation;

B. Request of legal documents for child custody proceedings where necessary for the protection of Indian children;

C. Submission of these legal requests to the Prosecutor of the Muscogee (Creek) Nation for action;

D. Placement and supervision of children placed by the District Court in the legal custody of the Muscogee (Creek) Nation Children and Family Services Administration, including emergency placements;

E. Conduct placement home studies and placement recommendations regarding children in foster care to the District Court;

F. Reports and recommendations regarding children in foster care to the District Court; and

G. Participation in and attendance at all District Court proceedings in order to serve as an advocate for the child, including permanency planning for the child.

[NCA 01-126, § 108, approved Aug. 9, 2001.]

Library References

Indians ⇄132.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150, 152, 154 to 176.

§ 1-205. State court proceedings

The Prosecutor shall provide the following services in state court proceedings:

A. Intervention on behalf of the Muscogee (Creek) Nation in all Oklahoma state court child custody proceedings involving Muscogee (Creek) children domiciled in Indian country within the jurisdiction of the Nation, in order to secure dismissal of said state court action for lack of state court jurisdiction; and referral of said case to the Child Protection Worker for institution of child custody proceedings in the District Court if necessary for the protection of the child.

B. Intervention on behalf of the Muscogee (Creek) Nation in all Oklahoma state court child custody proceedings within the boundaries of the Muscogee (Creek) Nation involving enrolled Muscogee (Creek) children or Muscogee (Creek) Nation children whose biological parent or parents are enrolled members, in order to serve as an advocate of the Muscogee (Creek) Nation regarding proper placement of the child; and to move on behalf of the Nation to transfer proceedings to the Nation's District Court if appropriate. CFSA shall conduct

and prepare home studies; provide supervision; provide rehabilitative services to the child and his family; prior to each hearing, prepare reports and recommendations to the appropriate Court; and attend all Court hearings in said matter;

C. Intervention on behalf of the Muscogee (Creek) Nation in child custody proceedings involving enrolled Muscogee (Creek) children or Muscogee (Creek) Nation children whose biological parent or parents are enrolled members arising in an Oklahoma state court outside the boundaries of the Muscogee (Creek) Nation, or a Tribal court located within Oklahoma, for the limited purpose of monitoring activities in said proceedings or for the purpose set forth in paragraph B of this subsection; and,

D. Intervention on behalf of the Muscogee (Creek) Nation in child custody proceedings involving Muscogee (Creek) children arising in state or Tribal courts outside of the state of Oklahoma, for the limited purpose of monitoring activities in said proceedings or for the purposes set forth in paragraph B of this subsection.

[NCA 01-126, § 108, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006; NCA 07-252, § 2, eff. Oct. 10, 2007; NCA 07-252, § 3, eff. Oct. 10, 2007.]

Library References

Indians ☞136.
Westlaw Topic No. 209.
C.J.S. Indians §§ 154 to 176.

§ 1-206. Multi-Disciplinary Team

The CFSA shall maintain an effective Multi-Disciplinary Team (hereinafter “MDT”), which shall have responsibility for making recommendations regarding the diagnostic, prognostic, and treatment services being offered to the child or family in connection with reported abuse, pursuant to the following requirements:

A. The MDT shall staff each case on an anonymous basis. In all its discussions, the team shall not disclose the names or addresses or any other identifying information relating to the children, families, or informants in those cases.

B. At the beginning of the discussion of each case, a designated team member shall state the following information: The severity of the abuse or neglect and the age and sex of the child. The team shall also state whether the child was hospitalized and whether the child’s medical records were checked.

C. The public shall not be permitted to attend those portion of MDT meetings concerned with mandatory team discussions of public and private agencies responses to each report of child abuse and neglect being considered by the team, as well as the team’s recommendations related to public agency responses.

D. At the meeting, the MDT shall review the responses of public and private agencies to each report of child abuse or neglect and shall state whether such response was timely and adequate.

[NCA 01-126, § 108, approved Aug. 9, 2001.]

Cross References

Records and reports of incidents of domestic abuse, see Title 6, § 3–314.

Library References

Indians ☞132.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150, 152, 154 to 176.

§ 1–207. Manager

The Manager of the CFSA shall be responsible for the day to day operation of CFSA, shall hire staff pursuant to the personnel policies and procedures of the Nation, shall supervise all staff of CFSA, shall maintain oversight over case-loads, shall be responsible for seeking funding sources and preparing grant applications, and shall prepare and submit quarterly reports to the Principal Chief for distribution to the National Council.

[NCA 01–126, § 109, approved Aug. 9, 2001.]

Library References

Indians ☞132.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150, 152, 154 to 176.

SUBCHAPTER 3. JURISDICTION AND VENUE

Section

- 1–301. Jurisdiction over Indian children domiciled in Indian country.
- 1–302. Jurisdiction over Indian children domiciled outside of Indian country.
- 1–303. Indian Child Welfare Act transfers from state courts.
- 1–304. Indian Child Welfare transfers from Tribal courts to the Muscogee (Creek) Nation District Court.
- 1–305. Muscogee (Creek) Nation District Court transfers to other Tribal or state courts.

Cross References

Jurisdiction of Muscogee (Creek) Nation Courts, see Title 27, § 1–102.

§ 1–301. Jurisdiction over Indian children domiciled in Indian country

Except as otherwise provided by law, the District Court shall have exclusive jurisdiction in child custody proceedings involving a Muscogee (Creek) child domiciled in Indian country within the Muscogee (Creek) Nation and concurrent jurisdiction with the child’s Tribe in all cases involving an Indian child of another Tribe domiciled in Indian country within the boundaries of the Muscogee (Creek) Nation, including the following types of proceedings: cases in which the child has been made a ward of the District Court; foster care placements; termination of parental rights; preadoptive placements; adoptive placements; guardianships; transfer proceedings to or from a court of another sovereign; child support; paternity actions; actions for judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law; actions for writ of habeas corpus; and actions for the treatment or commitment of a mentally ill or developmentally disabled child. The District

Court shall possess exclusive jurisdiction over all delinquency proceedings involving Indian children and involving acts occurring in Indian country, provided that such jurisdiction may be concurrent with the state in the case of delinquency cases involving delinquent acts occurring both in Indian country and outside Indian country.

[NCA 01–126, § 113, approved Aug. 9, 2001.]

Cross References

Adoptions of children, jurisdiction, see Title 6, § 1–1001.

Library References

Indians ⇨134 to 136, 134(3), 501.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

§ 1–302. Jurisdiction over Indian children domiciled outside of Indian country

A. Concurrent jurisdiction. The District Court shall have concurrent jurisdiction with the state in child custody proceedings involving a Muscogee (Creek) child who is not domiciled in Muscogee (Creek) Nation Indian country, including foster care placements, termination of parental rights, pre-adoptive placements, adoptive placements, guardianships, child support, paternity actions, actions for judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law, and for the treatment or commitment of a mentally ill or developmentally disabled child.

B. Manner in which concurrent jurisdiction may be exercised. Concurrent jurisdiction shall be exercised by the District Court in the following circumstances, provided that the child shall be made a ward of the court in such cases:

1. When a child custody proceeding has been filed in District Court, and no other child custody proceedings has been held in the court of another jurisdiction; or

2. When a child custody proceeding has been filed in the court of another sovereign and such proceeding involves a Muscogee (Creek) child and the case has been transferred to the District Court pursuant to Title 6, §§ 1–303 and 1–304.

[NCA 01–126, § 114, approved Aug. 9, 2001.]

Cross References

Adoptions of children, jurisdiction, see Title 6, § 1–1001.

Library References

Indians ⇨501.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1–303. Indian Child Welfare Act transfers from state courts

A. Conditions. Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b), any state court may transfer to the District Court herein any foster

care or parental rights termination proceeding subject to exclusive or concurrent Tribal jurisdiction involving any Indian child who is a member of or eligible for membership in the Nation, if the District Court accepts jurisdiction over the case.

B. Hearing on acceptance of transfer. The District Court shall determine, in a transfer hearing initiated by the Nation or the child's parent or Indian custodian, whether the transfer to its jurisdiction is required (1) because the District Court has exclusive jurisdiction over the case or (2) because the case is subject to concurrent Tribal jurisdiction and would not be detrimental to the best interest of the child. Such determination shall be made after the order of transfer is received by the Court Clerk. In cases involving concurrent jurisdiction the Court may consider the following:

1. Whether the child or its family will be in need of special services for physical or mental disease or defect which the Nation and its resources are unable to adequately provide; and
2. If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear the Court should decline to accept the transfer until after the adjudication is completed; and
3. Any other matters which may adversely affect the Nation's ability to provide treatment or necessary services to the family.

C. Transfer procedures. A state court transferring a case to the Nation's jurisdiction under subsection A of this section shall transmit all documents and legal and social records, or certified copies thereof, to the District Court, which court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a District Court juvenile division case number as in other cases. [NCA 01-126, § 115, approved Aug. 9, 2001.]

Library References

Indians ☞134(3), 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

Code of Federal Regulations

Reassumption of jurisdiction over child custody proceedings, see 25 CFR 13.1 et seq.

§ 1-304. Indian Child Welfare transfers from Tribal courts to the Muscogee (Creek) Nation District Court

Any Tribal court or other CFR court may transfer to the District Court herein any case involving a Muscogee (Creek) child, if the District Court finds that the transfer would not be detrimental to the best interests of the child, pursuant to the same requirements as Title 6, § 1-303.

[NCA 01-126, § 116, approved Aug. 9, 2001.]

Library References

Indians ☞134(3).
Westlaw Topic No. 209.

Code of Federal Regulations

Reassumption of jurisdiction over child custody proceedings, see 25 CFR 13.1 et seq.

§ 1–305. Muscogee (Creek) Nation District Court transfers to other Tribal or state courts

A. Conditions. The District Court, absent objection by either parent, is authorized to transfer any children’s case arising within the court’s jurisdiction, said child not being a member or eligible for membership in the Nation, to the Court of the child’s Indian Nation, or if the child is a non-Indian, to the courts of the state where the child is a resident or domiciled, upon the petition of the Prosecutor, either parent, a custodian or guardian, the Indian Nation of which the child is a member or eligible for membership, or an appropriate official of the child’s state.

B. Considerations. In making such transfers the District Court may consider:

1. The best interests of the child;
2. Any special needs or mental or physical disease or defects of the child and family and the ability of the Nation and the receiving jurisdiction to meet those needs;
3. If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction;
4. Emotional, cultural, and social ties of the child and its family; and
5. The likelihood that the same child and family would return to the Nation’s jurisdiction within a reasonable time and come before the District Court again.

C. Order of transfer. Upon entering an order transferring a case as provided in this section, the Court shall serve a certified copy of the order of transfer, the legal case file, and any social or police reports concerning the child’s case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested. The District Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

[NCA 01–126, § 117, approved Aug. 9, 2001.]

Library References

Indians ⇄ 132, 401, 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

Code of Federal Regulations

Reassumption of jurisdiction over child custody proceedings, see 25 CFR 13.1 et seq.

SUBCHAPTER 4. PROCEDURE, GENERALLY

Section

- 1–401. Procedural requirements.
- 1–402. Hearings.
- 1–403. Jury trials.
- 1–404. Effect of proceedings.
- 1–405. Inspection of court records.
- 1–406. Expungement of delinquency or in need of supervision court records.
- 1–407. Exclusion of certain statements by alleged delinquent.
- 1–408. Appeals.

Cross References

Judicial procedures, generally, see Title 27, § 1–101 et seq.

§ 1–401. Procedural requirements

A. The rules of juvenile procedure herein set forth shall apply in all proceedings under this chapter. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.

B. In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case.

C. The District Court shall have the authority by written court rule not inconsistent with this chapter or other law of the Muscogee (Creek) Nation setting forth rules of civil procedure and filed of record in the Court Clerk's office and National Council Secretary's office to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this chapter.

[NCA 01–126, § 118, approved Aug. 9, 2001.]

Cross References

Criminal offenses, see Title 14, § 2–101 et seq.
Criminal procedure, see Title 14, § 1–101 et seq.
Rules and procedures of tribal courts, see Title 27, App. 1.
Tribal court proceedings, see Title 27, § 2–101 et seq.

Library References

Indians ⇄132, 501, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–402. Hearings

A. **Procedure.** Hearings shall be held before the Court without a jury, except as provided in Title 6, § 1–403, and may be conducted in an informal manner, except in proceedings brought concerning an alleged delinquent. The general public, including elected officials, shall be excluded unless the Court determines that it is in the best interest of the child to allow the general public to attend. The Court shall admit only such persons as have an interest in the case or the work of the Court, including persons whom the parents or Indian

custodian wish to be present unless an order has been entered authorizing the general public to attend. Hearings may be continued from time to time as ordered by court.

B. Record. An audio tape record shall be taken of all proceedings which might result in the deprivation of custody. An audio tape record shall be made in all other hearings, unless waived by the parties in the proceeding and so ordered by the Judge.

C. Consolidated hearings. When more than one (1) child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

D. Separate hearings. Children's cases shall be heard separately from adult's cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.

E. Confidentiality. The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings under this chapter shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the Court's detention facilities for not more than thirty (30) days, or by both such fine and imprisonment.

[NCA 01-126, § 119, approved Aug. 9, 2001.]

Cross References

Trials, see Title 27, § 2-109 et seq.

Library References

Indians ⇄ 132, 519, 651.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-403. Jury trials

A. Demand for jury. The child, his parent or guardian, or any interested party may demand a trial by jury of not more than six (6) persons:

1. In adjudicatory hearings concerning an alleged delinquent, deprived child, or child in need of supervision;
2. In hearings seeking termination of parental rights;
3. In determining the parentage of a child under this chapter.

B. Failure to demand. Unless a jury is demanded, it shall be deemed to be waived.

[NCA 01-126, § 120, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

Cross References

Jury trial, generally, see Title 27, § 2–110 et seq.
 Rules and procedures, jury trial, see Title 27, App. 1, Rule 11 et seq.

Library References

Indians ⇨651.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 151 to 179.

§ 1–404. Effect of proceedings

A. No civil disability. No adjudication or disposition in proceedings under this chapter shall impose any civil disability upon a child or disqualify him from any personnel system of the Nation, military service application, appointment or from holding an office of the Nation.

B. Admissibility of evidence in other proceedings. No adjudication, disposition, or evidence given in proceedings brought under this chapter shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this chapter concerning the same child.

[NCA 01–126, § 121, approved Aug. 9, 2001.]

Library References

Indians ⇨132, 520(3), 526.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 150 to 179.

§ 1–405. Inspection of court records

A. Right to inspect. Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.

B. No right to inspect. Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.

[NCA 01–126, § 122, approved Aug. 9, 2001.]

Cross References

Review, lending or copying of court files, see Title 27, App. 1, Rule 15B.

§ 1–406. Expungement of delinquency or in need of supervision court records

A. Petition. Any person who has been adjudicated delinquent or in need of supervision, who was taken into custody on an allegation of delinquency or need of supervision, or who was the subject of a petition for delinquency or need of supervision later may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its

own motion may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the Court. Such petition shall be filed or such court order entered no sooner than two (2) years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two (2) years from the date of termination of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

B. Hearing; notice. Upon the filing of a petition for expungement or entering of a court order, the Court shall set a date for a hearing and shall notify the Prosecutor and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record, including the child's past or present foster parents and all agencies or officials known to have relevant files relating to the individual.

C. Order. The Court shall order sealed all records in the petitioner's case in the custody of the Court and any records in the custody of any other agency or official, if at the hearing the Court finds that:

1. The subject of the hearing has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under this chapter since the termination of the Court's jurisdiction;
2. No proceeding concerning a felony, a misdemeanor involving moral turpitude, or a petition under this chapter is pending or being instituted against him; and
3. The rehabilitation of the person has been attained to the satisfaction of the Court.

D. Expungement. Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply that no record exists with respect to such person upon any inquiry in the matter. Copies of the order shall be sent to each agency or official named therein.

E. Inspection of expunged records. Inspection of the records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records and only to those persons named in such petition.

F. Expungement upon dismissal of petition at adjudication. In any proceeding alleging delinquency or need-of-supervision in which the Court orders the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the Court's own motion.

[NCA 01-126, § 123, approved Aug. 9, 2001.]

§ 1-407. Exclusion of certain statements by alleged delinquent

A. Inadmissibility of statements and admissions. No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be

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admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation if available at no fee except that, if, to the extent such counsel is available for appointment at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.

B. Exceptions to exclusion. Notwithstanding the provisions of subsection A of this section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding.

[NCA 01–126, § 124, approved Aug. 9, 2001.]

Cross References

Criminal procedure, rights of defendant, see Title 14, § 1–303.

Library References

Indians ⇄520(3), 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–408. Appeals

An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the Appellate Court and shall be decided at the earliest practical time. The Nation shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

[NCA 01–126, § 125, approved Aug. 9, 2001.]

Cross References

Appellate procedure, see Title 27, § 3–101 et seq.
Rules of Appellate Procedure, see Title 27, App. 2.

Library References

Indians ⇄132, 542, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

SUBCHAPTER 5. ABUSE AND NEGLECT REPORTING REQUIREMENTS; CENTRAL REGISTRY

Section

1–501. Legislative purpose.

GENERAL PROVISIONS

Title 6, § 1-502

Section

- 1-502. Persons required to report child abuse or neglect.
- 1-503. Required report of postmortem investigation.
- 1-504. Evidence of abuse and neglect.
- 1-505. Immunity from liability.
- 1-506. Communication not privileged.
- 1-507. Reporting procedures.
- 1-508. Confidentiality of reports of abuse or neglect.
- 1-509. Home study and other reports.
- 1-510. Children and Family Services Administration records.
- 1-511. Law enforcement records confidential.
- 1-512. Identity confidential.
- 1-513. Central registry.
- 1-514. Action upon receipt of report.

Cross References

Domestic and family violence, see Title 6, § 3-101 et seq.
Physical abuse of a child, see Title 14, § 2-313.
Sexual abuse of a person under the age of sixteen, see Title 14, § 2-315.

United States Code Annotated

Reporting of child abuse, see 18 U.S.C.A. § 1169.

§ 1-501. Legislative purpose

The National Council hereby declares that the complete reporting of child abuse and neglect is a matter of concern and that in enacting this subchapter it is the intent of the Nation to protect the children within the jurisdiction of the Nation and to offer protective services in order to prevent any further harm to a child suffering from abuse and neglect. It is the further intent of the Nation that the various federal, state and Tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative interaction.

[NCA 01-126, § 201, approved Aug. 9, 2001.]

Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5.	C.J.S. Infants §§ 116 to 117.
Westlaw Topic Nos. 209, 211.	

§ 1-502. Persons required to report child abuse or neglect

A. Any person specified in subsection B of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the CFSA or appropriate law enforcement agency.

B. Persons required to report such abuse or neglect or circumstances or conditions shall include any of the following:

1. Physician or surgeon, including a physician in training;
2. Child health associate or community health representative (CHR);

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3. Medical examiner or coroner;
4. Dentist;
5. Osteopath;
6. Optometrist;
7. Chiropractor;
8. Chiropodist or podiatrist;
9. Registered nurse or licensed practical nurse;
10. Hospital personnel engaged in the admission, care, or treatment of patients;
11. School official or employee;
12. Social worker or worker in a family care home or child care center;
13. Mental health professional;
14. Any law enforcement personnel;
15. The Prosecutor or his assistants.

C. In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal law enforcement agency or CFSA.

D. Any Indian or non-Indian person subject to the jurisdiction of the District Court who willfully violates the provisions of this section:

1. Shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00); and
2. Shall be liable for damages proximately caused thereby.

[NCA 01-126, § 202, approved Aug. 9, 2001.]

Library References

Indians ☞132.

Infants ☞13.5.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150, 152, 154 to 176.

C.J.S. Infants §§ 116 to 117.

§ 1-503. Required report of postmortem investigation

A. Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the appropriate law enforcement agency, the Child Protection Worker, the Prosecutor, and the CFSA.

B. The CFSA shall forward a copy of such report to the central registry.

[NCA 01-126, § 203, approved Aug. 9, 2001.]

Library References

Indians ⇨132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ⇨13.5.	C.J.S. Infants §§ 116 to 117.
Westlaw Topic Nos. 209, 211.	

§ 1–504. Evidence of abuse and neglect

A. Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

B. Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

[NCA 01–126, § 204, approved Aug. 9, 2001.]

Library References

Indians ⇨132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ⇨13.5.	C.J.S. Infants §§ 116 to 117.
Westlaw Topic Nos. 209, 211.	

§ 1–505. Immunity from liability

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this chapter, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this subchapter or otherwise performing his duties or acting pursuant to this chapter shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

[NCA 01–126, § 205, approved Aug. 9, 2001.]

Library References

Health ⇨768.	C.J.S. Hospitals § 44.
Indians ⇨132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ⇨13.5(2).	C.J.S. Infants § 117.
Westlaw Topic Nos. 198H, 209, 211.	C.J.S. Mental Health §§ 123 to 124.

§ 1–506. Communication not privileged

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this subchapter.

[NCA 01–126, § 206, approved Aug. 9, 2001.]

Cross References

Spouse's testimony, rights of defendant, see Title 14, § 1–303.

Library References

Indians ☞132, 520, 640.
 Infants ☞13.5(1).
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150 to 179.
 C.J.S. Infants § 116.

§ 1–507. Reporting procedures

A. Reports of known or suspected child abuse or neglect made pursuant to this subchapter shall be made immediately to the CFSA or Lighthouse Police and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by CFSA.

B. Such reports, when possible, shall include the following information:

1. The name, address, age, sex, and race of the child;
2. The name and address of the parent, guardian or Indian custodian;
3. The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;
4. The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
5. The family composition;
6. The source of the report and the name, address, and occupation of the person making the report;
7. Any action taken by the reporting source;
8. Any other information that the person making the report believes may be helpful in furthering the purposes of this section.

C. A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Prosecutor's office and to the Lighthouse Police.

D. A written report from persons or officials required by this subchapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

[NCA 01–126, § 207, approved Aug. 9, 2001.]

Library References

Indians ☞132.
 Infants ☞13.5(1).
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150, 152, 154 to 176.
 C.J.S. Infants § 116.

§ 1–508. Confidentiality of reports of abuse or neglect

A. Except as provided in this section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

B. Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when

authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim or child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

C. Any person who violates any provision of this section shall be subject to a civil penalty of not more than five hundred dollars (\$500.00).

D. Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

1.¹ The law enforcement agency or social services department investigating a report of known or suspected child abuse or neglect, caring for, supervising or treating a child or family which is the subject of the report or record, including the Lighthorse Police, Attorney General, and the Muscogee (Creek) Nation Children and Family Services Administration, including the Deputy Director of Community Services, but excluding other administrators, personnel and elected officials of the Muscogee (Creek) Nation of Oklahoma.

E. After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection D of this section and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the manager of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the manager of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is the Prosecutor or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

[NCA 01-126, § 208, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

¹ So in original.

Library References

Indians ☞132.
 Infants ☞13.5(1).
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians §§ 150, 152, 154 to 176.
 C.J.S. Infants § 116.

§ 1-509. Home study and other reports

A. Home study reports. Unless waived by the Court, the CFSA or other agency designated by the Court shall make a home study and report in writing in all children's cases, except:

1. If the allegations of a petition filed under Title 6, § 1-707 are denied, the study shall not be made until the Court has entered an order of adjudication; and

2. The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

B. Use of reports as evidence. For the purpose of determining proper disposition of a child the general rules of evidence shall not apply, and written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence. However, the Court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires. The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified herein.

[NCA 01–126, § 209, approved Aug. 9, 2001.]

Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

§ 1–510. Children and Family Services Administration records

All records of the Nation's Children and Family Services Administration related to child custody proceedings concerning all children's cases under the provisions of this chapter, and all records of any federal agency related to child custody proceedings concerning all children's cases under the provisions of this chapter may not be inspected or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- A. To the victim in each case when the child is found guilty of a delinquent act;
- B. When the child has escaped from an institution to which he has been committed;
- C. By order of the Court;
- D. When the Court orders the child to be held for criminal proceedings;
- E. When there has been a criminal conviction and a presentence investigation is being made on an application for probation; or
- F. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by law of the Nation.

[NCA 01–126, § 210, approved Aug. 9, 2001.]

Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

§ 1-511. Law enforcement records confidential

The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this chapter shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- A. To the victim in each case when the child is found guilty of a delinquent act;
- B. When the child has escaped from an institution to which he has been committed;
- C. By order of the Court;
- D. When the Court orders the child to be held for criminal proceedings;
- E. When there has been a criminal conviction and a presentence investigation is being made on an application for probation; or
- F. When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by law of the Nation.

[NCA 01-126, § 211, approved Aug. 9, 2001.]

Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

§ 1-512. Identity confidential

No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under the provisions of this subchapter may be transmitted to the Federal Bureau of Investigation or any other person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings.

[NCA 01-126, § 212, approved Aug. 9, 2001.]

§ 1-513. Central registry

A. When the National Council determines that sufficient funding and resources are available, the Nation shall establish a central registry of child protection for the purpose of maintaining a registry of information concerning each case of child abuse reported under this subchapter.

- B. The central registry shall contain but shall not be limited to:
 1. All information in any written report received under this subchapter;
 2. Record of the final disposition of the report, including services offered and services accepted;

3. The plan for rehabilitative treatment;
4. The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;
5. Any other information which might be helpful in furthering the purposes of this chapter.

C. The CFSA Manager may employ a manager of the central registry on a part-time or full-time basis if funds are available, or may assign the duties of the manager of central registry to a CFSA employee or employees on a part-time basis. The person performing the duties of the manager shall have charge of said registry. Subject to available appropriations, the manager shall equip his office so that data in the central registry may be made available during nonbusiness hours through the use of computer technology. Such computerized records shall be password coded and only CFSA personnel, judges, justices and law enforcement personnel shall have access to the password.

D. After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection B of Title 6, § 1-502 and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the manager of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the manager of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is the Prosecutor or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

E. Unless an investigation of a report conducted pursuant to this subchapter determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the manager of the central registry based upon the investigation made by the CFSA or the enforcement agency.

F. In all other cases, the record of the reports to the central registry shall be sealed no later than ten (10) years after the child's eighteenth (18th) birthday. Once sealed, the record shall not otherwise be available unless the Manager of the central registry, pursuant to rules promulgated by CFSA and upon notice to the subject of the report, gives his personal approval for an appropriate reason. In any case and at any time, the manager may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

G. At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the manager of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

H. At any time subsequent to the completion of the investigation, a subject of the report may request the manager to amend, seal, or expunge the record of the report. If the manager refuses to does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing before the District Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this subchapter. The CFSA shall be given notice of the hearing. The burden in such a hearing shall be on the CFSA. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

I. Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this chapter shall be given to the subject of such report and to the CFSA. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

J. Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this subchapter shall be subject to a civil penalty not in excess of five hundred dollars (\$500.00) and any actual damages sustained.

K. The CFSA shall adopt such rules and regulations for the central registry as may be necessary to encourage cooperation with other Nations, states and the National Center on Child Abuse and Neglect.

[NCA 01-126, § 213, approved Aug. 9, 2001.]

Library References

Indians ☞132.	C.J.S. Indians §§ 150, 152, 154 to 176.
Infants ☞13.5(1).	C.J.S. Infants § 116.
Records ☞30.	C.J.S. Records §§ 74, 76, 78, 80, 112.
Westlaw Topic Nos. 209, 211, 326.	

§ 1-514. Action upon receipt of report

A. The Muscogee (Creek) Nation Children and Family Services Administration (CFSA) shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect pursuant to cooperative agreement between the two agencies. The immediate concern of such investigation shall be the protection of the child.

B. The investigation, to the extent that it is reasonably possible, shall include:

1. The nature, extent, and cause of the abuse or neglect;
2. The identity of the person responsible for such abuse or neglect;
3. The names and conditions of any other children living in the same place;
4. The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
5. All other data deemed pertinent.

C. The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or

neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the District Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

D. The receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The receiving agency may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The receiving agency shall provide for persons to be continuously available to respond to such reports. Nations and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the receiving agency or to have such arrangements made through agreements with local law enforcement agencies.

E. The receiving agency shall refer its investigation report to the Child Protection Worker. Upon receipt of a report, if the CFSA reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the appropriate law enforcement agency is necessary for the protection of the child or other children under the same care, the law enforcement agency and the Prosecutor shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with applicable provisions of this chapter.

F. If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the receiving agency in order to refer the case for investigation. If the local law enforcement agency is unable to contact the receiving agency, it shall make a complete investigation and may request the Prosecutor to institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the CFSA.

[NCA 01-126, § 301, approved Aug. 9, 2001.]

SUBCHAPTER 6. SEARCH WARRANTS; CUSTODY OR DETENTION

Section

- 1-601. Search warrants for the protection of children.
- 1-602. Issuance and return of search warrant.
- 1-603. Expiration of search warrant.

GENERAL PROVISIONS

Title 6, § 1-602

Section

- 1-604. Children taken into custody prior to filing of petition.
- 1-605. Detention or release of child; medical examination and treatment; notice and hearing.
- 1-606. Notification of court officers.
- 1-607. Temporary care and shelter.
- 1-608. Conditions of detention of child; detention or confinement in adult facility.
- 1-609. Court-ordered release.
- 1-610. Authorized medical treatment.
- 1-611. Court ordered commitment for observation.

Cross References

Criminal procedure, search and seizure, see Title 14, § 1-306.

§ 1-601. Search warrants for the protection of children

A. Authority to issue. A search warrant may be issued by the District Court to search any place for the recovery of any Indian child believed to be a delinquent child, a child in need of supervision, a child in need of treatment or a neglected or abused child and located within Indian country subject to the Court's jurisdiction.

B. Warrant requirements. Such warrant shall be issued only on the conditions that the application for the warrant shall:

1. Be in writing and supported by affidavit sworn to or affirmed before the Court;
2. Name or describe with particularity the child sought;
3. State that the child is believed to be a delinquent child, a child in need of supervision, a child in need of treatment or a neglected or abused child and the reasons upon which such belief is based;
4. State the address or legal description of the place to be searched; and
5. State the reasons why it is necessary to proceed pursuant to this section instead of proceeding by issuance of a summons.

[NCA 01-126, § 302, approved Aug. 9, 2001.]

Library References

Indians ◊640.

Searches and Seizures ◊102 to 108.

Westlaw Topic Nos. 209, 349.

C.J.S. Indians §§ 151 to 179.

C.J.S. Searches and Seizures §§ 175 to 186,
188 to 193, 199 to 200, 203 to 205.

§ 1-602. Issuance and return of search warrant

A. Issuance. If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

B. Service. The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct. A copy of the warrant, the

application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.

C. Custody of child. If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility.

D. Return. The warrant shall be returned to the issuing court, immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Prosecutor. If the child was not found, such information should be subscribed on the warrant.

[NCA 01–126, § 303, approved Aug. 9, 2001.]

Library References

Indians ☞640.

Searches and Seizures ☞123, 124, 150.

Westlaw Topic Nos. 209, 349.

C.J.S. Indians §§ 151 to 179.

C.J.S. Searches and Seizures §§ 173 to 174,
204 to 205, 225 to 243, 274 to 275.

§ 1–603. Expiration of search warrant

A search warrant for the protection of a child shall be null and void if not served within ten (10) days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

[NCA 01–126, § 304, approved Aug. 9, 2001.]

§ 1–604. Children taken into custody prior to filing of petition

A. Custody without court order. A child may be taken into custody prior to the filing of a petition by a peace officer without a court order if the child is found violating any law, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, guardian or legal custodian for a substantial length of time or without intent to return, or if the child's surroundings are such as to endanger the welfare of the child.

B. Custody with court order. A child may be taken into custody prior to the filing of a petition pursuant to an order of the District Court issued on the application of the Prosecutor. The application presented by the Prosecutor may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The Court order may be written or oral, provided, that if the order is issued orally, the Judge shall reduce the order to writing within twenty-four (24) hours of the oral issuance of the order. The Court order may be transmitted to the Court Clerk by facsimile, and the facsimile copy filed stamped upon receipt, provided that the original order shall be delivered to the Court Clerk and attached to the file stamped facsimile copy within ten (10) days of the date of filing the facsimile copy.

[NCA 01–126, § 305, approved Aug. 9, 2001.]

Library References

Indians ↻135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-605. Detention or release of child; medical examination and treatment; notice and hearing

A. Custody of alleged delinquent child or child in need of supervision. Whenever a child is taken into custody as a delinquent child or a child in need of supervision, the child shall be detained or be released to the custody of his parent, guardian, attorney or custodian, upon the written promise of such parent, guardian, attorney or custodian to bring the child to the Court at the time fixed. If detained, such child shall be taken immediately before a Judge of the District Court or to the place of detention or shelter designated by the Court. If no Judge be available locally, the person having the child in custody shall immediately report his detention of the child to the Chief Judge, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a regional juvenile detention center, beyond the next two (2) judicial days unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child. If the latter Judge cannot be reached, such detention shall be reported immediately to any Judge serving on the Court. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the Court may be released to the custody of a parent or other person appointed by the Court, or be detained in such place as shall be designated by the Court, subject to further order.

B. Custody of alleged deprived child. Whenever a child is taken into custody as a deprived child, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Court or he shall be taken immediately before a judge of the District Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a deprived child without a court order, the peace officer or Child Protection Worker shall immediately report the fact of the detention of the child to a Judge of the District Court. If no Judge is available locally, the detention shall be reported immediately to the Chief Judge, or if the Chief Judge cannot be reached, then to any Judge regularly serving the Court. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the Court, the Court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent guardian, legal custodian or another responsible person pending further proceedings pursuant to this subchapter. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of the hearing. The Court may release an alleged deprived child from protective custody upon such conditions as the court finds reasonably necessary for the protection of the child and the Court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to this chapter is warranted.

C. Custody of alleged child in need of treatment. Whenever a child is taken into custody as a child in need of treatment, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Court or he shall be taken immediately before a judge of the District Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a child in need of treatment without a court order, the peace officer or Child Protection Worker shall immediately report the fact of the detention of the child to a Judge of the District Court. If no Judge is available locally, the detention shall be reported immediately to the Chief Judge, or if the Chief Judge cannot be reached, then to any Judge regularly serving the Court. The parent or legal guardian of the child shall be given immediate notice of the custody of the child whenever possible and prior adequate notice of any hearing pursuant to this subsection. Within the next two (2) judicial days following the child being taken into custody, and thereafter at such intervals as may be determined by the Court, the Court shall conduct a hearing to determine whether the child should remain in protective custody or be released to the parent, guardian, legal custodian or another responsible person pending further proceedings pursuant to this chapter. The Court may release an alleged child in need of treatment from protective custody upon such conditions as the Court finds reasonably necessary for the protection of the child or others and the Court shall determine whether the allegations regarding the child are such that additional time for the filing of a petition pursuant to this chapter is warranted. Any protective order of the Court pursuant to this subsection for a mental health examination of the child shall be provided. After a prescreening examination and a determination by a qualified medical health professional that there is reasonable cause to believe that as a result of a demonstrable mental illness there exists an imminent danger that the child will intentionally or unintentionally seriously physically injure himself or another person, the child may be admitted to a hospital or mental health facility on an emergency psychiatric basis. Except upon an order of the court for an inpatient mental health examination of the child, such emergency psychiatric admission shall be for not more than two (2) judicial days, excluding weekends and legal holidays.

[NCA 01-126, § 306, approved Aug. 9, 2001.]

Library References

Indians ☞135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-606. Notification of court officers

Whenever an officer takes a child to a detention or shelter facility, or admits a child to a medical facility, and determines not to release said child, the officer who took the child to a detention or shelter facility shall notify the Prosecutor, the CFSA, and any agency or persons so designated by the Court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Prosecutor, the CFSA, and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child

was not released. This report shall be filed within twenty-four (24) hours excluding Saturdays, Sundays, and legal holidays.

[NCA 01-126, § 307, approved Aug. 9, 2001.]

Library References

Indians ☞135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-607. Temporary care and shelter

A. Temporary shelter. A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility approved by the CFSA and designated by the Court or the CFSA and shall not be placed in detention.

B. Temporary shelter in child's home. Upon application of the CFSA the Court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the CFSA, if emergency caretaker services are available, to remain in the child's home with the child until a parent, or legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the CFSA, to resume charge of the child, but in no event shall such period of time exceed twenty-four (24) hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the CFSA, to resume charge of the child. The Manager of the CFSA shall designate in writing the representatives of CFSA authorized to perform such duties. The Court order allowing emergency shelter in the child's home may be written or oral, provided, that if consent is given verbally, the Judge shall reduce the consent given to writing within twenty-four hours.

[NCA 01-126, § 308, approved Aug. 9, 2001.]

Library References

Indians ☞135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-608. Conditions of detention of child; detention or confinement in adult facility

A. Basic requirements. When a child is taken into custody pursuant to the provisions of this chapter, the child shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public, pursuant to the following guidelines:

1. No pre-adjudicatory or predisposition detention or custody order shall remain in force and effect for more than thirty (30) days. The Court for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed sixty (60) days.

2. Whenever the Court orders a child to be held in a juvenile detention facility, as that term is defined in this chapter, an order for secure detention

shall remain in force and effect for not more than ten (10) days after such order. Upon an application of the Prosecutor and after a hearing on such application, the Court, for good and sufficient cause may allow an additional period not to exceed ten (10) days after such hearing. The total period of pre-adjudicatory or predisposition shall not exceed the ninety (90) day limitation specified in paragraph 1 of this subsection. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, "telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the Court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention, or may order the release of the child from detention.

3. No child alleged or adjudicated to be deprived, in need of supervision or in need of treatment shall be confined in any jail, adult lockup or adult detention facility. No child shall be transported or detained in association with criminal, vicious or dissolute persons.

4. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, a child in need of supervision or a child in need of treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care, or released to the custody of his parents or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the Court may order the child placed in a juvenile detention facility pending Court proceedings if it finds said detention to be essential for the safety of the child.

B. Prohibition regarding secure detention. No child may be placed in secure detention unless:

1. The child is an escapee from a correctional facility or community correctional program or placement; or

2. The child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction; or

3. The child is seriously assaultive or destructive towards others or himself; or

4. The child is detained for the commission of a crime that would constitute a serious act; or

5. The child is detained for the commission of a crime that would constitute a habitual criminal act; or

6. The child is currently charged with a felony or misdemeanor and is on probation or parole on a prior delinquent offense, is on pre-adjudicatory community supervision, is currently on release status on a prior delinquent offense, or has willfully failed or there is reason to believe that the child will willfully fail to appear for District Court proceedings.

C. Prohibition regarding use of adult secure detention facilities; exceptions. Except as otherwise provided in this section, no child may be placed in secure detention in a jail, adult lockup or other adult detention facility unless: the child is detained for the commission of a crime that would constitute felony if committed by an adult; and the child is awaiting an initial court appearance which is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays; and there is no existing acceptable alternative placement for the child; and the jail, adult lockup or adult detention facility meets the requirements for licensure of state juvenile detention facilities, is appropriately licensed, and provides sight and sound separation for juveniles, including total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities, total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities and separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both.

D. Limited use of adult secure facilities. Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a juvenile training school or group home from being held in any jail certified by the Oklahoma Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention. The time limitations for holding a child in jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

E. Use of jail for runaways. Notwithstanding the provisions of this section a child who is alleged to be a runaway from another Indian Nation's jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his parent, or legal custodian.

F. Detention hearing for child in delinquency proceedings involving alleged felony crime. No child taken to a detention or shelter facility without a court order as the result of an allegedly delinquent act which would constitute a major crime if committed by an adult shall be released from such facility if in writing a law enforcement agency has requested that a detention hearing be

held to determine whether the child's immediate welfare or the protection of the community requires that he be detained. No such child shall thereafter be released from detention except after a hearing, reasonable advanced notice of which has been given to the Prosecutor, alleging new circumstances concerning the further detention of the child. When, following a detention hearing the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition. Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult.

G. Contracts for juvenile detention facilities. The CFSA shall initiate negotiations for a contract on behalf of the Muscogee (Creek) Nation with any state juvenile detention facility for the providing of detention services pursuant to 10A O.S. 2–3–101 G, provided that such contract is subject to approval by the Principal Chief and National Council.

[NCA 01–126, § 309, approved Aug. 9, 2001.]

Library References

Indians ☞135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–609. Court-ordered release

At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court.

[NCA 01–126, § 310, approved Aug. 9, 2001.]

Library References

Indians ☞135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–610. Authorized medical treatment

A. Emergency medical treatment without court order. When any child is taken into custody pursuant to this chapter and it reasonably appears to the police officers, child protection worker or person acting pursuant to court order that the child is in need of medical treatment to preserve his health, any police officer, any child protection worker or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of a parent or guardian who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent, guardian or other person legally competent to authorize said medical treatment. The parent,

guardian or custodian of the child shall be responsible for such medical expenses as ordered by the court. No peace officer, employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

B. Court order for medical treatment prior to adjudication. At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:

1. When the Court finds that emergency medical, surgical, or dental treatment is required for a child in CFSA custody it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to this chapter or pursuant to court order.

2. After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, and after a hearing on notice the Court may authorize or consent to non emergency medical, surgical, or dental treatment or care for a child in CFSA custody.

C. Court order for medical treatment after adjudication. After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child.

[NCA 01-126, § 311, approved Aug. 9, 2001.]

Library References

Health ☞911.	C.J.S. Physicians, Surgeons, and Other Health
Indians ☞640.	Care Providers § 116.
Westlaw Topic Nos. 198H, 209.	C.J.S. Right to Die §§ 4, 23 to 26, 51, 53.
C.J.S. Indians §§ 151 to 179.	

§ 1-611. Court ordered commitment for observation

If it appears that any child being held in detention or shelter may be mentally ill developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for seventy-two (72) hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended for a period not exceeding ten (10) days.

[NCA 01-126, § 312, approved Aug. 9, 2001.]

Library References

Indians ☞640.	C.J.S. Indians §§ 151 to 179.
Infants ☞227(1).	C.J.S. Infants §§ 24 to 25, 41, 43, 46 to 48, 71
Westlaw Topic Nos. 209, 211.	to 95.

SUBCHAPTER 7. ADJUDICATION

Section

- 1-701. Court intake.
- 1-702. Prosecutor intake.
- 1-703. Deferred adjudication.
- 1-704. Deferred adjudication admissible.
- 1-705. Court diversion by stipulation.
- 1-706. Limitation on diversions.
- 1-707. Filing petition; time limits when child already in custody; order to remove child from home.
- 1-708. Petition heading.
- 1-709. Petition contents.
- 1-710. Summons.
- 1-711. When summons unnecessary.
- 1-712. Additional parties to be summoned.
- 1-713. Service of summons.
- 1-714. Failure to appear.
- 1-715. Appointment of guardian ad litem.
- 1-716. Notice of legal rights.
- 1-717. Adjudicatory hearing.
- 1-718. Mentally ill and developmentally disabled children.
- 1-719. Dismissal of petition.
- 1-720. Sustaining petition.
- 1-721. Temporary orders.

§ 1-701. Court intake

A. Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the Court's jurisdiction, by reason of delinquency, need of supervision, need of treatment, neglect or abuse, the law enforcement officer or other person may refer the matter to the CFSA, which shall determine whether the interests of the child or of the community requires that further action be taken.

B. If the CFSA worker determines that the interests of the child or of the community require that court action be taken, he shall request in writing the Prosecutor to file a petition and deliver a copy of the entire case file to the Prosecutor. The file shall include without limitation, the initial referral, the investigative report, and all available police reports, medical reports and other relevant documents.

C. If the CFSA worker is unable to determine whether the interests of the child or of the Nation require that court action be taken from information available to him, he may investigate or refer the matter to another agency designated by the Court for a preliminary investigation and recommendations as to filing a petition or as to initiating an informal adjustment pursuant to this chapter.

D. If the CFSA worker determines that the interests of the child or of the Nation do not require court action, the CFSA may assist the family in development of a voluntary treatment plan and/or offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have.

[NCA 01-126, § 401, approved Aug. 9, 2001.]

Library References

Indians ↻134, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-702. Prosecutor intake

A. Upon receiving a request to file a petition and the accompanying reports and files from the CFSA, the Prosecutor shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the applicable evidentiary rules to establish the jurisdiction of the District Court over the child.

B. If the Prosecutor determines that there is not sufficient evidence available to establish the jurisdiction of the District Court over the child, he shall, in writing, refuse to file the requested petition, or, in his discretion, may request the appropriate law enforcement or child welfare agency to conduct a further investigation into the matter.

C. If the Prosecutor determines that sufficient evidence is available to establish the jurisdiction of the District Court over the child, he shall file a petition concerning the child.

[NCA 01-126, § 402, approved Aug. 9, 2001.]

§ 1-703. Deferred adjudication

A. Prior to the filing of a petition, either the CFSA or the Prosecutor with the consent of the CFSA may divert any children's case from the court process through use of a deferred adjudication, except a case subject to prosecution as a major crime or subject to Title 6, § 1-706.

B. A deferred adjudication shall be made by entering into a contract with the child's parents, guardian, or other custodian whereby the parent, guardian or other custodian agrees to undergo specified treatment for the condition noticed, including an agreement to do or refrain from doing certain acts and the CFSA or Prosecutor on behalf of the Nation agrees not to file a petition in the case so long as the parent, guardian, or other custodian comply with the contract.

C. Each such contract shall contain the following:

1. The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract.

2. The specific treatment programs the parents, guardian, or custodian agree to successfully complete and their duration.

3. The specific facts which the parents, guardian, or custodian agree to do or to refrain from doing.

4. The specific treatment or other social services to be offered by the Nation or the Bureau of Indian Affairs and accepted by the family.

5. A fixed, limited time for the contract to run not exceeding one (1) year.

6. That the Prosecutor will not file a petition on the subject of the contract for the facts or allegations stated if the parents, guardian, or custodian comply with the contract terms for the full term of the contract.

7. That each party has received a copy of the contract.

D. No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge of the District Court.

[NCA 01-126, § 403, approved Aug. 9, 2001.]

§ 1-704. Deferred adjudication admissible

The deferred adjudication contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence. The parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm.

[NCA 01-126, § 404, approved Aug. 9, 2001.]

§ 1-705. Court diversion by stipulation

A. After filing of a petition but prior to the entry of an order sustaining the petition, the Prosecutor with the consent of the CFSA, may divert any children's case, except a case subject to prosecution as a major crime or subject to Title 6, § 1-706, from the adjudicatory process with the consent of the respondents and the Court by obtaining consent decree if:

1. The Court has informed the child and his parents, guardian, or legal custodian, and the Court believes they understands said information regarding their rights to:

a. Deny the allegations of the petition and require the Prosecutor to prove each allegation by admissible evidence;

b. Confront and cross-examine the witnesses against them and to call witnesses on their own behalf;

c. Refuse to testify against themselves or each other in delinquency cases;

d. A trial by a jury of six (6) persons at the adjudicatory stage, where a jury trial is available;

e. Be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel.

2. Written consent to the stipulation is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding.

3. The CFSA has prepared a treatment plan for the family to be incorporated into the consent decree which distinctly states:

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a. A statement that CFSA has consulted with the child's parents in development of the plan or a brief summary of CFSA's attempt to obtain such consultation and explanation why such attempt failed.

b. The specific treatment programs the parents, guardian, or custodian, or child agree to successfully complete and their duration.

c. The specific treatment or other social services to be offered by the CFSA and accepted by the family.

d. The specific acts which the parents, guardian, or custodian or child agree to do or to refrain from doing.

e. The person or agency to be vested with custody of the child if the child cannot remain in its own home, the specific provisions of subparagraphs (b), (c), and (d) of this paragraph which must be completed or accomplished for a specific duration before the child is returned to its own home, and the period of supervision of the child in its own home.

B. After all parties have consented, the Court shall review the treatment plan and if the Court agrees that the plan is satisfactory, shall order all parties by the consent decree to abide by the provisions of the treatment plan. The consent decree shall be monitored and modified as in other dispositions, provided, that if the family fails to comply with the treatment plan, the Court, on motion of the Prosecutor shall proceed with the adjudication.

C. A consent decree shall remain in effect for not exceeding one (1) year, provided, that upon notice of hearing the Court may extend the force of the decree for an additional term of one (1) year with the consent of the parties. The adjudication shall be continued during the term of the consent decree and thereafter dismissed if the decree is complied with.

[NCA 01-126, § 405, approved Aug. 9, 2001.]

§ 1-706. Limitation on diversions

No child shall be handled by informal adjustment where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve (12) months or has been handled by informal adjustment for a delinquent act in the preceding twelve (12) months.

[NCA 01-126, § 406, approved Aug. 9, 2001.]

§ 1-707. Filing petition; time limits when child already in custody; order to remove child from home

A. **Petition when child already in custody.** When a child has been taken into custody under any provision of this chapter before a petition has been filed, a petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to his parent, guardian or other legal custodian. Where a child has been taken into custody and upon allegations of cruelty on the part of the parents, guardian or other person having custodial care of the child, the five-day limitation herein shall not cause the child to be relinquished to such parent, guardian or other legal custodian. In all such cases, the Court shall determine whether the petition was filed within a reasonable time, except that a petition

shall be filed within thirty (30) days of the child being taken into custody. When a child has been taken into custody as provided by this chapter and the Court has ordered an inpatient mental health examination of the child pursuant to this chapter, the Court shall determine whether the petition was filed within a reasonable time.

B. Petition prior to removal of child. The Prosecutor shall file a petition seeking adjudication for any alleged delinquent child, child in need of supervision, deprived child or child in need of treatment. The petition may seek removal of the child from the home. No order of the Court providing for the removal of an alleged or adjudicated deprived child from his home shall be entered unless the Court finds that the continuation of the child in his home is contrary to the welfare of the child. Said order shall include either a determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from his home and as appropriate, reasonable efforts have been made to provide for the return of the child to his home or a determination as to whether or not an absence of efforts to prevent the removal of the child from his home is reasonable under the circumstances, if such removal of the child from his home is due to an alleged emergency and is for the purpose of providing for the safety of the child.

[NCA 01-126, § 407, approved Aug. 9, 2001.]

Cross References

Home study, timing when allegations of petition are denied, see Title 6, § 1-509.
Initiation of civil proceedings, see Title 27, § 2-101.

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-708. Petition heading

The Prosecutor shall sign and file all child welfare petitions alleging a child to be delinquent, in-need-of-supervision, neglected, or abused. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION
OKMULGEE DISTRICT

In The Interest Of:)	
)	
)	Case No. JV-
)	
An Alleged)	Child,

[NCA 01-126, § 408, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-709. Petition contents

A. The petition shall set forth plainly the facts which bring the child within the Court’s jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law which the child is alleged to have violated. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian or of his nearest known relative if no parent, guardian, or other legal custodian is known.

B. All petitions filed alleging the abuse or neglect of a child may include the following statement: “Termination of the parent-child legal relationship is a possible remedy available if this petition is sustained.” Unless such statement is contained in the petition, no termination of parental rights can be obtained unless, upon the occurrence of new facts after the filing of the petition an amended petition be filed based upon the new facts and containing the above required statement.

[NCA 01-126, § 409, approved Aug. 9, 2001.]

Library References

Indians ⇌134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-710. Summons

Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION
OKMULGEE DISTRICT

In The Interest Of:)
)
)
)
An Alleged Child,) **Case No. JV-**

SUMMONS

THE PROSECUTOR OF THE MUSCOGEE (CREEK) NATION to:

, Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the District Court alleging that the above named _____ is a (delinquent) (abused or neglected) child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Muscogee (Creek) Nation District Court at _____, on the __ day of _____, 20 __, at the hour of _____ o’clock __.m. and to there remain subject to the call of the Court until discharged that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in your physical custody or subject to your control, to bring the child to Court with you. You may seek the advice of an attorney on any matter relating to this action at your own expense.

Court Clerk

[Seal]

(Return as in other civil cases)

[NCA 01–126, § 410, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–711. When summons unnecessary

A summons need not issue or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

[NCA 01–126, § 411, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–712. Additional parties to be summoned

The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

[NCA 01–126, § 412, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–713. Service of summons

A. Summons shall be served personally, pursuant to applicable rules of civil procedure.

B. If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the jurisdiction of the District Court, the fact of the child’s presence within the Court’s jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

1. When the residence of the person to be served outside the Court's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

2. When the person to be served has no residence within the Court's jurisdiction and his place of residence is not known or when he cannot be found within the Court's jurisdiction after due diligence, service may be by publication.

[NCA 01-126, § 413, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-714. Failure to appear

A. Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.

B. If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.

C. When a parent or other person who signed a written promise to appear and bring the child to court, or who has waived or acknowledged service fails to appear with the child on the date set by the Court, a bench warrant may be issued for the parent or other person, the child, or both.

[NCA 01-126, § 414, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-715. Appointment of guardian ad litem

A. The Court may appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to this chapter when:

1. No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or
2. The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or
3. The Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

B. The Court may appoint a guardian ad litem for any parent in proceedings pursuant to this chapter who has been determined to be mentally ill by a

Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

C. At the time any child first appears in Court, if it is determined that he has no guardian of his person, the Court shall appoint a guardian of the person of the child before proceeding with the matter.

D. In all proceedings brought for the protection of a child suffering from abuse or nonaccidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.

E. All guardians ad litem shall, whenever practical, be required to personally visit the place of residence of the child.

[NCA 01-126, § 415, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-716. Notice of legal rights

A. Advice regarding legal rights. At his first appearance before the Court, the child and his parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

1. Their right to a jury trial upon demand where available;
2. Their right to be represented by an attorney, at their own expense, at every stage of the proceeding;
3. Their right to see, hear and cross-examine all witnesses against them;
4. Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them; and
5. In juvenile delinquency proceedings, the right of the child not to be compelled to testify against himself.

B. Court-appointed counsel. If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent funds are available or counsel is available at no fee, shall be appointed by the Court in proceedings wherein the Nation is a party, and termination of the parent-child legal relationship is stated as a possible remedy in the summons. The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

C. No legal counsel; motion for new trial. If the child and his parents, guardian or other legal custodian were not represented by legal counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have

the right to appeal, provided that lack of counsel alone shall not be grounds for reversal.

[NCA 01-126, § 416, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-717. Adjudicatory hearing

A. At the adjudicatory hearing, which shall be conducted as provided in the applicable rules of civil procedure, except that the applicable rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

B. When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

C. In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

D. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

[NCA 01-126, § 417, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-718. Mentally ill and developmentally disabled children

A. If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this section, the Court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty (30) days.

B. A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, but neither a Tribal, city or county jail nor a detention facility shall be considered a suitable facility under any circumstances.

C. If the report of the examination made pursuant to subsection A of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

D. The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

E. The Court shall set a time for resuming the hearing on the original petition under the following circumstances:

1. The report of the examination made pursuant to subsection A of this section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;

2. The child is found not to be mentally ill; or

3. The report of the examination made pursuant to subsection A of this section states that the child is developmentally disabled but not mentally ill.

F. 1. “Developmental disability” means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first eighteen (18) years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.

2. “Mentally ill person” means a person who is of such mental condition that he is in need of supervision, treatment, care, or restraint.

3. “Mentally retarded person” means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

[NCA 01-126, § 418, approved Aug. 9, 2001.]

Library References

Indians ☞ 134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-719. Dismissal of petition

When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning deprived children or children in need of treatment, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other legal custodian shall also be discharged from any restriction other previous temporary order.

[NCA 01-126, § 419, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 150 to 179.

§ 1–720. Sustaining petition

When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning deprived children or children in need of treatment, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, deprived or in need of treatment and making the child a ward of the Court. In cases concerning deprived children, evidence that child abuse or nonaccidental injury has occurred shall constitute prima facie evidence that such child is deprived and such evidence shall be sufficient to support an adjudication under this section.

[NCA 01–126, § 420, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 150 to 179.

§ 1–721. Temporary orders

Upon sustaining a petition the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay.

[NCA 01–126, § 421, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 150 to 179.

SUBCHAPTER 8. DISPOSITION**Section**

- 1–801. Dispositional hearing.
- 1–802. Social studies and reports.
- 1–803. Treatment plan.
- 1–804. Medical examination.
- 1–805. Hearing purpose.
- 1–806. Hearing informal.
- 1–807. Continuance.
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- 1–809. Child in need of treatment; disposition.
- 1–810. Deprived child; disposition.
- 1–811. Placement preferences.
- 1–812. Child in need of supervision; disposition.
- 1–813. Delinquent child; disposition.
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CHILDREN

Section

- 1–815. Probation for delinquents and children in need of supervision.
- 1–816. New hearing authorized.
- 1–817. Continuing jurisdiction.
- 1–818. Orders for support.
- 1–819. Review hearings.
- 1–820. Permanency hearing.

§ 1–801. Dispositional hearing

After making an order of adjudication finding the child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Muscogee (Creek) Nation at a hearing scheduled for that purpose.

[NCA 01–126, § 501, approved Aug. 9, 2001.]

Library References

- Indians ⇄134, 135, 640.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 150 to 179.

§ 1–802. Social studies and reports

A. The Court may order any agency within its jurisdiction or request any other agency to prepare and submit to the Court after the adjudication and prior to disposition a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.

B. After adjudication the Court may order or request, as appropriate, any agency to submit preadjudicatory social studies or reports helpful in determining proper treatment and disposition for the family.

C. Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing.

[NCA 01–126, § 502, approved Aug. 9, 2001.]

§ 1–803. Treatment plan

A. In every case the Court shall order the CFSA to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

B. The treatment plan shall be developed by CFSA after consultation with the parents unless such consultation cannot be obtained and shall contain at a minimum:

1. A brief social and family history;
2. A brief statement of the causes of the Court's exercise of its jurisdiction;
3. A statement that CFSA has consulted with the child's parents in development of the plan or a brief summary of CFSA's attempt to obtain such consultation and explanation why such attempt failed
4. The specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished;

5. The specific actions the parents, guardian, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore;

6. The specific treatment or other social services offered by the Nation or other agency which the family should be required to accept; and

7. The person or agency to be vested with custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be retained in its home under supervision and when court supervision should cease.

C. The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing.

[NCA 01-126, § 503, approved Aug. 9, 2001.]

Library References

Indians ⇄134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-804. Medical examination

The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose.

[NCA 01-126, § 504, approved Aug. 9, 2001.]

Library References

Indians ⇄134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-805. Hearing purpose

The purpose of the dispositional hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the child during the treatment period or, if treatment cannot or does not correct the problems after actual attempts have been made to do so, to provide for the long term health, welfare, and safety of the child.

[NCA 01-126, § 505, approved Aug. 9, 2001.]

Library References

Indians ⇄134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-806. Hearing informal

The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

[NCA 01-126, § 506, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–807. Continuance

A. The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

B. If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

C. In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

[NCA 01–126, § 507, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–808. Order of protection

A. The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this subchapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is party to the proceeding.

B. The order of protection may require any such person:

1. To stay away from a child or his residence;
2. To permit a parent to visit a child at stated periods;
3. To abstain from offensive conduct against a child, his parent or parents, guardian, or any other person to whom legal custody of a child has been given;
4. To give proper attention to the care of the home;
5. To cooperate in good faith with an agency:
 - a. Which has been given legal custody of a child;
 - b. Which is providing protective supervision of a child by court order; or
 - c. To which the child has been referred by the Court.
6. To refrain from acts of commission or omission that tend to make a home an improper place for a child; or
7. To perform any legal obligation of support.

C. When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection E of this section.

D. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Nation will be served thereby.

E. A person failing to comply with an order of protection without good cause may be found in contempt of court.

[NCA 01-126, § 508, approved Aug. 9, 2001.]

Library References

Indians ☞ 134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-809. Child in need of treatment; disposition

A. The CFSA may provide for the care of a child adjudicated to be a child in need of treatment who is in the custody of the CFSA:

1. In the home of the child, the home of a relative of the child, a foster home, a group home, a transitional living program, an independent living program or in any other community based child care facility under the jurisdiction or licensure of the State of Oklahoma or the CFSA appropriate for the care of the child and shall provide for the outpatient care and treatment of the child; or

2. The CFSA may place a child in need of treatment and found by a Court to be eligible to receive inpatient care and treatment in a treatment center operated by the Muscogee (Creek) Nation, another Tribe or the State of Oklahoma, Indian Health Service or other public or private mental health facility. The CFSA shall establish a system for the regular review by a qualified mental health professional, at intervals of not more than sixty (60) days, of the case of each child in need of treatment in the custody of the CFSA and receiving inpatient care and treatment to determine whether or not continued inpatient treatment is required and appropriate for the child. When such child no longer requires inpatient care and treatment in a mental health treatment facility, the CFSA shall place the child as provided in paragraph 1 of this subsection.

B. In providing for the outpatient care and the treatment of children in its custody who have been adjudicated in need of treatment, the Department of Human Services shall utilize to the maximum extent possible and appropriate the services available through state or Tribal guidance centers, substance abuse programs and community-based private nonprofit agencies and organizations.

C. Nothing contained in this section shall be interpreted to require the CFSA to place a child found by a Court to be eligible for inpatient mental health treatment in a mental health facility when the CFSA determines that

such placement is inappropriate or unnecessary for the treatment needs of the child.

[NCA 01–126, § 508–A, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–810. Deprived child; disposition

A. When a child has been adjudicated to be deprived the Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship pursuant to subchapter 9 of this chapter (Title 6, § 1–901 et seq.), it shall include one or more of the following provisions which the Court finds appropriate:

1. The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the Court may impose.

2. The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with applicable provisions of this chapter.

3. The Court may place legal custody in the CFSA or a child placement agency for placement in a family care home, or other child care facility in accordance with applicable provisions of this chapter.

4. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

B. The Court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to subchapter 9 of this chapter (Title 6, § 1–901 et seq.), and disposition of the child shall be made in accordance with subchapter 9 of this chapter.

[NCA 01–126, § 509, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–811. Placement preferences

A. **Preferences.** In making a placement of or committing legal custody of a child to some person, whether for foster care or adoption, the Court shall place the child with extended family members, as defined in Title 6, § 1–103, in the following descending order of preference:

1. The natural or adoptive parents;
2. A stepparent who is a member of the Muscogee (Creek) Nation;

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3. A member of the child's extended family;
4. A member of the same clan, band or Tribal town within Muscogee (Creek) Nation;
6. A Muscogee (Creek) Nation alternative/foster care home approved or specified by CFSA;
7. With approval of CFSA, a foster care home licensed or approved by another Tribe;
8. A public or private institution for children approved by CFSA or operated by an Indian organization which has programs suitable to meet the needs of an Muscogee (Creek) Indian child; provided that a child attending a BIA, Muscogee (Creek) Nation or other Tribal school will not be eligible for reimbursement, except that weekend care in an alternative/foster care home is reimbursable.

B. Good cause not to follow preferences. The Court shall find good cause not to strictly comply with the placement preferences set forth in subsection A of this section in the following circumstances:

1. Where both parents are deceased, and at least one of the parents has stated a placement preference in an affidavit filed of record with the District Court Clerk or has stated a placement preference in a will admitted into probate in the state courts, in the Nation's Court, in the court of another Indian Nation, or in a proceeding before an administrative law judge;
2. When the child is already in the custody of a stepparent who is not a member of the Nation at the time of commencement of any child custody proceeding, and the Court finds that the stepparent has been involved in the day to day care of the child for a significant period of time and that the continued custody of the child by the stepparent would be in the child's best interests;
3. When the child is under the age of fourteen (14) and has spent a significant amount of time with a relative or stepparent within one (1) of the placement preference categories set forth in subsection A of this section, has stated a preference for placement with said relative, and the Court finds that such a placement would be in the child's best interests; and
4. When the child is fourteen years of age or older and states a preference for a relative who fits within one of the placement preference categories set forth in subsection A of this section, provided that the Court determines that the placement pursuant to the wishes of the child is in the child's best interests.

C. Parental preference and location of foster home. In foster care placements, the Court may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying the preferences set forth in subsection A of this section, where appropriate.

D. Considerations regarding persons within placement categories. For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

E. Placement with agency which must follow placement preferences. The Court may place the child with the CFSA or with a child placement agency approved by the CFSA for further placement in lieu of a direct placement pursuant to subsection A of this section. When the Court does so, the agency shall place said child in accordance with the preferences described above, and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

F. Placement preferences applicable in state court proceedings. State courts shall follow the placement preference rules outlined herein as authorized and required by the Federal Indian Child Welfare Act, 25 U.S.C. § 1915 and the Oklahoma Indian Welfare Act, 10 O.S. § 40.6, so long as the placement is the least restrictive setting appropriate to the particular needs of the child.

G. Home studies; Supervision of foster homes. The CFSA shall be responsible for supervision of children subject to juvenile proceedings, and shall be responsible for conducting home studies.

[NCA 01–126, § 510, approved Aug. 9, 2001.]

Library References

Indians ⇄ 134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–812. Child in need of supervision; disposition

When a child has been adjudicated as being in need of supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

A. The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the Court may impose.

B. The Court may place the child in the legal custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the child on probation or under protective supervision in accordance with applicable provisions of this chapter.

C. The Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

1. The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

2. The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel; and

3. The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty days.

D. The Court may place legal custody in the CFSA or a child placement agency for placement in a family care home or child care facility, or it may place the child in a child care center.

E. The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

F. The Court may commit the child to any institution or group care facility designated by the Court.

[NCA 01-126, § 511, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-813. Delinquent child; disposition

A. If a child has been adjudicated as being delinquent, the Court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child.

B. The designated institution shall provide the Court with any information concerning a child committed to its care which the Court at any time may require.

C. A commitment of a child to a designated institution under applicable provisions of this chapter shall be for an indeterminate period not to exceed two (2) years.

D. The CFSA may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

E. Each commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter.

[NCA 01-126, § 512, approved Aug. 9, 2001.]

Library References

Indians ☞135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-814. Legal custody; guardianship

A. Any individual, agency, or institution vested by the Court with legal custody of a child shall have the rights and duties defined in paragraphs 4 and 5 of subsection K of Title 6, § 1-102.

B. Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have the rights and duties defined in subsection K of Title 6, § 1-102; except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the Court.

C. If legal custody or guardianship of the person is vested in an agency or institution, the Court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

D. An individual, agency, or institution having legal custody of guardianship of the person of a child shall give the court any information concerning the child which the Court at any time may require.

E. Any agency other than the department of institutions vested by the Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.

F. No individual vested by the Court with legal custody of child shall remove the child from the state for more than thirty (30) days without Court approval.

G. A decree vesting legal custody of a child in an individual, institution, or agency other than the CFSA shall be for an indeterminate period, not to exceed two (2) years from the date it was entered. Such decree shall be reviewed by the Court no later than six (6) months after it is entered.

H. The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the child. The findings of the Court and the reasons therefore shall be entered with the order renewing or denying renewal of the decree.

I. No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the Court if he so requests.

[NCA 01-126, § 513, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-815. Probation for delinquents and children in need of supervision

A. The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition of probation for a child who is fourteen (14) years of age or older but less than eighteen (18) years of age on the date of the dispositional hearing, has the power to impose a commitment, placement, or detention, whether continuous or at designated intervals, which shall not exceed forty-five (45) days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

B. The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six (6) months.

C. The Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied

satisfactorily with the terms and conditions of his probation for a period of two (2) years shall be released from probation, and the jurisdiction of the Court shall be terminated.

D. When it is alleged that a child has violated the terms and conditions of his probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and his parents, guardian or other legal custodian, and any other parties to the proceeding. The child, his parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses. The hearing on the alleged violation shall be conducted as soon as possible.

E. If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this subchapter which is in the best interest of the child and the Nation.

F. If the Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

G. If the Court revokes the probation of a person over eighteen (18) years of age, in addition to other action permitted by this subchapter, the Court may sentence him to juvenile detention for a period not to exceed one hundred eighty (180) days during which he may be released during the day for school attendance, job training, or employment, as ordered by the Court.

[NCA 01-126, § 514, approved Aug. 9, 2001.]

Library References

Indians ☞134, 135, 640.

Westlaw Topic No. 209.

C.J.S. Indians §§ 150 to 179.

§ 1-816. New hearing authorized

A. A parent, guardian, custodian, or next friend of any child adjudicated under this chapter, or any person affected by a decree in a proceeding under this subchapter, may petition the court for a new hearing on the following grounds:

1. That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

2. That irregularities in the proceedings prevented a fair hearing.

B. If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

[NCA 01-126, § 515, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–817. Continuing jurisdiction

Except as otherwise provided in this subchapter, the jurisdiction of the Court over any child adjudicated as neglected or abused, in need of supervision, or delinquent shall continue until he becomes twenty-one (21) years of age unless terminated by court order.

[NCA 01–126, § 516, approved Aug. 9, 2001.]

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–818. Orders for support

A. Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Nation, or take other reasonable action to provide support for the child.

B. When the Nation, or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Court Clerk and dispensed by court order to that agency, the Nation or to the State of Oklahoma or an agency of the State of Oklahoma if required by foster care agreement between the Nation and the State of Oklahoma or an agency of the State of Oklahoma or as otherwise necessary by law or appropriate in the circumstances. In all cases of placement with a particular family, the contribution shall be paid to that family by the Court Clerk subject to the supervision of the Court to prevent waste or misuse of such funds.

[NCA 01–126, § 517, approved Aug. 9, 2001.]

Cross References

Review of child’s disposition following termination of the parent-child relationship, see Title 6, § 1–909.

Library References

Indians ⇨134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1–819. Review hearings

A. Purpose. After proper disposition and implementation of a family treatment plan, a review hearing shall be conducted to review the progress of the family treatment plan, the health and welfare of the child(ren) and the safety of the child(ren)’s placement.

1. A review hearing shall be scheduled based upon the recommendation of the child treatment worker or at the request of any party.

2. The review hearing shall be scheduled at a minimum of once every six (6) months.

3. The review hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered.

B. Reports. The CFSA through a child treatment worker shall prepare a written report for such purpose of review.

1. In every case CFSA shall prepare a written report for such review and include, without limitation, the status of the health and welfare of the child, parents' compliance with the family treatment plan, any recommendations of the child treatment worker and any other relevant reports.

2. Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the review hearing. Failure to file reports at least five (5) days prior to a review hearing shall be grounds for contempt of court.

[NCA 01-126, § 518, approved Aug. 9, 2001; amended by NCA 06-059, § 1, approved May 8, 2006.]

Library References

Indians ⇄134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-820. Permanency hearing

A. Reasonable efforts. The CFSA shall make reasonable efforts to eliminate the need for removing the child from his home and to make a timely reunification unless there has been a legal determination that reasonable efforts are not required.

B. Hearings

1. A permanency hearing shall be scheduled within thirty (30) days when there is a determination by the Court that reasonable efforts are not required.

2. The Court shall conduct permanency hearings the earliest date of either twelve (12) months after adjudication or twelve (12) months after the child has been removed from his/her home for sixty (60) days.

3. The permanency hearings will determine the permanency plan for the child which includes whether, and if applicable, when the child will be returned to the parent, placed for adoption, when a petition for termination will be filed, referred to legal guardianship, or placed in another permanent living arrangement.

C. Reports. The CFSA through a child treatment worker shall prepare a written report for such purpose.

1. In every case CFSA shall prepare a written report for such hearing and include, without limitation, the status of the health and welfare of the child, parents' compliance with the family treatment plan, any recommendations of the child treatment worker and any other relevant reports.

2. Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the permanency hearing. Failure to file reports at least five (5) days prior to a review hearing shall be grounds for contempt of court.

[NCA 01–126, § 518, approved Aug. 9, 2001; amended by NCA 06–059, § 1, approved May 8, 2006.]

Library References

Indians ☞ 134, 135, 640.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

SUBCHAPTER 9. TERMINATION OF PARENTAL RIGHTS

Section

- 1–901. General provisions.
- 1–902. Termination of parental rights of father or putative father of child born out of wedlock.
- 1–903. Notice of hearing to terminate parental rights.
- 1–904. Expert testimony.
- 1–905. Burden of proof in termination proceedings.
- 1–906. Appointment of counsel.
- 1–907. Effect of decree.
- 1–908. Custody with authority to consent to adoption following termination.
- 1–909. Review of child’s disposition following termination of the parent-child legal relationship.
- 1–910. Appeals.
- 1–911. Traditional custodian’s and grandparent’s rights.

Cross References

Deprived child, disposition decree not terminating parent-child relationship, see Title 6, § 1–810.

§ 1–901. General provisions

A. Adjudication not grounds for termination. The finding that a child is delinquent, in need of supervision or deprived shall not deprive the parents of the child of their parental rights.

B. Grounds for termination. The Court may terminate the rights of a parent to a child in any one of the following situations:

1. Consent. The Court may terminate parental rights upon a written relinquishment by a parent, including a parent who is a minor, acknowledged as provided in Title 6, § 1–1006, who desires to terminate his parental rights; provided that the court finds that such termination is in the best interests of the child.

2. Abandonment. The Court may terminate parental rights upon a finding that a parent who is entitled to custody of the child has abandoned the child. For purposes of this subsection the term “abandonment” includes, but is not limited to, the following:

a. The parent has willfully left the child alone or in the care of another who is not the parent of the child without identifying the child or furnishing a means

of identification for the child, the whereabouts of the parents are unknown, and the child's identity cannot be ascertained by the exercise of reasonable diligence,

b. The parent has voluntarily left the child alone or has placed the child informally and without benefit of Tribal custom in the care of another person who is not the parent and expressed a willful intent by words, actions, or omissions not to return for the child, or

c. The parent fails to maintain a significant relationship with the child through visitation or communication for a period of six (6) consecutive months out of the last fourteen (14) months immediately preceding the filing of a petition for termination of parental rights. Incidental or token visits or communications shall not be construed or considered in establishing whether a parent has maintained a significant relationship with the child.

3. Failure to correct conditions. The Court may terminate parental rights upon a finding that:

a. The child is deprived as defined in this chapter; and

b. Such condition is caused by or contributed to by acts or omissions of his parent; and

c. The parent has failed to show that the condition which led to the removal of custody of the child from the parent has not been corrected although the parent has been given three (3) months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The Court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the Court may return the child to the custody of its parent or guardian, subject to any conditions which it may wish to impose or the court may place the child with an individual or an agency; and

d. The Court determines that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious emotional or physical injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In determining this, the Court shall consider, but not be limited to, the following factors:

i. Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child pursuant to paragraph 8 of this subsection;

ii. Conduct towards the child or sibling of the child of a physically or sexually abusive nature pursuant to paragraph 5 of this subsection;

iii History of violent behavior;

iv. A single incident of life-threatening or gravely disabling injury or disfigurement of the child;

v. Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;

vi. The evidence of abuse or neglect of the child or siblings of the child by the parent;

vii. Reasonable efforts by child care agencies which have been unable to rehabilitate the parent or parents.

4. Failure to contribute to support. The Court may terminate parental rights upon a finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity.

5. Conviction related to child abuse. The Court may terminate parental rights upon a finding of a conviction in a criminal action pursuant to state or federal law or a finding in a deprived child action either that:

a. The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse, or

b. The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse.

6. Conviction related to death of child's sibling. The Court may terminate parental rights upon a finding of a conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic neglect of such sibling.

7. Long-term incarceration. If in the best interests of the child, the Court may terminate parental rights to a child which has been adjudicated as deprived and which has been placed outside of the home of a natural or adoptive parent, guardian or extended family member, if the parent whose rights are sought to be terminated has been sentenced to a period of incarceration of not less than ten (10) years and the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past. Incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights.

8. Mental illness. If in the best interests of the child, the Court may terminate parental rights to a child which has been adjudicated as deprived and which has been placed outside of the home of a natural or adoptive parent,

guardian or extended family member, if the parent whose rights are sought to be terminated has a mental illness or mental deficiency which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities; the continuation of parental rights would result in harm or threatened harm to the child; and the mental illness or mental deficiency of the parent is such that will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve. A finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

a. In considering any factors in subsection (B) of this section in terminating the parent-child relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

b. The Prosecutor will file petitions to terminate the parental rights of parents for any child who has been in the foster care system for fifteen (15) of the most recent twenty-two (22) months or there is a finding that reasonable efforts are not required. A termination of parental rights petition does not have to be filed in the cases which meet the following criteria for exceptions:

- i. The child is being cared for by a relative;
- ii. The Nation has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child;
- iii. The Nation has not provided (when reasonable efforts are required) the services the Nation deems necessary for the safe return of the child to the child's home.

C. Persons authorized to petition for termination. The Prosecutor is authorized to petition the Court to terminate the parental rights of a parent or the parents of the child for any of the grounds listed in subsection B of this section. A parent consenting to a step-parent adoption, legal guardian of a child or other person having legal custody of the child to be adopted may petition the Court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in paragraphs 1, 2 or 4 of subsection B of this section. A prior finding by a court that a child is delinquent, deprived or in need of supervision shall not be required for the filing of such petition by the parent or guardian.

[NCA 01-126, § 601, approved Aug. 9, 2001.]

Cross References

Adoptions of children, when consent of parents unnecessary, see Title 6, § 1-1007.

Library References

Indians ⇄134.
Westlaw Topic No. 209.
C.J.S. Indians § 150.

§ 1-902. Termination of parental rights of father or putative father of child born out of wedlock

A. Termination of parental rights of father or putative father. The Prosecutor, child's mother when relinquishing the child for adoption or consenting to a step-parent adoption, the legal guardian of the child or other person having legal custody of a child to be adopted may petition for termination of the parental rights of a father or putative father of a child born out of wedlock, provided that the notice requirements of subsection B of Title 6, § 1-903 are followed. The Court shall terminate parental rights if such action is supported by the evidence pursuant to subsection D of this section.

B. Fathers and putative fathers entitled to notice. For purposes of identifying fathers and putative fathers of children born out of wedlock entitled to notice pursuant to subsection B of Title 6, § 1-903, the terms "father" and "putative father" shall include:

1. Any person adjudicated by a court in this state to be the father of the child;
2. Any person who is recorded on the child's birth certificate as the child's father;
3. Any person who is openly living with the child and the child's mother at the time the proceedings is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;
4. Any person who has been identified as the child's father by the mother in a sworn statement;
5. Any person who was married to the child's mother within ten (10) months prior or subsequent to the birth of the child; and
6. Any person who has filed with the Oklahoma State Paternity Registry an instrument acknowledging paternity of the child.

C. Oklahoma Putative Father Registry. The Court, as necessary, shall order the Oklahoma Department of Human Services to provide the person or agency filing the petition with the name and address of any person on the registry who claims to be the father of the child.

D. Court decision. The Court may make one of the following decisions after the hearing to terminate parental rights of a father or putative father of a child born out of wedlock:

1. The Court shall terminate the rights of a father or putative father if he fails to appear at the hearing or has waived notice pursuant to subparagraph c of paragraph 2 of subsection B of Title 6, § 1-903; or
2. The Court may, if it is in the best interest of the child accept a relinquishment or consent to adoption executed by the father or putative father of the child; or
3. The Court may, if it is in the best interest of the child, determine that the father or putative father has failed to establish parental rights to the child and

may terminate any parental rights which such father or putative father may claim if:

a. Prior to the hearing and having actual knowledge of the birth or impending birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including the failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy; or

b. At the hearing he fails to prove that he is the father of the child; or

c. Having established paternity, he fails to prove that he has exercised parental rights and duties toward the child, unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child after having made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child.

4. The Court may, if it is in the best interest of the child terminate the parental rights of the father or putative father on grounds set forth in Title 6, § 1-901 of this Title; or

5. The Court may, if it is in the best interest of the child grant custody of the child to the father or putative father, if the court determines such person to be the father of the child.

[NCA 01-126, § 602, approved Aug. 9, 2001.]

Cross References

Adoptions of children, when consent of parents unnecessary, see Title 6, § 1-1007.

Library References

Indians ⇄ 134.
Westlaw Topic No. 209.
C.J.S. Indians § 150.

§ 1-903. Notice of hearing to terminate parental rights

A. General requirements. A parent shall be given actual notice of any hearing to terminate his parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least twenty (20) days after the receipt of such notice, except with the consent of the parent, if known. If the Court finds that the whereabouts of the parent cannot be ascertained, it may order that notice be given by publication and a copy mailed to the last known address of the parent. The notice shall be published one (1) day a week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the action to terminate parental rights is brought, and once in the *Muscogee Nation News*. Nothing in this section shall prevent a Court from immediately taking custody of a child and ordering whatever action may be necessary to protect his health or welfare.

B. Special notice provisions for father or putative father of child born out of wedlock.

1. Notice requirements. The father or putative father shall be entitled to notice and an opportunity to be heard pursuant to subsection A of this section. The notice shall also apprise the father or putative father of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the child's care, custody or guardianship or in the child's adoption.

2. Exceptions to notice requirements. The following are exceptions to the notice requirements contained in paragraph 1 of this subsection:

a. The Court may waive notice to a putative father whose identity is unknown to the mother of the child born out of wedlock if the mother of the child signs a sworn statement before the Court that the identity of the father or putative father of the child is unknown and the Court is satisfied, after inquiry into the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law. The waiver of notice by the Court pursuant to this subparagraph shall not constitute grounds to challenge an adoption of the child.

b. The Court may waive notice when the identity of the father or putative father of a child born out of wedlock is known but his whereabouts is unknown and the Court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown, the Court may order that notice be given by publication as provided in subsection A of this section and a copy mailed to the last-known address, if known, of such father or putative father. When notice is given by publication the order terminating parental rights shall not become final for a period fifteen (15) days from the date of the order.

c. A person may waive his right to notice under this subsection. Such waiver signed by such person shall include a statement affirming that the persons signing such waiver understands that said waiver shall constitute grounds for the termination of his parental rights pursuant to the provisions of this section and Title 6, § 1-901.

[NCA 01-126, § 603, approved Aug. 9, 2001.]

Cross References

Adoptions of children, when consent of parents unnecessary, see Title 6, § 1-1007.

Library References

Indians ⇄ 134, 519.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-904. Expert testimony

A. Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the court funds.

B. All ordered evaluations shall be made available to counsel at least fifteen (15) days prior to the hearing.

[NCA 01-126, § 604, approved Aug. 9, 2001.]

Library References

Indians ☞134, 520(1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-905. Burden of proof in termination proceedings

A finding resulting in termination of parental rights must be supported by clear and convincing evidence.

[NCA 01-126, § 605, approved Aug. 9, 2001.]

Library References

Indians ☞134, 520(2).
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-906. Appointment of counsel

A. After a petition for termination of a parent-child legal relationship is filed pursuant to this subchapter, the parent or parents shall be advised of the right to counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whenever the Court fund has sufficient unobligated funds to pay an attorney.

B. An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

[NCA 01-126, § 606, approved Aug. 9, 2001.]

Library References

Indians ☞134, 500.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-907. Effect of decree

A. The termination of parental rights terminates the parent-child relationship, including the parent's right to the custody of the child, the parent's right to visit the child, the parent's right to control the child's training and education, the parent's right to the earnings of the child, and the parent's right to inherit from or through the child. After termination the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

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B. Nothing herein shall in any way affect the right of the child to inherit from the parent or disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian Nation, any agency, any state, or the United States.

[NCA 01-126, § 607, approved Aug. 9, 2001.]

Library References

Indians ☞134.
Westlaw Topic No. 209.
C.J.S. Indians § 150.

§ 1-908. Custody with authority to consent to adoption following termination

A. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Court may:

1. Leave the child in the legal custody of the other parent and discharge the proceedings; or
2. Make any other disposition provided in subchapter 8 of this chapter that the Court finds appropriate.

B. After parental rights of both living parents have been terminated, a Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but a Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the parents have been terminated in accordance with the provisions of this subchapter.

[NCA 01-126, § 608, approved Aug. 9, 2001.]

Library References

Indians ☞134.
Westlaw Topic No. 209.
C.J.S. Indians § 150.

§ 1-909. Review of child's disposition following termination of the parent-child legal relationship

A. The Court, at the conclusion of a hearing following which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

B. Review hearings shall be conducted pursuant to Title 6, § 1-818.

[NCA 01-126, § 609, approved Aug. 9, 2001.]

Library References

Indians ☞134, 524.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-910. Appeals

A. Appeals of court decrees made under an order terminating parental rights shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

B. Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of and paid from the court fund.

[NCA 01-126, § 610, approved Aug. 9, 2001.]

Library References

Indians ☞134, 540.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 1-911. Traditional custodian's and grandparent's rights

A. No dispositional order or decree including termination of parental rights and adoption shall divest the child's traditional custodians or grandparents of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party.

B. The rights and duties of the traditional custodians and grandparents may be enforced by court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

[NCA 01-126, § 612, approved Aug. 9, 2001.]

SUBCHAPTER 10. ADOPTIONS

Section

- 1-1001. Jurisdiction over adoptions.
- 1-1002. Purpose of adoptions.
- 1-1003. Types of adoptions.
- 1-1004. Persons eligible to adopt by statutory process.
- 1-1005. Consent to statutory adoption.
- 1-1006. Voluntary relinquishment.
- 1-1007. When consent of parents unnecessary.
- 1-1008. Consent of child.
- 1-1009. Petition.
- 1-1010. Investigation.
- 1-1011. Adoption hearing.
- 1-1012. Report and final decree of adoption.

Section

- 1–1013. Contents of adoption order.
- 1–1014. Effect of final decree of statutory adoption.
- 1–1015. Records and hearings confidential.
- 1–1016. Certificates of adoption.
- 1–1017. Foreign decree.
- 1–1018. Adoption of adults.
- 1–1019. Appeals.

§ 1–1001. Jurisdiction over adoptions

The Court shall possess jurisdiction over adoptions of children pursuant to the provisions of Title 6, §§ 1–301 and 1–302. The Court may exercise jurisdiction over an adoption between two (2) adults who submit to the jurisdiction of the Court regardless of residence or domicile.

[NCA 01–126, § 701, approved Aug. 9, 2001.]

Library References

Indians ☞138, 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–1002. Purpose of adoptions

The purpose of an adoption is to establish a formal and legal family relationship between two (2) or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this chapter shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

[NCA 01–126, § 702, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1–1003. Types of adoptions

There shall be three (3) types of adoptions recognized by the Muscogee (Creek) Nation, namely:

1. Statutory adoptions pursuant to this subchapter;
2. Statutory adoptions under the laws of some state or Nation having jurisdiction over the parties and the subject matter; and
3. Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Nation’s common law until such time as the proper procedures for such adoptions are written down as a part of the Code of Laws of the Muscogee (Creek) Nation, at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by statutory law of the Muscogee (Creek) Nation, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedent’s estates.

[NCA 01–126, § 703, approved Aug. 9, 2001.]

Library References

Indians ↻138.
Westlaw Topic No. 209.

§ 1-1004. Persons eligible to adopt by statutory process

A. The following persons are eligible to adopt a child pursuant to statutory law, subject to the placement preferences of § 1-811 of this Title:

1. A husband and wife jointly;
2. Either the husband or wife if the other spouse is a parent of the child;
3. An unmarried person who is at least twenty-one (21) years old;
4. A married person who is legally separated from the other spouse and at least twenty-one (21) years old.
5. In the case of a child born out of wedlock, its unmarried father or mother.

[NCA 01-126, § 704, approved Aug. 9, 2001.]

Library References

Indians ↻138.
Westlaw Topic No. 209.

§ 1-1005. Consent to statutory adoption

A. Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court in accordance with the following requirements:

1. Consent shall be given by both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree.
2. A parent less than sixteen (16) years of age may give his consent only with the written consent of one of the minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.
3. If both parents be deceased, or if their parental rights have been terminated by judicial decree, then one of the following may consent to the adoption: the Indian custodian having physical custody of said child for the preceding six (6) month period; the legal guardian of the person of the child; the guardian ad litem of the child if authorized to exercise consent by court order; the executive head of an agency having custody of the child by judicial decree with the specific authority granted by the Court to consent to the adoption of the child; or any person having legal custody of a child by court order, provided that the Court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the adoption petition.
4. Where any parent or Indian custodian voluntarily consents to an adoption or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Court shall certify that the parent or Indian custodian either

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fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

5. Any consent given prior to or within ten (10) days after the birth of a child shall not be valid.

B. Any consent given for the adoption of or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent.

C. After the entry of a final decree of adoption the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the Court to vacate such decree, provided that the adoption decree was entered no more than two (2) years preceding the filing of the petition to vacate. Upon a finding that such consent was obtained through fraud or duress, the Court shall vacate such decree and return the child to the parent.

[NCA 01–126, § 705, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1–1006. Voluntary relinquishment

Any parent, legal custodian, traditional custodian, or other guardian of a child may relinquish any rights he may have to the care, custody, and control of the child. A relinquishment shall be made by filing a petition in the District Court with notice to the CFSA, Prosecutor, Indian custodians, and the parent(s) who is not a petitioner. The Indian custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court.

[NCA 01–126, § 706, approved Aug. 9, 2001.]

Cross References

Consent to termination of parental rights, see Title 6, § 1–901.

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1–1007. When consent of parents unnecessary

A. Termination prior to filing adoption petition. Adoption of a child may be decreed without parental consent if the parent has had his parental or custodial rights terminated by a decree of a Court of competent jurisdiction prior to the filing of the adoption petition. A certified copy of the termination order shall be attached to the petition.

B. Termination based on abandonment or failure to provide support. Adoption of a child may be decreed without parental consent if a consenting

parent, legal guardian or person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding based on the grounds of abandonment set forth in paragraph 2 of subsection B of Title 6, § 1-901 or based on the grounds of failure to contribute to support as set forth in paragraph 4 of subsection B of Title 6, § 1-901.

C. Termination based on failure of father or putative father to establish parental rights. Adoption of a child born out of wedlock may be decreed without consent of the father or putative father when the mother who has custody of the child executes a relinquishment for the purpose of the adoption, and the person or agency to whom such relinquishment was made secures the termination of parental rights by filing a petition for the termination of the parental rights of the father or putative father based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to Title 6, § 1-902, unless such rights have been previously terminated or relinquished. Adoption of a child born out of wedlock may also be decreed without parental consent if a consenting parent, legal guardian or person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding, based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to Title 6, § 1-902.

D. Requirements for application for termination of parental rights for adoption purposes. The application shall contain the name of the child to be adopted, the time, date, and place of the hearing, the grounds for the termination of parental rights, and notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why his consent is necessary. The application and notice shall be served on the parent whose termination of rights is sought pursuant to Title 6, § 1-903. The application shall be set for hearing at a date and time certain and must be at least twenty-four (24) hours prior to the hearing on the adoption.

[NCA 01-126, § 707, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1-1008. Consent of child

Whenever a child be a sufficient maturity and understanding the Court may, and in every case of a child over ten (10) years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

[NCA 01-126, § 708, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1-1009. Petition

A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

A. The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.

B. Their relationship with the child, if any, and their Tribal affiliation by blood and membership, if any.

C. When and from whom the petitioners acquired or intend to acquire physical custody of the child.

D. The names of the child's biological parents and their Tribal affiliation by blood and membership, including Tribal roll numbers, if known.

E. The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and Tribal affiliation by blood and membership, including Tribal roll number, if known.

F. The name used for the child in the proceeding, and, if a change in name is desired, the new name.

G. A statement that the petitioners desire that the relationship of parent and child be established between them and the child.

H. A full description and statement of the value of all property owned or possessed by the child.

I. The facts, if any, which excuse the consent of the parents or either of them to the adoption.

J. Any required consents to the adoption or termination order may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.

K. The facts which bring the child within the jurisdiction of the Court.

[NCA 01-126, § 709, approved Aug. 9, 2001.]

Library References

Indians ☞138, 511.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-1010. Investigation

A. Upon the filing of a petition for adoption, the Court shall order an investigation to be made:

1. By the agency having custody or legal guardianship of the child; or
2. In other cases, by the state, Bureau of Indian Affairs, or CFSA; or
3. By a person qualified by training or experience, designated by the Court.

B. The Court shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court which shall be no more than sixty (60) days from the issuance of the order for investigation, unless time therefore is extended by the Court.

C. Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.

D. The Court may order agencies named in subsection A of this section located in one or more jurisdictions to make separate investigations on separate parts of the inquiry, as may be appropriate.

E. The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefore.

F. Where the adopting parent is the spouse of a parent, or in the event that a report, as outlined above deemed adequate for the purpose by the Court, has been made within the six (6) months next preceding the filing of the petition for adoption, the Court, in its discretion, may waive the making of an investigation and the filing of a report.

G. Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the CFSA and the Prosecutor.

[NCA 01-126, § 710, approved Aug. 9, 2001.]

Library References

Indians ☞ 138, 411.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-1011. Adoption hearing

At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by an attorney or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the CFSA, Federal agencies, or other agencies to provide services to

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assist in the placement and the care of the child, or, in case of need, refer the matter to the CFSA and Prosecutor for the purpose of determining whether an involuntary juvenile petition should be filed.

[NCA 01–126, § 711, approved Aug. 9, 2001.]

Library References

Indians ☞138, 518.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–1012. Report and final decree of adoption

If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six (6) months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request Tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

[NCA 01–126, § 712, approved Aug. 9, 2001.]

Library References

Indians ☞138, 527, 534.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–1013. Contents of adoption order

The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, and a statement that the relationship of parent and child exists between the petitioners and the child.

[NCA 01–126, § 713, approved Aug. 9, 2001.]

Library References

Indians ☞138, 527.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–1014. Effect of final decree of statutory adoption

A. After a final decree of adoption is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural

relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).

B. After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in the Nation by virtue of his birth to said natural parents.

C. Unless the Indian custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Court, at any time within two (2) years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural Indian custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

[NCA 01-126, § 714, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1-1015. Records and hearings confidential

Unless the Court shall otherwise order:

A. All hearings held in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including Indian custodians, representatives of the CFSA when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, Indian custodians, and the CFSA.

B. All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

1. Upon order of the Court for good cause shown.
2. Upon the adopted person reaching the age of eighteen (18), the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including Tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.

3. The traditional custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity by affidavit, the traditional custodians and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

4. For the purpose of obtaining the enrollment of the child with another Indian Nation, the Court may upon request of an enrollment officer of that Nation, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that Nation subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other Nation for an in camera review only, or allow such Judge to review the record in the District Court, in camera, for the purpose of said Judge certifying to his Nation that the child is eligible for membership in that Nation.

[NCA 01–126, § 715, approved Aug. 9, 2001.]

Library References

Indians ⇄ 138, 519.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1–1016. Certificates of adoption

A. For each adoption or annulment of adoption, the Court shall prepare, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the state or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

B. Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

C. One certified copy of the form certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judge's certificate showing:

1. The original and adoptive name and Tribal affiliation of the child;
2. The names, addresses, Tribal affiliation and degree of blood of the biological parents when known;
3. The names and addresses of the adoptive parents;
4. The identity of any agency having files or information relating to the adoptive placement; and

5. Any affidavit of the biological parent requesting that their identity remain confidential.

[NCA 01-126, § 716, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1-1017. Foreign decree

When the relationship of parent and child has been created by a decree of adoption of any court of competent jurisdiction of any other state or Nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined.

[NCA 01-126, § 717, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1-1018. Adoption of adults

A. An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth herein. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including Tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

B. Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

[NCA 01-126, § 718, approved Aug. 9, 2001.]

Library References

Indians ☞138.
Westlaw Topic No. 209.

§ 1-1019. Appeals

An appeal to the District Court of Appeals may be taken from any final order, judgment, or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals.

[NCA 01-126, § 719, approved Aug. 9, 2001.]

Library References

Indians ☞138, 542.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

SUBCHAPTER 11. FOSTER CARE

Section

- 1–1101. Purpose and applicability.
- 1–1102. License required.
- 1–1103. Issuance of licenses.
- 1–1104. Denial of application or revocation of license.
- 1–1105. Licensing appeals process.
- 1–1106. Tribal/state agreements.

§ 1–1101. Purpose and applicability

A. The purpose of this subchapter is the protection of the best interests of Muscogee (Creek) children, and the promotion of the stability and security of the Muscogee (Creek) Nation and Muscogee (Creek) families, by the establishment of standards and procedures for the licensing of Tribal foster homes.

B. This subchapter applies only to the licensing of temporary, as opposed to permanent, care of Muscogee (Creek) children.

C. The CFSA shall have authority to place a child in a Tribal foster home only when granted to the CFSA by one of the following: an order of a state court having jurisdiction of the child custody proceeding, an order of a Tribal court or CFR Court having jurisdiction of the child custody proceeding, the voluntary written consent of a child’s parent having custody, or the written consent of a legal guardian or Indian custodian, other than a parent.

[NCA 01–126, § 801, approved Aug. 9, 2001.]

Library References

Indians ☞136.
Westlaw Topic No. 209.
C.J.S. Indians §§ 154 to 176.

§ 1–1102. License required

A. A Muscogee (Creek) household must be licensed by the Muscogee (Creek) Nation Children and Family Services (CFSA) as a foster home, if it is engaged in twenty-four (24) hour care of an Indian child who is not the biological child of at least one head of the household.

B. The CFSA shall license any other Muscogee (Creek) home desiring to care for Indian foster children, provided that Tribal licensing standards are met.

C. A foster home licensed by the Muscogee (Creek) Nation shall not provide placements for more than one (1) agency at a time without a written agreement delineating the responsibilities of all parties involved.

[NCA 01–126, § 802, approved Aug. 9, 2001.]

Library References

Indians ⇨136, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 154 to 176.

§ 1-1103. Issuance of licenses

A. Any Indian family and any Muscogee (Creek) family living within the boundaries of the State of Oklahoma may apply for certification as a foster family for Tribal children.

B. The CFSA shall prepare a written statement regarding procedures in the application and licensing process, which shall be given to every applicant.

C. The CFSA shall perform a foster home study in accordance with established procedures of the CFSA to determine if the applicant meets the minimum foster home standards.

D. The CFSA shall issue a license to a family for the care of foster children:

1. When it has determined that the family meets Tribal licensing standards; and

2. When the applicant has signed an agreement concerning the rights and duties of a Tribal foster home and the rights and duties of the CFSA. Such agreement shall include, but not be limited to the rights and responsibilities of the foster parent, the rights and responsibilities of the CFSA, the rights and responsibilities of the foster child, the rights and responsibilities of the child's parents/custodians, arrangements for financial assistance, if available, and a statement concerning the right of the CFSA to evaluate the foster home.

E. Every license shall specify the kind of license and the maximum number of foster children to be provide care at any one given time.

F. The CFSA must be notified, in advance, of any changes that would affect the terms of the license, such as a change of address or additional persons in the home.

G. A provision shall be made for the licensing of foster homes for specific children who require extraordinary care or services or have special needs. This type home may not otherwise be eligible for regular certification according to foster home standards set forth in this subchapter. This provision shall not be construed as replacing the regular Tribal foster home standards and placement procedures.

[NCA 01-126, § 803, approved Aug. 9, 2001.]

Library References

Indians ⇨136, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 154 to 176.

§ 1-1104. Denial of application or revocation of license

A. The CFSA may deny a Tribal foster home application if it finds that it does not meet the standards for foster homes and may suspend or revoke a Tribal foster home license for good cause. The CFSA shall notify in writing the

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CHILDREN

Tribal foster home applicant or the foster home of the denial of the application or the suspension or revocation of the license. The notification shall state the grounds for the action taken.

B. The CFSA shall send a notice of the closure of any Tribal foster home to any entities financially responsible, including, but not limited to, the State of Oklahoma Department of Human Services, Child Welfare Division.

C. The CFSA shall notify any Tribal foster home applicant whose license is denied, suspended, or revoked.

D. The notification to the applicant or licensee shall state the grounds for the action, and shall inform the applicant of his right to appeal the action as set forth in by Title 6, § 1-1105.

[NCA 01-126, § 804, approved Aug. 9, 2001.]

Library References

Indians ☞136, 226, 416.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 151 to 179.

§ 1-1105. Licensing appeals process

A licensing appeals process is set forth in this section to hear any dispute concerning the denial, suspension, or revocation of a Tribal foster home license as provided for in the Children and Family Services policies and procedures:

A. An applicant/licensee may appeal in writing to the Manager of the Children and Family Services Administration regarding any denial, suspension, or revocation.

B. The appeal will be forwarded for review by the CFSA Administrative Board.

C. All decisions of the Board shall be final.

[NCA 01-126, § 805, approved Aug. 9, 2001.]

Library References

Indians ☞136, 429.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 1-1106. Tribal/state agreements

The Principal Chief is authorized to enter into agreements with the State of Oklahoma concerning state financial assistance and the provision of other state resources, subject to the approval of the Muscogee (Creek) National Council.

[NCA 01-126, § 806, approved Aug. 9, 2001.]

Library References

Indians ☞139, 216.
Westlaw Topic No. 209.
C.J.S. Indians §§ 54 to 55, 59.

CHAPTER 2. FAMILY RELATIONS—MARRIAGE

Section

- 2-101. Definitions; generally.
- 2-102. Marriage defined.
- 2-103. Consanguinity; clan members.
- 2-104. Who may marry.
- 2-105. License required.
- 2-106. License fee; premarital counseling.
- 2-107. Physician's certificate; filing; contents.
- 2-108. Application requirements.
- 2-109. Issuance of license; contents; waiting period; delivery to person officiating; accompanying statement.
- 2-110. Solemnization of marriages.
- 2-111. Endorsement and return of license.
- 2-112. Records; return; inspections.
- 2-113. Copy of record; admission as evidence.

Historical and Statutory Notes

NCA 01-163, § 2, §§ 2-101, 102, provide:

“Section 2-101. Findings. The National Council finds:

“A. By an Act of the National Council approved October 22, 1881, the Muscogee (Creek) Nation statutorily provided for marriages between citizens, established authority for solemnization of marriages and granted the District Court the jurisdiction and authority to dissolve the marriage contract.

“B. The power to regulate the domestic relations of its members is vested in the Muscogee (Creek) Nation.

“C. The power to regulate domestic relations is a sovereign function.

“D. By Treaty beginning with the Treaty of 1790, signed August 7, 1790, through and including the Treaty with the Creeks of 1866 ratified on July 19, 1866, the Muscogee (Creek) were secured in the unrestricted right of self-government.

“E. The Muscogee (Creek) Nation has a legitimate and rightful concern with persons domiciled within its borders in relationship to marriage and can determine who may assume and who may occupy the matrimonial relation within its borders.

“Section 2-102. Title and Codification.

“This Act shall be entitled ‘Family Relations–Marriage’ and shall be placed in Chapter Two of Title 6 ‘Children and Family Relations’ of the Code of Laws of the Muscogee (Creek) Nation.”

§ 2-101. Definitions; generally

The following words shall have the following definitions for purposes of this chapter:

A. “Court Clerk” means the Court Clerk of the Muscogee (Creek) Nation District Court, or his or her designees.

B. “District Judge” means a Judge of the Muscogee (Creek) Nation District Court.

[NCA 01-163, § 2-103, approved Sept. 7, 2001.]

§ 2-102. Marriage defined

Marriage is a personal relation arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into it is necessary, and the marriage relation shall only be entered into, maintained or abrogated as provided by law.

[NCA 01-163, § 2-104, approved Sept. 7, 2001.]

Library References

Indians ⇨131.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 176.

§ 2–103. Consanguinity; clan members

Marriages prohibited by traditional law and marriages between ancestors and descendants of any degree, or a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited; provided, that any marriage of first cousins performed within the jurisdiction of another Indian Nation or state authorizing such marriages, which is otherwise legal, is hereby recognized as valid and binding in the Muscogee (Creek) Nation as of the date of such marriage.

[NCA 01–163, § 2–105, approved Sept. 7, 2001.]

Library References

Indians ⇨131.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 176.

§ 2–104. Who may marry

A. Persons aged eighteen years and older. Any unmarried person of the age of eighteen (18) or upwards and not otherwise disqualified is capable of contracting and consenting to marriage with a person of the opposite sex.

B. Persons under age of eighteen years. No person under the age of eighteen (18) years shall enter into the marriage relation, nor shall the Court Clerk issue any marriage license pursuant to Title 6, §§ 2–105 and 2–109, unless one of the following requirements is met:

1. The parent or guardian of such underage applicant expressly gives consent and authority for the marriage in the presence of the Court Clerk; or
2. The parent or guardian of such underage applicant executes a written consent to the marriage that is acknowledged in person before the Court Clerk; or
3. The written and verified consent of a parent or guardian is presented to the Court Clerk with an accompanying medical certificate of a duly licensed medical doctor or osteopath, acknowledged in the manner provided by law for the acknowledgment of deeds, stating that such parent or guardian is unable by reason of health or incapacity to be present in person; or
4. The written consent of a parent or guardian on active duty with the Armed Forces of the United States is presented to the Court Clerk, acknowledged in the manner provided by law for acknowledgment of deeds by military personnel authorized to administer oaths, accompanied by a certificate executed by a commissioned officer in command of said applicant, to the effect that said parent or guardian is on active duty in the Armed Forces of the United States; or

5. The affidavits of three (3) reputable persons are presented to the Court Clerk, stating that both parents of said minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has theretofore been appointed for said minor, in which case the District Judge may in his or her discretion consent to said marriage in the same manner as in all cases in which consent may be given by a parent or guardian and with the same effect.

C. Retention of documents used for marriage license to a minor. Any certificate and written permission considered for purposes of issuance of a marriage license to a minor shall be retained by the official issuing the marriage license.

D. Persons under age of sixteen. Every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the marriage relation.

E. Authorization of marriage of minors under certain circumstances. This section shall not be construed to prevent the District Judge from authorizing the marriage of persons under the ages herein mentioned, in settlement of suits for seduction or paternity; and the District Judge may also authorize the marriage of persons under the ages herein mentioned when the unmarried female is pregnant, or has given birth to an illegitimate child, whether, or not any suits for seduction or paternity have been brought; provided that no Court shall authorize the marriage of any male under the age of sixteen (16) or any female under the age of sixteen (16) when the unmarried female is pregnant unless at least one (1) parent of each minor, or the guardian or custodian of such child, is present before the Court and has an opportunity to present evidence in the event such parent, guardian, or custodian objects to the issuance of a marriage license, and if they are not present said parent, guardian, or custodian may be given notice of the hearing at the discretion of the Court.

F. Incestuous marriage prohibited. No marriage may be authorized when such marriage would be incestuous under this chapter.

G. Same gender marriage prohibited. A marriage between persons of the same gender performed in another Indian Nation or state shall not be recognized as valid and binding in the Muscogee (Creek) Nation.

[NCA 01–163, § 2–106, approved Sept. 7, 2001.]

Library References

Indians ⇄131.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 176.

§ 2–105. License required

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in the Muscogee (Creek) Nation without a license being first issued by the Court Clerk or by other licensing authority under the law of any other jurisdiction, authorizing the marriage between the persons named in such license.

[NCA 01–163, § 2–107, approved Sept. 7, 2001.]

Library References

Indians ⇨131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2–106. License fee; premarital counseling

A. Fees. The Court Clerk shall charge a license fee of twenty-five and no/100 dollars (\$25.00) for issuance of a marriage license except as provided in subsection B of this section.

B. Premarital counseling as basis for fee reduction. The Court Clerk shall reduce the fee for a marriage license to persons who have successfully completed a premarital counseling program meeting the conditions specified by this section. A premarital counseling program shall be conducted by a health professional or an official representative of a religious institution. Upon successful completion of the program, the counseling program provider shall issue to the persons a certificate signed by the instructor of the counseling program. The certificate shall state that the named persons have successfully completed the premarital counseling requirements. For purposes of this section, the term “health professional” means a person licensed or certified by the Muscogee (Creek) Nation to practice psychiatry or psychology; a licensed social worker with experience in marriage counseling; a licensed marital and family therapist; or a licensed professional counselor.

[NCA 01–163, § 2–108, approved Sept. 7, 2001; amended by NCA 03–032, § 1, approved Feb. 4, 2003]

Library References

Indians ⇨131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2–107. Physician’s certificate; filing; contents

A. Standard serological test. A standard serological test shall be a laboratory test for syphilis, approved by the State Commissioner of Public Health, and may be obtained on request from the Oklahoma State Department of Public Health free of charge, or at a laboratory approved for this purpose by said Oklahoma State Department of Public Health or at a laboratory approved for this purpose by the Muscogee (Creek) Nation Health Services Department.

B. Serological examination; certificate. Any person seeking to obtain a marriage license shall first file with the Court Clerk a certificate or affidavit from a duly-licensed physician, licensed to practice within the State of Oklahoma, stating that each party to the marriage contract has been given a standard serological examination, as may be necessary for the discovery of syphilis, made not more than thirty (30) days prior to the date of such application to obtain a marriage license, and that, in the opinion of the physician, the persons named therein are not infected with syphilis, or, if infected, said syphilis is not is a stage which may be communicable to the marriage partner.

C. Laboratory statement and report of test. Each physician’s statement shall be accompanied by a statement from the person in charge of the laboratory

making the test, or from some other person authorized to make such statement, setting forth the name of the test, the date it was completed and the name and address of the person whose blood was tested, but not stating the result of the test. The physician's statement and the laboratory statement shall be on the same form sheet. Upon said form a detailed report of the laboratory test, showing the result of the test, shall be transmitted by the laboratory to the physician who, after examining it and if he deems it desirable, discussing it with either or both of the proposed marital parties, shall file it with the Oklahoma State Health Officer, or the Oklahoma State Superintendent of Health, where it shall be held in absolute confidence and shall not be open to public inspection; provided that it shall be produced for evidence at a trial or proceeding in a court of competent jurisdiction, involving issues in which it may be material and relevant, on an order of the judge of such court requiring its production.

D. District Court order dispensing with requirements. Because of an emergency or other cause shown by affidavit or other proof of both of the parties over the age of twenty-five (25) years, the District Judge, if satisfied by medical testimony, that neither the health of the individuals nor the public health and welfare will be injuriously affected thereby, may make an order, on joint application of both the parties desiring the marriage license, dispensing with those requirements of this section which relate to the filing with the Court Clerk by either or both of the parties of the physician's certificates and the laboratory statements or, the said affidavits and statements having been filed, extending the thirty-day period following the examination and test to not later than ninety (90) days after such examination and test. The order shall be accompanied by a memorandum in writing from the District Judge stating the reasons for granting said order. Application for such extension may be made before, on or after the expiration of such thirty-day period. The order in the accompanying memorandum shall be filed with the Court Clerk and said Clerk shall thereupon accept the application for the marriage license without the production or filing of the physician's certificates and the laboratory statements dispensed with by the order or shall accept the application within any such extended period, as the case may be. The Court Clerk and employees shall hold such memorandum of the District Judge in absolute confidence.

[NCA 01-163, § 2-109, approved Sept. 7, 2001.]

Library References

Indians ☞ 131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2-108. Application requirements

A. Application contents. Persons desiring to be married in the Muscogee (Creek) Nation shall submit an application in writing signed and sworn to in person before the Court Clerk by both of the parties setting forth:

1. Each party's place of residence;
2. Each party's full name and age as the same appear upon one or more of the following documents, a copy of which shall be provided with the applica-

Title 6, § 2–108

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tion: the party's Muscogee (Creek) Nation Citizenship Card, a certified copy of birth certificate, a current motor vehicle operator's, chauffeur's or commercial license, a current voter's registration certificate, a current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof accepted as proof of identity and age;

3. A statement that the parties are not disqualified from or incapable of entering into the marriage relation;

4. A statement that at least one (1) of the parties is a citizen of the Muscogee (Creek) Nation; and

5. A statement whether the parties have successfully completed a premarital counseling program.

B. Evidence before issuance of license. If the Court Clerk before whom application for a marriage license is made shall be in doubt of the legal capacity of the parties for whose marriage a license is sought to enter into the marriage relation, the Court Clerk shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, the Court Clerk shall not issue a marriage license.

[NCA 01–163, § 2–110, approved Sept. 7, 2001.]

Library References

Indians ⇄ 131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2–109. Issuance of license; contents; waiting period; delivery to person officiating; accompanying statement

A. Issuance of license. Upon application pursuant to this section and the payment of the fee specified in subsection A of Title 6, § 2–106, if the Court Clerk is satisfied of the truth and sufficiency of the application and that there is no legal impediment to such marriage, the Court Clerk shall issue the license authorizing the marriage.

B. Contents of license. The license herein provided for shall contain the date of its issuance, name of the court, the full names of the persons to be married thereunder, their ages and places of residence, and social security numbers, if any and shall be directed to any person authorized by law to perform and solemnize the marriage ceremony, and shall fix the time of the return thereof, which shall not be more than thirty (30) days from the date of its issuance, and shall contain a blank certificate to be made out by the person solemnizing or performing the marriage ceremony thereunder.

C. Waiting period for certain licenses. In the event that one or both of the parties are under legal age, the marriage license shall not be issued until the application has been on file in the Court Clerk's office for a period of not less than seventy-two (72) hours, unless at the time of application for the license, the parent or guardian of such underage applicant or other person authorized

by this chapter to give consent has signed a waiver, waiving the seventy-two (72) hour waiting period.

D. Delivery of license. Any person obtaining such marriage license from the Court Clerk shall deliver said license, within ten (10) days from the date of issue, to the clergyman or other qualified person who is to officiate before the marriage can be performed.

E. Accompanying statement. Each license, when issued, shall have endorsed thereon or annexed thereto, at the end thereof, a statement, subscribed by the Court Clerk, that the application for the license was accompanied by papers complying with the applicable requirements of Title 6, § 2-107 relative to examination and health of each party, or a statement that such requirements were waived by order of the District Judge pursuant to Title 6, § 2-107. [NCA 01-163, § 2-111, approved Sept. 7, 2001.]

Library References

Indians ⇄ 131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2-110. Solemnization of marriages

A. Ceremony. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two (2) adult, competent persons as witnesses, by a judge or retired judge of any Court of this Nation, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to preach the Gospel, and who is at least eighteen (18) years of age; by a person commissioned by the District Judge after a proper application and examination; or by the clan elder in the case of a marriage solemnized at a ceremonial ground.

B. Prerequisites to performance of ceremony. No person herein authorized to perform or solemnize the marriage ceremony shall do so unless the license issued therefor be first delivered into his or her possession nor unless he or she has good reason to believe the persons presenting themselves before him or her for marriage are the identical persons named in the license and for whose marriage the same was issued, and that there is no legal objection or impediment to such marriage.

C. Credentials to officiate at marriage ceremony. The credentials of persons officiating at a marriage ceremony shall be confirmed as follows:

1. The preacher, minister, priest, or ecclesiastical dignitary who is a resident of this Nation shall have filed, in the office of the Court Clerk, a copy of the credentials or authority from his or her church authorizing him or her to solemnize marriages.

2. The preacher, minister, priest, or ecclesiastical dignitary who is not a resident of this Nation, but has complied with the laws of the state of which he or she is a resident, shall have filed once, in the office of the Court Clerk, a copy of his or her credentials or authority from his or her church authorizing him to solemnize marriages.

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3. The filing by resident or nonresident preachers, ministers, priests, or ecclesiastical dignitaries shall be effective in and for the Nation, provided, that no fee shall be charged for such recording.

4. Marriages between persons belonging to the society called Friends, or Quakers, the spiritual assembly of the Bahai's or the Church of Jesus Christ of Latter Day Saints, which have no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society, church or assembly.

[NCA 01-163, § 2-112, approved Sept. 7, 2001.]

Library References

Indians ⇄131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2-111. Endorsement and return of license

A. Endorsement by person officiating at ceremony. The person performing or solemnizing the marriage ceremony shall immediately upon the completion thereof endorse upon the license authorizing the marriage his or her name; official or clerical designation; the court of which he is judge or the congregation or body of which he is pastor, preacher, minister, or dignitary, provided, that the authority to perform or solemnize marriages shall be co-extensive with the congregation or body of which he is pastor, preacher, minister, priest, or dignitary; and signed by him with his or her official or clerical designation; provided further that all marriages solemnized among the society called Friends or Quakers, the spiritual assembly of the Bahai's, or the Church of Jesus Christ of Latter Day Saints, in the form heretofore practiced and in use in their meetings shall be good and valid. One person chosen by such society, church or assembly shall be responsible for completing the certification of marriage pursuant to this title in the same manner as the minister or other person authorized to perform marriages. Such person shall be chosen by the society, church or assembly for this purpose.

B. Endorsement by witnesses. The witnesses to the ceremony shall endorse the license authorizing the marriage with their names and post office addresses.

C. Return to Court Clerk. The license with such certificate thereon shall be transmitted to the Court Clerk who issued the same within five (5) days succeeding the date of the performance of the marriage therein authorized. Any person or persons who shall willfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100.00) for each and every offense.

[NCA 01-163, § 2-113, approved Sept. 7, 2001.]

Library References

Indians ⇄131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2-112. Records; return; inspections

A. Records. The Court Clerk issuing any marriage license shall make a complete record of the application, license, and certificate thereon, in connected form, each subjoining the other on an optical disc, microfilm, microfiche, or in a book kept by the Clerk for that purpose, properly indexed. The record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license.

B. Return of original license. After recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate on the back thereof showing the book and page where the same has been recorded.

C. Inspections. All records pertaining to the issuance of such license shall be open to public inspection during office hours.

[NCA 01-163, § 2-114, approved Sept. 7, 2001.]

Library References

Indians ☞131, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 176.

§ 2-113. Copy of record; admission as evidence

Copies of any record required to be made and kept by the Court Clerk under the provisions of this chapter, certified to by the Court Clerk, under the Court Clerk's official signature and seal, shall be received as evidence in all Courts of this Nation.

[NCA 01-163, § 2-115, approved Sept. 7, 2001.]

CHAPTER 3. PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT

Subchapter

1. General Provisions
2. Special Evidentiary Rules
3. Law Enforcement Procedures and Criminal Penalties
4. Civil Procedures and Remedies
5. Offender Treatment and Victim Services

Cross References

Abuse and neglect reporting requirements, see Title 6, § 1-501 et seq.

Family violence prevention, see Title 35, § 2-101.

Offenses against the person, see Title 14, § 2-301 et seq.

United States Code Annotated

Indian Child Protection and Family Violence Prevention Act, see 25 U.S.C.A. § 3201 et seq.

SUBCHAPTER 1. GENERAL PROVISIONS

Section

- 3-101. Title.
3-102. Purpose and construction.
3-103. Definitions.
3-104. Immunity.

§ 3-101. Title

This chapter shall be entitled the Protection from Domestic and Family Violence Act.

[NCA 01-157, § 2-101, approved Oct. 7, 2001.]

§ 3-102. Purpose and construction

This chapter shall be construed to promote the protection and safety of all victims of domestic or family violence and all victims of crimes involving domestic or family violence in a fair, prompt, and effective manner; and promote the prevention of future violence in all families.

[NCA 01-157, § 2, §§ 2-102, 105, approved Oct. 7, 2001.]

§ 3-103. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Crimes involving domestic or family violence” are as defined in Title 6, § 3-301.

B. “Cross-deputization agreement” means an agreement between the Nation, the Bureau of Indian Affairs (BIA) and/or any city, county or state governmental entity, by which the Lighthouse Police are authorized to act as

law enforcement officers to enforce the law of such other governmental entity with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to that entity's criminal jurisdiction as described in Title 6, § 3–302, and by which such other governmental entity's law enforcement officers are authorized to enforce the law of the Muscogee (Creek) Nation and/or federal law with regard to crimes arising in the Muscogee (Creek) Nation territorial jurisdiction that are subject to Muscogee (Creek) Nation jurisdiction or federal jurisdiction as described in Title 6, § 3–302.

C. "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement, and shall be adjudged by the District Court upon consideration of factors such as the length of time of the relationship, the type of relationship, the frequency of interaction between the parties, and if the relationship has been terminated by either parties, the length of time since the termination of the relationship. This term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

D. "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

1. Attempting to cause or causing physical harm to another family or household member;
2. Placing a family or household member in fear of physical harm; or
3. Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

E. "Family or household members" means:

1. Adults or minors who are current or former spouses;
2. Adults or minors who live together or who have lived together;
3. Adults or minors who are in a dating relationship or who have been in a dating relationship as defined in subsection C of this section;
4. Adults or minors who are engaged in or who have engaged in a sexual relationship with each other;
5. Adults or minors who are related by blood or adoption;
6. Adults or minors who are related or formerly related by marriage;
7. Persons who have a child in common; and
8. Minor children of a person in a relationship that is described in paragraphs 1 and 2 of this subsection.

F. "Foreign protection order" means a protection order issued by any issuing court except the Muscogee (Creek) Nation District Court.

G. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor thirteen (13) years of age or older, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and

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DOMESTIC AND FAMILY VIOLENCE

shall actually cause substantial distress to the person. “Harassment” shall include, but not be limited to, harassing or obscene telephone calls.

H. “Indian” means a person who is a member of the Muscogee (Creek) Nation; or a person who is a member of any other federally recognized Indian Tribe, including Native Hawaiians and Alaska Natives; or a person who possesses a Certificate of Degree of Indian Blood; or a person who under oath confirms to the District Court that he/she is an Indian.

I. “Issuing court” means a court that has issued a protection order, and includes a court of any Tribe, the United States, a state of the United States, the District of Columbia, or a commonwealth, territory, or possession of the United States.

J. “Lighthouse Police” means law enforcement officers of the Muscogee (Creek) Nation.

K. “Other authorized law enforcement officer” means, for purposes of this Act, any federal law enforcement officer or law enforcement officer of a city, county or state governmental entity who is authorized to enforce a Muscogee (Creek) Nation law or a federal law under authority of a commission received pursuant to a cross-deputization agreement as defined in subsection B of this section.

L. “Prosecutor” shall mean the Prosecutor of the Muscogee (Creek) Nation charged with the duty of enforcing the criminal laws of the Nation.

M. “Stalking” means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury.

N. “Territorial jurisdiction” means the Muscogee (Creek) Nation territorial jurisdiction as defined by the Judicial Code of the Muscogee (Creek) Nation in Title 27 of the Code of Laws of the Muscogee (Creek) Nation.

O. “Violation of protection order” means: (1) any violation within the Muscogee (Creek) Nation territorial jurisdiction of a protection order issued by the District Court; and (2) where applicable, any violation within the Muscogee (Creek) Nation territorial jurisdiction of a foreign protection order.

[NCA 01–157, § 2–103, approved Oct. 7, 2001.]

§ 3–104. Immunity

No judge, Lighthouse Police or other authorized law enforcement officer, court employee, Attorney General, Assistant Attorney General, Prosecutor, Assistant Prosecutor or other Tribal government official who takes, or refrains from taking, any action to enforce a protection order can be sued in a civil suit or prosecuted in a criminal action. Nothing herein shall imply an absence of immunity for any other purpose. The Nation and all its officials, employees, and agents retain all available immunity in all settings, unless specifically and explicitly waived by law duly enacted by the National Council of the Muscogee (Creek) Nation.

[NCA 01–157, § 2–104, approved Oct. 7, 2001.]

SUBCHAPTER 2. SPECIAL EVIDENTIARY RULES

Section

- 3-201. Expert testimony.
3-202. Spousal privileges inapplicable in criminal proceedings related to crimes involving domestic or family violence.
3-203. Advocate-victim privilege.

§ 3-201. Expert testimony

Notwithstanding the provisions of any other evidentiary rules, in a civil or criminal action in the District Court, if a party offers evidence of a domestic abuse, the testimony of an expert witness concerning the effects of such domestic abuse on the beliefs, behavior, and perception of the person being abused shall be admissible as evidence.

[NCA 01-157, § 2-106, approved Oct. 7, 2001.]

Library References

Indians ☞612.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 3-202. Spousal privileges inapplicable in criminal proceedings related to crimes involving domestic or family violence

Notwithstanding the provisions of any other evidentiary rules, the following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of a crime involving domestic or family violence perpetrated by the other spouse: the privilege of confidential communication between spouses and the testimonial privilege of spouses.

[NCA 01-157, § 2-107, approved Oct. 7, 2001.]

Library References

Indians ☞610, 612.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 3-203. Advocate-victim privilege

A. Prevention of disclosure. Except as otherwise provided in subsection B, a victim of a crime involving domestic or family violence may refuse to disclose, and may prevent an advocate as defined in subsection B of Title 6, § 3-501 from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:

1. The victim; or
2. The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the privilege has been waived by the victim.

B. Mandatory reporting requirements. The privilege does not relieve a person from any duty imposed pursuant to any law of the Muscogee (Creek)

Nation concerning mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse pursuant to any such law.

[NCA 01–157, § 2–108, approved Oct. 7, 2001.]

Library References

Indians ☞610, 612.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

**SUBCHAPTER 3. LAW ENFORCEMENT PROCEDURES
AND CRIMINAL PENALTIES**

Section

- 3–301. Crimes involving domestic or family violence.
- 3–302. Criminal jurisdiction over crimes involving domestic or family violence.
- 3–303. General duties of law enforcement officers to protect victims and prevent violence.
- 3–304. Response of Lighthorse police or other authorized law enforcement officers related to complaint of domestic or family violence.
- 3–305. Arrests; rights of persons detained; reports.
- 3–306. Assistance to victims by Lighthorse police or other authorized law enforcement officer.
- 3–307. Conditions of pretrial release of person arrested for or charged with crime involving domestic or family violence.
- 3–308. Duty of Advocate or Prosecutor to notify victim.
- 3–309. Record of dismissal.
- 3–310. Rights of victims; duty of Prosecutor to inform victim of rights.
- 3–311. Residential confinement in victim’s home prohibited.
- 3–312. Diversion prohibited; deferred sentencing permitted.
- 3–313. Conditions of probation.
- 3–314. Record of reported incidents of domestic abuse; reports.
- 3–315. Giving false information to Lighthorse police or other authorized law enforcement officer.

§ 3–301. Crimes involving domestic or family violence

A. Crimes defined in Criminal Code. A “crime involving domestic or family violence” occurs when a family or household member commits one or more of the following crimes as defined in and punishable pursuant to Title 14 of the Muscogee (Creek) Nation Code of Laws against another family or household member:

1. Arson;
2. Assault and battery offenses;
3. Burglary, breaking and entering;
4. Destruction, damage, vandalism of property;
5. Homicide offenses, including without limitation, murder, non-negligent manslaughter, negligent manslaughter, and justifiable homicide;
6. Kidnaping and abduction;

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7. Sex offenses, forcible, including without limitation forcible rape, forcible sodomy, forcible sexual assault with an object, and forcible fondling;

8. Stolen property offenses;

9. Weapon law violations;

10. Disorderly conduct;

11. Stalking; and

12. Trespass of real property.

B. Violation of ex parte or final protection order by Indian respondent a crime.

1. In addition to the crimes listed in subsection A of this section, a “crime involving domestic or family violence” includes the violation by an Indian respondent of a protection order issued by the District Court in accordance with this Act and includes the violation by an Indian respondent of a foreign protection order as follows: An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member; an order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly; an order removing and excluding the respondent from the residence of the petitioner; an order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member; and an order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

2. Except as provided by paragraph 3 of this subsection, any Indian respondent who has been served with an ex parte or final protection order or foreign protection order and who is convicted of the crime of “Violation of a Protection Order” shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00) or by imprisonment of not less than one (1) day and not more than one (1) year, or by both such fine and imprisonment.

3. Any Indian respondent who has been served with an ex parte or final protection order or foreign protection order and who is convicted of the crime of “Violation of a Protection Order—Second or Subsequent Offense” shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000.00) or by imprisonment of not less than ten (10) days and not more than one (1) year, or both such fine and imprisonment.

4. Any Indian respondent who has been served with an ex parte or final protection order or foreign protection order who violates the protection order and causes physical injury or physical impairment to the petitioner or to any other person named in said protection order shall, upon conviction, be guilty of the crime of “Violation of Protection Order with Physical Injury Inflicted” and shall be punished by a term of imprisonment for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed five thousand dollars (\$5,000.00). In determining the term of imprisonment required by this para-

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graph, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim. The provisions of this paragraph shall not effect the applicability of Title 14 of the Muscogee (Creek) Nation Code of Laws.

5. The minimum sentence of imprisonment issued pursuant to the provisions of paragraphs 1 and 2 of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the District Court may subject any remaining penalty under the jurisdiction of the District Court to the statutory provisions for suspended sentences, deferred sentences or probation.

6. In addition to any other criminal penalty specified by this section, the District Court may require the Indian respondent to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic or family violence against the victim.

7. When an Indian minor child violates the provisions of any protection order, the violation shall be heard in a civil juvenile proceeding and the District Court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed.

[NCA 01–157, § 2–201, approved Oct. 7, 2001.]

Cross References

Crimes involving domestic or family violence, see Title 6, § 3–103.

§ 3–302. Criminal jurisdiction over crimes involving domestic or family violence

A. Muscogee (Creek) Nation jurisdiction. The Muscogee (Creek) Nation shall have criminal jurisdiction for the enforcement of a crime involving domestic or family violence that occurs in the Muscogee (Creek) Nation territorial jurisdiction and that involves an Indian offender, regardless of the Indian or non-Indian status of the victim, subject to the limitations contained in the Federal Indian Civil Rights Act, 25 U.S.C. § 1302(7), which provides that Indian tribes shall not impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year and a fine of five thousand dollars (\$5,000), or both.

B. Federal jurisdiction. The Muscogee (Creek) Nation recognizes that the United States possesses criminal jurisdiction over the following:

1. The enforcement of certain felony offenses as defined by 18 U.S.C. § 1153 that are crimes involving domestic or family violence, that occur in the Muscogee (Creek) Nation territorial jurisdiction and that involve an offense by an Indian offender against an Indian victim;

2. The enforcement of certain crimes involving domestic or family violence that occur in the Muscogee (Creek) Nation territorial jurisdiction and that involve an offense by a non-Indian offender against an Indian victim;

3. The enforcement of the criminal provisions of the Federal Violence Against Women Act (VAWA), 18 U.S.C. §§ 2261 and 2262, over a person who

enters or leaves Indian country as defined by VAWA, 18 U.S.C. § 2266, with the intent to commit certain crimes involving domestic or family violence, and who in the course of or as a result of such travel, engages in such conduct as more specifically described in VAWA; and

4. Any other provisions of VAWA granting Federal Courts jurisdiction over crimes involving domestic or family violence or dating violence in Indian country as defined by VAWA, 18 U.S.C. § 2266.

C. Construction. Nothing herein shall be construed as limiting the authority of the Muscogee (Creek) Nation to take any of the following actions in the Muscogee (Creek) Nation territorial jurisdiction:

1. Lighthorse police enforcement of state or federal criminal laws against a non-Indian offender pursuant to a cross-deputization agreement;

2. Lighthorse arrest of a non-Indian offender, detention and referral to appropriate authorities for violation of a foreign protection order in the Muscogee (Creek) Nation territorial jurisdiction when the foreign protection order was issued against a non-Indian offender, pursuant to 18 U.S.C. § 2265; or

3. Civil enforcement related to a violation of a protection order in the Muscogee (Creek) Nation territorial jurisdiction, regardless of the Indian or non-Indian status of the offender and the victim.

[NCA 01–157, § 2–202, approved Oct. 7, 2001.]

Cross References

Cross-deputization agreements, see Title 6, § 3–103.

Jurisdiction, generally, see Title 27, § 1–102.

Protection orders, civil jurisdiction, see Title 6, § 3–401.

Library References

Indians ⇄601.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 3–303. General duties of law enforcement officers to protect victims and prevent violence

A Lighthorse police or other authorized law enforcement officer who responds to an allegation of domestic or family violence or a crime involving domestic or family violence occurring in the Muscogee (Creek) Nation territorial jurisdiction shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

1. Taking the action necessary to provide for the safety of the victim and any family or household member;

2. Confiscating any weapon involved in the domestic or family violence as provided in subsection G of Title 6, § 3–304;

3. Transporting or obtaining transportation for the victim and any child to a shelter;

4. Assisting the victim in removing essential personal effects;

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5. Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility;

6. Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic or family violence.

[NCA 01–157, § 2–203, approved Oct. 7, 2001.]

§ 3–304. Response of Lighthouse police or other authorized law enforcement officers related to complaint of domestic or family violence

A. Determination of identity of primary aggressor. If a Lighthouse police or other authorized law enforcement officer receives complaints of domestic or family violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the officer shall consider:

1. Prior complaint of domestic or family violence;
2. The relative severity of the injuries inflicted on each person;
3. The likelihood of future injury to each person; and
4. Whether one of the persons acted in self-defense.

B. Prohibited actions. A Lighthouse police or other authorized law enforcement officer shall not:

1. Discourage a victim of domestic or family violence from pressing charges against the perpetrator by any means; or
2. Discourage a request for intervention by law enforcement by any party, such as threatening, suggesting, or otherwise indicating the possible arrest of all parties.

[NCA 01–157, § 2–204, approved Oct. 7, 2001.]

§ 3–305. Arrests; rights of persons detained; reports

A. Presumption of need to arrest. If a Lighthouse police or other authorized law enforcement officer has probable cause to believe that a person has committed a crime involving domestic or family violence, even if the crime was committed outside the presence of the officer, the Lighthouse police or other authorized law enforcement officer shall presume that arresting and charging the person is the appropriate response. A Lighthouse police or other authorized law enforcement officer shall not base the decision to arrest or not to arrest on the specific consent or request of the victim or the Officer's perception of the willingness of a victim or witness to a crime involving domestic or family violence to testify or otherwise participate in a judicial proceeding.

B. Warrantless arrest for crimes involving domestic or family violence outside presence of law enforcement officer. If a Lighthouse police or other authorized law enforcement officer observes a recent physical injury to, or an impairment of the physical condition of the victim, the officer shall arrest

without a warrant a person located within the Muscogee (Creek) Nation territorial jurisdiction, including his/her place of residence, if the Lighthorse police or other authorized law enforcement officer has probable cause to believe that the person, within the preceding seventy-two (72) hours, has committed a crime involving domestic or family violence in the Muscogee (Creek) Nation territorial jurisdiction, although the crime did not take place in the presence of the Lighthorse police or other authorized law enforcement officer.

C. Warrantless arrest for violation of protection order issued by District Court. A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that:

1. An emergency ex parte or final protection order has been issued and served upon the person, pursuant to this title;
2. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
3. The person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

D. Mandatory warrantless arrest for violation of conditions of pretrial release. If a Lighthorse officer or other authorized law enforcement officer has probable cause to believe that a person has violated a condition of pretrial release imposed in accordance with Title 6, § 3-307 in the Muscogee (Creek) Nation territorial jurisdiction and verifies that the alleged violator has notice of the condition, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

E. Warrantless arrest for violation of foreign protection orders. A Lighthorse police or other authorized law enforcement officer, without a warrant, may arrest and take into custody a person if the following conditions have been met:

1. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe that a foreign protection order has been issued pursuant to the law of the issuing court; and
2. The Lighthorse police or other authorized law enforcement officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order in the Muscogee (Creek) Nation territorial jurisdiction, whether the violation was committed in or outside the presence of the officer.

F. Seizure of weapons incident to arrest. Incident to an arrest for a crime involving domestic or family violence, a Lighthorse police or other authorized law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime; and

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2. May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

G. Rights of person detained. Any person detained pursuant to this section shall be brought before the District Court within twenty-four (24) hours after arrest to answer to a charge for violation of the order, at which time the District Court shall do each of the following:

1. Set a time certain for a hearing on the violation of the order within seventy-two (72) hours after arrest, unless extended by the District Court on the motion of the arrested person;

2. Set a reasonable bond pending a hearing of the violation of the order; and

3. Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

H. Written report stating grounds for action. In addition to any other report required, a Lighthorse police or other authorized law enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence or who arrests two or more persons for a crime involving domestic or family violence shall submit a written report setting forth the grounds for not arresting or for arresting both parties.

[NCA 01–157, § 2–205, approved Oct. 7, 2001.]

Cross References

Criminal procedure, arrest, see Title 14, § 1–307.

Library References

Arrest ⇐62.

Westlaw Topic No. 35.

C.J.S. Arrest §§ 9 to 10.

§ 3–306. Assistance to victims by Lighthorse police or other authorized law enforcement officer

A. Notice to victim. The Lighthorse police or other authorized law enforcement officer shall give the victim immediate, adequate oral and written notice of the rights of victims and of the remedies and services available to victims of domestic or family violence. The written notice shall include resources available in the Community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters. The written notice shall not include the addresses of shelters, unless the location is public knowledge and shall be provided in the native language of the victim, if practicable, when the native language of the victim is not English. The written notice shall be substantially in the following form:

“If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a

safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may assist law enforcement in the completion of a police report of the incident and receive a copy of the police report at no cost to you. You also have the right to file a petition in the Muscogee (Creek) Nation District Court requesting an order for protection from domestic or family violence which could include any of the following orders:

“1. An order enjoining your abuser from threatening to commit or committing acts of domestic or family violence against you or other family or household member;

“2. An order prohibiting your abuser from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly;

“3. An order removing and excluding your abuser from the residence of the petitioner;

“4. An order requiring your abuser to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;

“5. An order prohibiting your abuser from using or possessing a firearm or other weapon specified by the Court;

“6. An order requiring your abuser to pay attorneys fees and court costs; and

“7. An order requiring your abuser to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

“The forms you need to obtain an order for protection are available from the Muscogee (Creek) Nation District Court Clerk. The resources available in this community for information relating to domestic and family violence, treatment of injuries, and places of safety and shelters are [Note: the list and hotline numbers shall be inserted by the District Court Clerk during preparation of this Notice for use by Lighthorse police].”

B. Responsibility of law enforcement officers related to emergency protection order after arrest

1. When an arrest has been made pursuant to Title 6, § 3-305 and the District Court is not open for business, the Lighthorse police or other authorized law enforcement officer shall either (1) seek an emergency temporary order on behalf of the victim or (2) provide the victim with a form for a petition for an emergency temporary protection order and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Title 6, § 3-403 for a petition for protection order.

2. The Lighthorse police officer or other authorized law enforcement officer shall immediately notify, by telephone or otherwise, the Judge of the District Court of the request for an emergency temporary protection order and describe the circumstances. The District Court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the Court

in person or by telephone, and the Court finds reasonable grounds to believe, that the petitioner is in immediate danger of domestic or family violence based on an allegation of a recent incident of domestic or family violence by a family or household member. The order may include any of the types of relief set forth in paragraphs 1 through 5 of subsection A of this section. The Judge shall inform the Lighthorse police or other authorized law enforcement officer of his decision to approve or disapprove the emergency temporary order. If the order is approved, the law enforcement officer shall write and sign the order on the form required pursuant to Title 6, §§ 3–404 and 6–3–405.

3. The law enforcement officer shall inform the victim whether the Judge has approved or disapproved an emergency temporary order. If an emergency order has been approved, the officer shall provide the victim with a copy of the petition and a statement signed by the officer that the Judge has approved the emergency temporary protection order and notify said victim that the emergency temporary order shall be effective only for seventy-two (72) hours from the time of its issuance.

4. The law enforcement officer shall notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the Lighthorse police or other authorized law enforcement officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to said person. The law enforcement officer shall file a copy of the petition and the statement of the Lighthorse police or other authorized law enforcement officer with the District Court immediately upon the opening of the District Court on the next business day. The temporary order shall be effective only for seventy-two (72) hours from the time of its issuance.

[NCA 01–157, § 2–206, approved Oct. 7, 2001.]

Cross References

Eligible petitioners for civil protection order, see Title 6, § 3–402.

§ 3–307. Conditions of pretrial release of person arrested for or charged with crime involving domestic or family violence

A. Review of facts. In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection, the District Court shall review the facts of the arrest and detention of the person and determine whether the person:

1. Is a threat to the victim or other family or household member;
2. Is a threat to public safety; and
3. Is reasonably likely to appear in court.

B. Findings. Before releasing a person arrested for or charged with a crime involving domestic or family violence, the District Court shall make findings on the record if possible concerning the determination made in accordance with subsection A and may impose conditions of release or bail on the person to protect the victim of domestic or family violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

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1. An order enjoining the person from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member;

2. An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, either directly or indirectly;

3. An order directing the person to vacate or stay away from the home of the victim and to stay away from any other location where the victim is likely to be;

4. An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;

5. An order prohibiting the person from possession or consumption of alcohol or controlled substances; and

6. Any other order required to protect the safety of the victim and to ensure the appearance of the person in court.

C. Conditional release. If conditions of release are imposed, the District Court shall:

1. Issue a written order for conditional release;

2. Immediately distribute a copy of the order to the agency having custody of the arrested or charged person; and

3. Provide the agency having custody of the arrested or charged person with any available information concerning the location of the victim in a manner that protects the safety of the victim.

D. Provision of copy of conditions to person charged. The District Court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

E. Hearing upon request. If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

F. Notification of victim. When a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection is released from custody, the District Court shall:

1. Use all reasonable means to immediately notify the victim of the crime of the release; and

2. Furnish the victim of the crime at no cost a certified copy of any conditions of release.

G. No delay. Release of a person who is arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection shall not be delayed because of the requirements of subsection F of this section.

[NCA 01-157, § 2-207, approved Oct. 7, 2001.]

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Cross References

Bail and bonds, criminal procedure, see Title 14, § 1–801 et seq.

Library References

Bail ⇄41.

Indians ⇄604.

Westlaw Topic Nos. 49, 209.

C.J.S. Bail;release and Detention Pending
§§ 7 to 8, 11 to 60.

C.J.S. Indians §§ 151 to 179.

§ 3–308. Duty of Advocate or Prosecutor to notify victim

A. Notification of victim. The Advocate or Prosecutor shall make reasonable efforts to notify a victim of a crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.

B. No delay. Release of a defendant from custody shall not be delayed because of the requirements of subsection A of this section.

[NCA 01–157, § 2–208, approved Oct. 7, 2001.]

§ 3–309. Record of dismissal

When the District Court dismisses criminal charges or the Prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic or family violence, the specific reasons for the dismissal shall be recorded in the court file. The Prosecutor shall indicate the specific reason why the witness is unavailable and the reasons the case cannot be prosecuted.

[NCA 01–157, § 2–209, approved Oct. 7, 2001.]

§ 3–310. Rights of victims; duty of Prosecutor to inform victim of rights

A. Rights of victims. A victim of a crime involving domestic and family violence is entitled to all rights granted to victims of crime including but not limited to the right to:

1. Be informed of all hearing dates and continuances.
2. Be present at sentencing and address the Court.
3. Be advised by the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members; and
4. Receive restitution for losses sustained as a direct consequence of any criminal conduct.

B. Duty of Prosecutor to inform victim of rights. An attorney prosecuting a crime involving domestic or family violence shall notify the victim of domestic or family violence of the victim's rights set forth in this section.

[NCA 01–157, § 2–210, approved Oct. 7, 2001.]

§ 3–311. Residential confinement in victim's home prohibited

In criminal cases involving domestic or family violence, the District Court shall not order residential confinement for a perpetrator in the home of the victim.

[NCA 01–157, § 2–211, approved Oct. 7, 2001.]

Cross References

Sentence, criminal procedure, see Title 14, § 1–604.

§ 3–312. Diversion prohibited; deferred sentencing permitted

A. Diversion prohibited. The District Court shall not approve diversion for a perpetrator of a crime involving domestic or family violence.

B. Deferred sentence. The Court may defer sentencing of a perpetrator of a crime involving domestic or family violence if:

1. The perpetrator meets eligibility criteria established pursuant to subsection C of this section;
2. Consent of the Prosecutor is obtained after consultation with the victim, when the victim is available;
3. A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
4. The Court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.

C. Criteria. District Court shall establish criteria for determination of:

1. A perpetrator's eligibility for deferred sentencing;
2. A perpetrator's successful completion of the conditions imposed by the Court; and
3. Penalties for violation of the conditions imposed by the Court.

D. Dismissal. The case against a perpetrator of a crime involving domestic or family violence may be dismissed if the perpetrator successfully completes all conditions imposed by the Court pursuant to subsection B of this section.

[NCA 01–157, § 2–212, approved Oct. 7, 2001.]

Cross References

Sentence, criminal procedure, see Title 14, § 1–604 et seq.

Library References

Indians ⇄620.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 3–313. Conditions of probation

A. Considerations. Before placing a perpetrator who is convicted of a crime involving domestic or family violence on probation, the Court shall consider the safety and protection of the victim of a crime involving domestic or family violence and any member of the victim's family or household.

B. Conditions. The Court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the Court, including but not limited to:

1. Enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member;

2. Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

3. Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member;

4. Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;

5. Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;

6. Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;

7. Directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators established pursuant to Title 6, § 3–502, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;

8. Directing the perpetrator to pay restitution to the victim; and

9. Imposing any other condition necessary to protect the victim of domestic or family violence and any other designated family or household member or to rehabilitate the perpetrator.

C. Costs. The perpetrator shall pay the costs of any condition of probation, according to ability.

D. Probation Officer policies and procedures. The Probation Officer shall establish policies and procedures for the exchange of information concerning the perpetrator with the Court and the victim; and for responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to subsection B of this section.

E. Immediate report required. The probation department shall immediately report to the Court and the victim any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court or probation department, and any threat of harm made by the perpetrator.

[NCA 01–157, § 2–213, approved Oct. 7, 2001.]

Cross References

Sentence, criminal procedure, see Title 14, § 1–604.

Library References

Indians ⇨625.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 3–314. Record of reported incidents of domestic abuse; reports

A. Duty to maintain records. It shall be the duty of the Lighthouse Police Administration to keep a record of each reported incident of domestic and family violence as provided in subsection B of this section and to submit a monthly report to such incidents as provided in subsection C of this section.

B. Contents of records. The record of each reported incident of domestic abuse shall:

1. Show the type of crime involved in the domestic abuse;
2. Show the day of the week the incident occurred; and
3. Show the time of day the incident occurred.

C. Monthly report. A monthly report of the recorded incidents of domestic abuse, as well as reports required by subsection D of Title 6, § 1-206, shall be submitted to the Lighthorse Commission and the Office of the Attorney General.

[NCA 01-157, § 2-214, approved Oct. 7, 2001.]

§ 3-315. Giving false information to Lighthorse police or other authorized law enforcement officer

It shall be a crime to knowingly and willfully present any false or materially altered protection order to any Lighthorse police or other authorized law enforcement officer to effect an arrest of any person. Such crime shall be punishable by a term of imprisonment of no more than one (1) year, or by a fine of not more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

[NCA 01-157, § 2-215, approved Oct. 7, 2001.]

SUBCHAPTER 4. CIVIL PROCEDURES AND REMEDIES

Section

- 3-401. Civil jurisdiction.
- 3-402. Eligible petitioners for civil protection order.
- 3-403. Petition for protection order.
- 3-404. Protection order; statement required; validity.
- 3-405. Emergency ex parte protection order.
- 3-406. Service of process.
- 3-407. Hearing and issuance of order.
- 3-408. Access to protection orders by law enforcement agencies.
- 3-409. Other proceedings; delay of relief prohibited; omission of petitioner's address.
- 3-410. Effect of action by petitioner or respondent on order.
- 3-411. Denial of relief due to lapse of time prohibited.
- 3-412. Mutual orders for protection prohibited.
- 3-413. Court-ordered and court-referred mediation of cases involving domestic or family violence prohibited.
- 3-414. Violation of ex parte or final protection order; civil penalty.
- 3-415. Registration and enforcement of foreign orders for protection; duties of Court Clerk.
- 3-416. Judicial enforcement of foreign protection orders.
- 3-417. Role of law enforcement in foreign protection orders.
- 3-418. Violation of foreign protection order.

§ 3-401. Civil jurisdiction

The District Court has full civil jurisdiction to issue protection orders if the petitioner currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction, if the respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction or if the domestic or family violence occurred in the Muscogee (Creek) Nation territorial jurisdiction; provided that such civil jurisdiction may be exercised regardless of the Indian

Title 6, § 3–401

DOMESTIC AND FAMILY VIOLENCE

or non-Indian status of petitioners and respondents. There is no minimum requirement of residency to petition the District Court for an order for protection. In accordance with 18 U.S.C. § 2265(e), the District Court has full civil jurisdiction to enforce protection orders issued by the District Court and to enforce foreign protection orders pursuant to Title 6, §§ 3–415, 3–416 and 6–3–417.

[NCA 01–157, § 3–101, approved Oct. 7, 2001.]

Cross References

Criminal jurisdiction over crimes involving domestic or family violence, see Title 6, § 3–302.
Jurisdiction, generally, see Title 27, § 1–102.

Library References

Indians ⇨501, 534.	C.J.S. Domestic Abuse and Violence §§ 11, 15 to 16, 18.
Protection of Endangered Persons ⇨33.	C.J.S. Indians §§ 151 to 179.
Westlaw Topic Nos. 209, 315P.	
C.J.S. Breach of the Peace §§ 18, 22.	

§ 3–402. Eligible petitioners for civil protection order

A. Petition by victim. A victim of domestic or family violence as defined in subsection D of Title 6, § 3–103 may seek relief by filing a civil petition for protection order with the District Court.

B. Petition on behalf of child. A parent, guardian, or other representative may file a civil petition for an order for protection on behalf of a child against a family or household member who commits an act of domestic or family violence.

C. Request for emergency temporary order. When the domestic or family violence occurs when the District Court is not open for business, such person may request an emergency temporary protection order as provided by Title 6, §§ 3–306 and 3–405. The District Judge or other Court officer with authority to issue an order for protection shall be available twenty-four (24) hours a day to hear petitions for emergency orders for protection.

[NCA 01–157, § 3–102, approved Oct. 7, 2001.]

Library References

Protection of Endangered Persons ⇨45.	C.J.S. Domestic Abuse and Violence §§ 1, 5, 7 to 10, 15 to 16, 18.
Westlaw Topic No. 315P.	
C.J.S. Breach of the Peace §§ 18, 20, 32 to 35.	

§ 3–403. Petition for protection order

A. Form of petition. The petition forms shall be provided by the Clerk of the District Court and shall be in substantially the following form:

GENERAL PROVISIONS

Title 6, § 3-403

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION
_____ DISTRICT

_____)	
)	
Petitioner)	Case No. _____
)	
vs.)	
)	
_____)	
Respondent)	

PETITION FOR PROTECTION ORDER

Petitioner, being sworn, states:

1. (Check one or more)

The respondent has caused or attempted to cause serious physical harm to _____.

The respondent threatened with imminent serious physical harm.

The respondent has stalked or harassed _____

2. The incident causing the filing of the petition occurred on or about _____ (date)

(Describe what happened:)

3. The victim and the respondent are related as follows:

(check one)

married

divorced

parent and child

persons related by blood

present spouse of an ex-spouse

persons living in the same household

persons formerly living in the same household

biological parents of the same child

not related

4. (Answer this question only if the petitioner is filing on behalf of someone else, minor or incompetent)

The petitioner and the victim are related as follows:

- parent and child
- persons related by blood
- next friend and incompetent
- guardian and ward

5. (Check A or B)

A) The victim is in immediate and present danger of abuse from the respondent and an emergency ex parte order is necessary to protect the victim from serious harm. The petitioner requests the following relief in the emergency ex parte order:

(Check one or more)

order the respondent not to commit or threaten to commit any acts of domestic or family violence against the victim or other family or household member.

order the respondent not to harass, annoy, telephone, contact or otherwise communicate with the victim, directly or indirectly.

order the respondent not to visit or stalk the victim or otherwise interfere with the victim.

order the respondent to stay away [from the residence of the victim located at _____ on or before _____.

order the respondent to stay away from the school, place of employment or other places frequented regularly by the victim and any named family or household member specified as follows: _____

on or before _____

order the respondent not to use or possess a firearm or other weapon specified by the Court.

_____ (describe other relief that petitioner requests)

B) The petitioner does not request an emergency ex parte order.

6. Petitioner requests the following order to be made by the District Court following notice to the respondent and a hearing:

(Check one or more)

order the respondent not to commit or threaten to commit any acts of domestic or family violence against the victim or other family or household member.

order the respondent not to harass, annoy, telephone, contact or otherwise communicate with the victim, directly or indirectly.

order the respondent not to visit or stalk the victim or otherwise interfere with the victim.

GENERAL PROVISIONS

Title 6, § 3-403

order the respondent to stay away from the residence of the victim located at _____ on or before _____

order the respondent to stay away from the school, place of employment or other places frequented regularly by the victim and any named family or household member specified as follows: _____

on or before _____

order the respondent not to use or possess a firearm or other weapon specified by the Court.

order the respondent to pay restitution as follows:

Medical expenses arising from injuries caused by the respondent

Reimbursement for property damaged by the respondent

Expenses for shelter for the victim

order the respondent to pay attorney fees of the petitioner in the sum of \$_____ on or before _____.

order the respondent to pay court costs of this action in the sum of \$_____ on or before _____.

_____ (describe other relief that petitioner requests)

7. Victim is a resident of the Muscogee (Creek) Nation as defined by the Constitution of the Muscogee (Creek) Nation wherein this petition is filed.

This Court has jurisdiction to hear this petition because:

(Check one)

Petitioner currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction (example: on an Indian restricted or trust allotment).

Respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction (example: on an Indian restricted or trust allotment).

Respondent committed an act or acts of domestic or family violence in the Muscogee (Creek) Nation territorial jurisdiction (example: on an Indian restricted or trust allotment).

8. Petitioner, being first duly sworn on oath states: That I have read the above and foregoing document, understand the meaning thereof, and declare, under penalty of perjury, that the facts and statements contained herein are believed to the best of my knowledge to the truth, and nothing but the truth.

Petitioner

Witness may hand and seal, affixed on the _____ day of _____, 20____.

District Court Clerk,
Deputy District Court Clerk or Notary Public

B. Costs and fees. The victim shall not be required to pay filing or service costs related to a protection order. The District Court may assess court costs and filing fees against the abuser at the hearing on the petition.

[NCA 01-157, § 3-103, approved Oct. 7, 2001.]

Cross References

Emergency temporary protection order, see Title 6, § 3-306.

§ 3-404. Protection order; statement required; validity

In addition to any other provisions required by this chapter, or otherwise required by law, each ex parte or final protection order issued pursuant to this chapter shall have the following statement printed in bold-faced type or in capital letters:

“THE FILING OR NONFILING OF CRIMINAL CHARGES RELATING TO THIS MATTER AND THE PROSECUTION OF THE CASE SHALL NOT BE DETERMINED BY A PERSON WHO IS PROTECTED BY THIS ORDER, BUT SHALL BE AT THE DISCRETION OF THE MUSCOGEE (CREEK) NATION PROSECUTOR. NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER. THIS ORDER SHALL BE IN EFFECT FOR THREE (3) YEARS UNLESS RENEWED, MODIFIED, VACATED OR RESCINDED BY THE COURT. A VIOLATOR OF THIS ORDER MAY BE PUNISHED BY CIVIL CONTEMPT OF COURT BY FINE OF UP TO \$5,000. A VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE BY A FINE OF UP TO \$2500 FOR A FIRST OFFENSE AND UP TO FIVE THOUSAND DOLLARS (\$5000.00) FOR A SECOND OR SUBSEQUENT OFFENSE OR IMPRISONMENT OF UP TO ONE (1) YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT. A VIOLATION OF THIS ORDER WHICH CAUSES INJURY IS A CRIME PUNISHABLE BY IMPRISONMENT FOR TWENTY (20) DAYS TO ONE (1) YEAR OR A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5000.00), OR BY BOTH SUCH FINE AND IMPRISONMENT. POSSESSION OF A FIREARM OR AMMUNITION BY A RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY SUBJECT THE RESPONDENT TO PROSECUTION FOR VIOLATION OF FEDERAL LAW EVEN IF THIS ORDER DOES NOT SPECIFICALLY PROHIBIT THE RESPONDENT FROM POSSESSING A FIREARM OR AMMUNITION.”

“A KNOWING VIOLATION OF A PROTECTION ORDER IS A CRIME IN THE JURISDICTION OF THE MUSCOGEE (CREEK) NATION, IN THE STATE OF OKLAHOMA AND IN OTHER JURISDICTIONS. ANY PERSON WHO TRAVELS ACROSS STATE LINES OR ENTERS OR LEAVES THE MUSCOGEE (CREEK) NATION TERRITORIAL JURISDICTION OR OTHER INDIAN COUNTRY WITH THE INTENT TO VIOLATE A PROTECTION ORDER AND WHO SUBSEQUENTLY ENGAGES IN SUCH CONDUCT IS SUBJECT TO FEDERAL PROSECUTION FOR A FEDERAL OFFENSE UNDER 18 U.S.C. § 2262. ANY PERSON WHO ENTERS OR LEAVES THE MUSCOGEE (CREEK) NATION TERRITORIAL JURISDICTION OR OTHER INDIAN COUNTRY WITH THE INTENT TO KILL, INJURE, HARASS, OR INTIMIDATE A SPOUSE OR INTIMATE PARTNER, AND WHO, IN THE COURSE OF OR AS A RESULT OF SUCH TRAVEL, COMMITS OR ATTEMPTS TO COMMIT A CRIME OF VIOLENCE AGAINST THAT SPOUSE OR INTIMATE

PARTNER, SHALL BE SUBJECT TO FEDERAL PROSECUTION FOR A FEDERAL OFFENSE UNDER 18 U.S.C. § 2261.”

“FEDERAL LAW REQUIRES THAT THIS ORDER BE GIVEN FULL FAITH AND CREDIT BY THE COURT OF ANY OTHER STATE OR INDIAN TRIBE UNDER 18 U.S.C. § 2265.”

[NCA 01–157, § 3–104, approved Oct. 7, 2001.]

Cross References

Emergency temporary protection order, see Title 6, § 3–306.

§ 3–405. Emergency ex parte protection order

A. Hearing on request for emergency ex parte protection order. If a petitioner requests an emergency ex parte protection order pursuant to this section, the District Court shall hold an ex parte hearing on the same day the petition is filed. The District Court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic and family violence, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted; provided, if the respondent, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the respondent is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the respondent with the permanent order. Any emergency ex parte order entered shall state: “IF YOU FAIL TO APPEAR AT THE HEARING, A PERMANENT ORDER MAY BE ISSUED WITHOUT FURTHER NOTICE TO YOU.”

B. Contents of emergency ex parte order. An emergency ex parte order authorized by this section may include the following:

1. An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member;
2. An order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly;
3. An order removing and excluding the respondent from the residence of the petitioner;
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;
6. An order requiring the respondent to pay attorneys fees and court costs; and
7. An order requiring the respondent to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

C. Verbal or written order. If a petitioner requests an emergency temporary ex parte protection order as provided by subsection B of Title 6, § 3–306, the judge who is notified of the request by a Lighthorse police or other authorized law enforcement officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the Lighthorse police or other authorized law enforcement officer to complete and sign a statement attesting to the order.

D. Effective period. The emergency temporary ex parte order shall be in effect no more than ten (10) days from the date it was issued by the District Court.

[NCA 01–157, § 3–105, approved Oct. 7, 2001.]

Library References

Indians ⇄519.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 3–406. Service of process

A copy of the petition, notice of hearing and a copy of any ex parte order issued by the District Court shall be served upon the respondent in the same manner as a summons. The Lighthorse police shall attempt service within twenty-four (24) hours of the issuance of an ex parte order by the District Court; provided that a private process server who is licensed pursuant to law of the Muscogee (Creek) Nation may serve such documents in the event that jurisdictional or practical considerations prevent service by the Lighthorse police and provided further that a private process server who is licensed pursuant to Oklahoma law or a law enforcement officer from another jurisdiction may serve such documents outside of Muscogee (Creek) Nation territorial jurisdiction. Ex parte orders can be served twenty-four (24) hours a day.

[NCA 01–157, § 3–106, approved Oct. 7, 2001.]

Library References

Indians ⇄510.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 3–407. Hearing and issuance of order

A. Hearing. Upon filing of a petition for protection order, the District Court shall schedule a full hearing on the petition, said hearing to be held no sooner than three (3) days and no later than ten (10) days from the date of filing of the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

B. Issuance of protection order. At the hearing for a protection order, the District Court may grant any protection order to bring about the cessation of domestic or family violence against the victim or stalking or harassment of the victim.

C. Contents of protection order. Protection orders authorized by this section may include the following:

1. An order enjoining respondent from threatening to commit or committing acts of domestic or family violence against the petitioner or other family or household member;
2. An order prohibiting the respondent from harassing, visiting, stalking, annoying, telephoning, contacting, or otherwise interfering with or communicating with the petitioner, directly or indirectly;
3. An order removing and excluding the respondent from the residence of the petitioner;
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;
6. An order requiring the respondent to pay attorneys fees and court costs; and
7. An order requiring the respondent to pay restitution, such as medical expenses, reimbursement for damaged property and expenses for shelter.

D. Treatment. After notice and hearing, protection orders authorized by this section may require the petitioner, the respondent or both to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic or family violence against the victim. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The District Court shall not be responsible for such cost.

E. Service of protection order. When necessary to protect the victim and when authorized by the District Court, protection orders granted pursuant to the provisions of this section may be served upon the respondent by a Light-horse officer or other authorized law enforcement officer whose duty it is to preserve the peace.

F. Time limitations. Any protection order issued pursuant to this section shall be for a fixed period not to exceed a period of three (3) years unless extended by the District Court. The District Court shall notify the parties at the time of the issuance of the protection order of the duration of the protection order.

1. The District Court Clerk shall send notice of expiration to the parties sixty (60) days prior to the expiration of a protection order.
2. The petitioning party shall have the opportunity to apply for renewal of the protection order for an additional three (3) year period.
3. Upon application, the District Court Clerk shall notify each party of the court date of the hearing on the application. It shall be the duty of each party to keep the District Court clerk informed of his or her current address.

4. At the hearing for renewal of the protection order, the District Court may grant the renewal of the protection order or allow the protection order to expire.

G. Limited scope of protection order. No order issued under this chapter shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief otherwise obtainable under the laws of the Muscogee (Creek) Nation. [NCA 01–157, § 3–107, approved Oct. 7, 2001.]

Library References

Indians ⇨519, 534.	C.J.S. Domestic Abuse and Violence §§ 2 to 4, 7 to 34, 36 to 45.
Protection of Endangered Persons ⇨70, 72.	
Westlaw Topic Nos. 209, 315P.	C.J.S. Indians §§ 151 to 179.
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32 to 38.	

§ 3–408. Access to protection orders by law enforcement agencies

A. District Court responsibility to distribute protection orders. Within twenty-four (24) hours of the return of service of any ex parte or final protection order, the District Court Clerk shall send certified copies thereof to Lighthorse as well as to all appropriate law enforcement agencies designated by the petitioner. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protection order shall be sent by the clerk of the issuing court to those law enforcement agencies receiving the original orders pursuant to this section.

B. Lighthorse police responsibility to ensure access to protection orders. The Lighthorse police shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents.

[NCA 01–157, § 3–108, approved Oct. 7, 2001.]

§ 3–409. Other proceedings; delay of relief prohibited; omission of petitioner’s address

A. Duty to inform court. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of each proceeding for an order for protection, any civil litigation, each proceeding in family or Juvenile Court, and each criminal case involving the parties, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.

B. Other actions. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. A Court shall not delay granting relief because of the existence of a pending action between the parties.

C. Address of petitioner. A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner shall provide the Court a mailing address. If disclosure of petitioner’s

address is necessary to determine jurisdiction or consider venue, the Court may order the disclosure to be made:

1. After receiving the petitioner's consent;
2. Orally and in chambers, out of the presence of the respondent and a sealed record to be made; or
3. After a hearing, if the Court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

[NCA 01-157, § 3-109, approved Oct. 7, 2001.]

§ 3-410. Effect of action by petitioner or respondent on order

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.

[NCA 01-157, § 3-110, approved Oct. 7, 2001.]

§ 3-411. Denial of relief due to lapse of time prohibited

The Court shall not deny a petitioner relief requested pursuant to this subchapter solely because of a lapse of time between an act of domestic or family violence and the filing of the petition.

[NCA 01-157, § 3-111, approved Oct. 7, 2001.]

§ 3-412. Mutual orders for protection prohibited

A court shall not grant a mutual order for protection to opposing parties.

[NCA 01-157, § 3-112, approved Oct. 7, 2001.]

§ 3-413. Court-ordered and court-referred mediation of cases involving domestic or family violence prohibited

A court shall not order parties into mediation or joint counseling or refer them to mediation or joint counseling for resolution of the issues in a petition for an order for protection.

[NCA 01-157, § 3-113, approved Oct. 7, 2001.]

§ 3-414. Violation of ex parte or final protection order; civil penalty

A. Violation of order; contempt of court. Except as provided in subsection B of this section, any person who has been served with an ex parte or final protection order or foreign protection order and who is in violation of such protection order, may be punished for civil contempt of court and upon entry of a finding that such person is in contempt of court, shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00).

B. Violation of order; subsequent offenses. Any person who has been served with an ex parte or final protection order or foreign protection order and who is in violation of such protection order after a prior judicial finding of contempt of court for a previous violation of such protection order, may be punished for civil contempt of court and upon entry of a finding that such

person is in contempt of court for a second or subsequent offense, shall be punished by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000.00); and

C. Treatment. In addition to any other civil penalty specified by this section, the District Court may require the respondent to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic or family violence against the victim.

D. Violation of order by minor. When a minor child violates the provisions of any protection order, the violation shall be heard in a civil juvenile proceeding and the District Court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed.

[NCA 01–157, § 3–114, approved Oct. 7, 2001.]

Library References

Indians ☞539.	C.J.S. Breach of the Peace §§ 18 to 19, 23, 28
Protection of Endangered Persons ☞96.	to 38.
Westlaw Topic Nos. 209, 315P.	C.J.S. Indians §§ 151 to 179.

§ 3–415. Registration and enforcement of foreign orders for protection; duties of Court Clerk

A. Registration. A certified copy of a foreign protection order issued by another Tribal court or by a state court may be filed in the office of the District Court Clerk. The District Court Clerk shall act upon the order in the same manner as the clerk acts upon an order for protection issued by the District Court. The District Court Clerk shall not notify the perpetrator of the registration of an out of state or Tribal protection order, unless the victim requests the notification.

B. Effect of foreign order. An order for protection filed in accordance with subsection A of this section has the same effect and shall be enforced in the same manner as an order for protection issued by the District Court.

C. Court Clerk responsibilities. The District Court Clerk shall:

1. Maintain a registry in which to enter certified orders for protection issued by other Tribal courts or by state courts that are received for filing.
2. At the request of a court of another Indian Tribe or of a state or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

D. Enforcement. The District Court shall enforce all provisions of a registered foreign order for protection.

[NCA 01–157, § 3–115, approved Oct. 7, 2001.]

Library References

Indians ☞531.	C.J.S. Breach of the Peace §§ 18, 24 to 28, 32
Protection of Endangered Persons ☞110.	to 38.
Westlaw Topic Nos. 209, 315P.	

C.J.S. Domestic Abuse and Violence §§ 2, 4,
11 to 14, 16 to 17, 19 to 34, 36 to 45.
C.J.S. Indians §§ 151 to 179.

§ 3-416. Judicial enforcement of foreign protection orders

A. Full faith and credit. Pursuant to 18 U.S.C. § 2265, any protection order issued that is valid according to the standards contained in subsection B of this section by the court of a state or another Indian Tribe shall be accorded full faith and credit by the District Court and the District Court shall enforce a valid foreign protection order as if it were issued by the District Court.

B. Requirements for valid orders. A protection order issued by a state or another Tribal court shall be valid if:

1. The issuing Court had jurisdiction over the parties and matter under the law of such state or Indian Tribe; and
2. Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process. In the case of an ex parte order, notice and opportunity to be heard must have been provided within the time required by state or Tribal law, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights.

C. Registration not required. Registration or filing of a foreign protection order shall not be a prerequisite for District Court enforcement of out-of-state or Tribal orders or protection.

D. Initiation of proceeding for enforcement. A proceeding to enforce a foreign protection order may be started in the District Court by:

1. A motion filed by the petitioner holding the foreign protection order, alleging that respondent has violated the protection order and requesting that the District Court enforce the order; and/or
2. An action filed by the Prosecutor alleging that respondent has violated the foreign protection order.

E. Validity of order; affirmative defense. If a foreign protection order bears the name of an issuing court, the persons to whom it applies, a judge's signature or an equivalent sign, terms and conditions against the respondent, and does not bear an expiration date that has passed or any other obvious indication that it is not authentic, it will be deemed valid, and the District Court shall enforce it, unless the party against whom the order is to be enforced proves, as an affirmative defense, that:

1. The issuing court did not have jurisdiction over the parties or the dispute under the law of the issuing court;
2. The respondent was not given due process, which means reasonable notice and an opportunity to be heard. If the foreign protection order was originally entered without the respondent having an opportunity to be heard, the respondent shall have been given notice and an opportunity to be heard within the time required by the law of the issuing court, or in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights;

3. The protection order is a support or child custody order issued pursuant to state divorce and child custody laws that is not entitled to full faith and credit under other federal law.

F. Cross or counter petitions. Cross or counter petitions are not entitled to full faith and credit unless a petition, complaint or other written pleading was filed seeking a protection order and the issuing court made specific findings that each party was entitled to a protection order.

[NCA 01–157, § 3–116, approved Oct. 7, 2001.]

Library References

Courts ☞530.	C.J.S. Domestic Abuse and Violence §§ 2, 4,
Protection of Endangered Persons ☞110.	11 to 14, 16 to 17, 19 to 34, 36 to 45.
Westlaw Topic Nos. 106, 315P.	
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32	
to 38.	

§ 3–417. Role of law enforcement in foreign protection orders

A. Manner of enforcement. A Lighthouse police or other authorized law enforcement officer shall enforce a foreign protection order in the same manner as he or she would enforce a protection order issued by the District Court.

B. Reliance on copy of order or statement of person. A Lighthouse police or other authorized law enforcement officer may rely on a copy of a foreign protection order that is provided to the officer from any source. A Lighthouse police or other authorized law enforcement officer may rely on the statement of a person protected by a foreign protection order that the order remains in effect.

C. Authenticity of order. If a copy of a foreign protection order is provided to the officer from any source, the officer shall enforce the order if it appears to the officer to be authentic. An officer shall treat a foreign protection order as authentic if it:

1. Bears the names of the issuing court and the persons to whom it applies, terms and conditions against the respondent, and a judge's signature or an equivalent sign; and
2. Does not bear an expiration date that has passed or any other obvious indication that it is not authentic.

D. Verification of authenticity. The fact that the foreign protection order cannot be verified in the manner described in the following paragraph does not mean that the order is not authentic.

E. Verification of information. If a person claiming to be protected by a foreign protection order does not have a copy of the order, the Lighthouse police or other authorized law enforcement officer shall attempt to verify the existence of the order, the names of the issuing court and the persons to whom it applies, the terms and conditions against the respondent, and that the order does not bear an expiration date that has passed or any other obvious indication that it is not authentic. If the Lighthouse police or other authorized law enforcement officer verifies this information, the officer shall enforce the

foreign protection order. Examples of ways to verify the order include consulting the issuing court, the Law Enforcement Information Network (LEIN), the National Crime Information Center (NCIC), a registry operated by the issuing jurisdiction, or any similarly reliable source.

F. Maintenance of peace. If a person claiming to be protected by a foreign protection order does not have a copy of the order and the Lighthouse police or other authorized law enforcement officer cannot verify the existence of the order through reliable sources, the officer shall maintain the peace and take any other lawful action that appears appropriate to the officer.

G. Counter or cross petitions. Cross or counter petitions shall not be enforced unless a petition, complaint or other written pleading was filed seeking a protection order and the issuing court made specific findings that each party was entitled to a protection order.

[NCA 01-157, § 3-117, approved Oct. 7, 2001.]

Library References

Indians ☞539.	C.J.S. Breach of the Peace §§ 18 to 19, 23, 28
Protection of Endangered Persons ☞90.	to 38.
Westlaw Topic Nos. 209, 315P.	C.J.S. Indians §§ 151 to 179.

§ 3-418. Violation of foreign protection order

When, following a hearing, the District Court finds that a person has violated a foreign protection order within the Muscogee (Creek) Nation territorial jurisdiction, the District Court may impose any penalty provided by law for violating a protection order issued by the District Court. The determination whether a foreign protection order has been violated is made in accordance with the Muscogee (Creek) Nation procedures governing criminal and civil cases.

[NCA 01-157, § 3-118, approved Oct. 7, 2001.]

SUBCHAPTER 5. OFFENDER TREATMENT AND VICTIM SERVICES

Section

- 3-501. Programs for victims of domestic violence.
- 3-502. Program of intervention for perpetrators.
- 3-503. Confidentiality of records.

§ 3-501. Programs for victims of domestic violence

A. “Program for victims of domestic violence” defined. A “program for victims of domestic or family violence” is a specialized program for victims of domestic or family violence and their children that provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education, or training.

B. “Advocate” defined. An “advocate” means an employee of or volunteer for a program for victims of domestic or family violence and victims of crimes involving domestic violence who:

Title 6, § 3–501

DOMESTIC AND FAMILY VIOLENCE

1. Has a primary function of rendering advice, counseling, or assistance to victims of domestic or family violence and victims of crimes involving domestic violence; supervising the employees or volunteers of the program; or administering the program;
2. Has undergone sufficient hours of training to perform the functions of an advocate; and
3. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

C. Memorandum of understanding to secure program for victims of domestic violence. The Muscogee (Creek) Nation Department of Justice and/or other agency of the Muscogee (Creek) Nation approved by the Principal Chief may enter into a memorandum of agreement with a private agency or organization that has a record of service to victims of domestic or family violence to provide a program for victims of domestic or family violence. The Muscogee (Creek) Nation Department of Justice and/or other agency of the Muscogee (Creek) Nation approved by the Principal Chief shall coordinate the provision of services with the providers of programs for victims of domestic or family violence.

D. Duties of provider of program for domestic and family violence. The duties of the provider of the program for domestic and family violence shall include but are not limited to:

1. Informing victims of domestic or family violence of their rights pursuant to applicable Tribal, state and federal law concerning victims' rights and assisting victims in securing those rights;
2. Informing victims of the availability of orders for protection and assisting victims in obtaining such orders;
3. Coordination with hospitals and the program for victims of domestic or family violence;
4. Providing interpreters for cases involving domestic or family violence, including requests for orders for protection;
5. Informing victims of the availability of shelter, counseling, and other social services;
6. Providing victims with shelter, counseling and other social services; and
7. Providing a victim with a safety plan consisting of a written or oral outline of actions to be taken by the victim to secure protection and support after making an assessment of the dangerousness of the situation, and assisting the victim in preparing the plan.

[NCA 01–157, § 4–101, approved Oct. 7, 2001.]

Cross References

Advocate-victim privilege, special evidentiary rules, see Title 6, § 3–203.

§ 3–502. Program of intervention for perpetrators

A. “Program of intervention for perpetrators” defined. “Program of intervention for perpetrators” means a specialized program that accepts perpetra-

tors of domestic or family violence into treatment or educational classes to satisfy court orders; offers treatment to perpetrators of domestic or family violence; or offers classes or instruction to perpetrators of domestic or family violence.

B. Establishment of program. The Muscogee (Creek) Nation Department of Justice and/or other agency of the Muscogee (Creek) Nation approved by the Principal Chief may enter into a memorandum of agreement with the Behavioral Health Department of the Muscogee (Creek) Nation Health Services Administration related to the establishment and availability of a program of education and counseling for domestic or family violence offenders and a program of intervention for perpetrators convicted of crimes involving domestic or family violence. The focus of the program shall be stopping the acts of violence and ensuring the safety of the victim and any children or other family or household members. The program shall be based on recognition that violence is a behavior for which the perpetrator shall be held accountable and recognition that substance abuse is a problem separate from domestic or family violence which requires specialized treatment.

C. Development of policies and procedures. The Muscogee (Creek) Nation Department of Justice and the Behavioral Health Department of the Muscogee (Creek) Nation Health Services Administration shall develop policies and procedures describing:

1. Standards of treatment for programs of intervention;
2. Criteria concerning a perpetrator's appropriateness for the program;
3. Systems for communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic or family violence, and the programs of intervention for perpetrators; and
4. Required education and qualifications of providers of intervention.

D. Requirements. Providers of programs of intervention for perpetrators shall require a perpetrator who is ordered into the program by a court to sign a release allowing the provider to inform the victim and victim's advocates that the perpetrator is in treatment with the provider, and to provide information for safety of the victim and victim's advocates; to sign a release allowing prior and current treating agencies to provide information about the perpetrator to the provider; and to sign a release allowing the provider to provide information about the perpetrator to relevant legal entities, including courts, parole officers, probation of officers. and children's protection services. Providers of programs of intervention for perpetrators shall report to the court and the victim any assault, failure to comply with the program, failure to attend the program, and threat of harm by the perpetrator.

[NCA 01-157, § 4-102, approved Oct. 7, 2001.]

Cross References

Conditions of probation, see Title 6, § 3-313.

§ 3-503. Confidentiality of records

A. Confidentiality. Except as otherwise provided by subsection B or C of this section, the case records, case files, case notes, client records, or similar

records of a domestic violence or sexual assault program, or of any employee or trained volunteer of a program, regarding an individual who is residing or has resided in the program or who has otherwise utilized or is utilizing the services of the program or counselor shall be confidential and shall not be disclosed. For purpose of this subsection, the term "client records" shall include, but not be limited to, all communications, records and information regarding clients of domestic violence and sexual assault programs.

B. Consent to disclosure. The case records, case files, or case notes of programs specified in subsection A of this section shall be confidential and shall not be disclosed except with the written consent of the individual, or in case of the individual's death or disability, of the individual's personal representative or other person authorized to sue on the individual's behalf.

C. Court order for disclosure; limitations. The District Court may order disclosure of the case records, case files, or case notes of programs specified in subsection A of this section for good cause shown; provided that the Court shall not order the disclosure of the address of a domestic violence shelter, the location of any person seeking or receiving services from a domestic violence or sexual assault program, or any other information which is required to be kept confidential pursuant to subsection A of this section.

[NCA 01-157, § 4-103, approved Oct. 7, 2001.]

CHAPTER 4. ORGANIZED INDIAN YOUTH COUNCILS—TRIBAL CHARTERS

Section

- 4-101. Applications for charter; requisites.
- 4-102. Status, protections and powers.
- 4-103. Assistance of Executive Branch.
- 4-104. Membership.
- 4-105. Applications for approval.
- 4-106. Denial or approval; certification.
- 4-107. Grant of charter.
- 4-108. Youth Services program.
- 4-109. Requests for funding.
- 4-110. Certificate of Youth Council Charter.

Historical and Statutory Notes

NCA 90-121, § 101(A) to (D), (G), provides:

“§ 102. Findings: The National Council finds that:

“(A) Over the past year, the Muscogee Nation has initiated efforts to establish Indian youth Councils in the planning and development of programs and activities designed to:

- “1. Promote youth and youth interaction.
- “2. Develop youth leadership potential.
- “3. Develop natural talents of youth.
- “4. Ensure the support and cooperation and coordination of efforts to enhance youth activities.
- “5. Provide a greater voice for youth and give them greater opportunities to participate in tribal leadership.
- “6. Promote healthy minds, spirits, and bodies among the youth.

“7. Provide opportunities for youth to experience and develop entrepreneurial interests.

“8. Increase youth awareness and understanding of the political process.

“(B) Youth represent the next general of leaders for our communities, tribe and nation.

“(C) Youth and adults have responded favorably to technical assistance provided by the tribal government to the youth council concept.

“(D) Official charters are needed for each organized Youth Council to give them a special status under tribal law, to outline the formal relationship between the chartered youth council and the tribal government, and outlining the duties and responsibilities of youth and adult advisors.”

“(G) In all aspects of tribal government, including the affairs of chartered Youth Councils, the Constitution of the Muscogee (Creek) Nation is the supreme law.”

§ 4-101. Applications for charter; requisites

A Youth Council Application for Charter to Muscogee (Creek) Nation must include the following:

- 1. Name of Youth Council
- 2. Purpose of Youth Council
- 3. Goals of Youth Council
- 4. Organization structure of Youth Council and provisions for elected representation.
- 5. Membership provisions and descriptions.
- 6. Annual elections of Youth Council officers.
- 7. Annual report of activities to the Creek Nation.
- 8. Identification of a minimum of three (3) Youth Council Adult Advisors. Adult Advisors must be age twenty-one (21) or over and serve a minimum of one-year terms.

Title 6, § 4–101

CHILDREN AND FAMILY RELATIONS

9. Youth Council Adult Advisor duties and responsibilities must be clearly described and specific.

10. Provision describing the replacement of Adult Advisors.

11. Meetings—frequency and location.

[NCA 90–121, § 101(E), approved April 3, 1991.]

§ 4–102. Status, protections and powers

Chartered Youth Councils shall, under this law, have the status of the Muscogee (Creek) Nation as to all tax exemptions, sovereign immunities, and any other protections and powers as provided by Tribal law.

[NCA 90–121, § 101(F), approved April 3, 1991.]

§ 4–103. Assistance of Executive Branch

The Executive Branch of the Muscogee (Creek) Nation shall provide technical assistance to youth groups in developing their charters.

[NCA 90–121, § 101(H), approved April 3, 1991.]

§ 4–104. Membership

Upon recommendation of the chartered members of the community, college students up to the age of twenty-two (22) years old, may be asked to participate as a member of the chartered Youth Council.

[NCA 90–121, § 101(I), approved April 3, 1991.]

§ 4–105. Applications for approval

Organized Indian Youth Councils of each community may apply in writing to their chartered community board (elected officials) for approval of their constitution and by-laws. If there is no chartered community then the Tribal youths may make application to the Office of the Principal Chief.

[NCA 90–121, §§ 102, 103, approved April 3, 1991.]

§ 4–106. Denial or approval; certification

A. The Principal Chief may deny approval of an Indian Youth Council constitution and by-laws by written objections within ten (10) days after their submission and these objections shall be made known to the applying Youth Council.

B. The Principal Chief shall sign a certificate upon his approval of an Indian Youth Council constitution.

[NCA 90–121, §§ 104, 105, approved April 3, 1991.]

§ 4–107. Grant of charter

Youth Council charters shall be granted within sixty (60) days after approval of the Youth Council constitution and by-laws under Title 6, § 4–106.

[NCA 90–121, § 106, approved April 3, 1991.]

§ 4-108. Youth Services program

The Youth Services program, under the Children and Family Services Department of the Executive Branch, would serve as a resource to the chartered Youth Councils, providing technical assistance, engaging speakers/presenters for their individual community meetings, disseminating relevant program information to designated Youth Council Officers, and assistance in obtaining requested materials on Youth Council activities.

[NCA 90-121, § 107, approved April 3, 1991.]

§ 4-109. Requests for funding

Chartered Youth Councils, by and through their elected officers, and with the requested advise/technical assistance as to procedure from Youth Program staff, could submit requests to the National Council or other potential funding sources for monies to be used as “seed money” to sponsor the start-up of economic development projects by and for the Youth Councils. This “technical assistance” would consist of advice on procedure; i.e., a workshop teaching the Youth “how to” develop a project narrative, goals and objectives, and a budget and justification, or “how to” prepare a cover letter to the Speaker for him to assign to Committee, “how to” lobby the Council members to find sponsors for the bill, and “how to” present oral arguments before the reviewing Committee for a recommendation of “Do pass”, etc. Technical assistance providers would not overstep the bounds of authority in “developing the proposals, bills, or project concepts for the Youth”, or in advocating “for” or “against” the legitimacy of the proposed project of the need for funding.

[NCA 90-121, § 108, approved April 3, 1991.]

§ 4-110. Certificate of Youth Council Charter

The form of the Certificate of Youth Council Charter shall be:

OFFICE OF THE PRINCIPAL CHIEF
MUSCOGEE (CREEK) NATION
YOUTH COUNCIL

WHEREAS, _____ Youth Council has submitted its constitution to the Principal Chief of Muscogee (Creek) Nation and that constitution has been approved and found not to be inconsistent with or in violation of the Constitution of the Muscogee (Creek) Nation:

NOW THEREFORE, I the undersigned Principal Chief of the Muscogee (Creek) Nation, by virtue of the powers vested in me by the Muscogee (Creek) National Council, do hereby grant a charter to:

(Name of Youth Council) to operate as a Youth Council of the Muscogee (Creek) Nation with all powers and privileges provided by law.

Two (2) youth pages shall be appointed by the Youth Services Coordinator to serve at each National Council monthly meeting.

Signature of Principal Chief

[NCA 90-121, attachment, approved April 3, 1991.]

CHAPTER 5. GUARDIAN AND WARD

Subchapter

1. General Provisions
2. Minors
3. Adults
4. Miscellaneous

SUBCHAPTER 1. GENERAL PROVISIONS

Section

- 5-101. Short title.
5-102. Subchapters in Act.
5-103. Purpose of Act; legislative intent.
5-104. Existing guardianships; compliance with Code; Muscogee (Creek) District Court review of cases.
5-105. Guardian defined.
5-106. Guardians ad litem excluded.
5-107. Ward defined.
5-108. Guardians classified.
5-109. General guardian.
5-110. Special guardian.
5-111. Definitions.
5-112. Persons and property subject to act; power of appointment; parental rights.
5-113. Appointment of guardian; jurisdiction.
5-114. Powers of the District Court.
5-115. Place of hearing; order and decree.
5-116. Guardians ad litem; power to appoint; appointment.
5-117. Guardian of nonresident.
5-118. Powers of guardian.
5-119. Power of guardian of the person; report of change of ward's abode; power of limited guardians.
5-120. Guardian of the property; power; fiduciary duty.
5-121. Confidential information filed with District Court.
5-122. Letters of guardianship.
5-123. Guardianship handbook and duties summary.
5-124. Computation of time.

§ 5-101. Short title

This Code shall be known as the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

- | | |
|------------------------------------|-----------------------------------|
| Guardian and Ward ☞2. | C.J.S. Guardian and Ward §§ 2, 5. |
| Indians ☞126. | C.J.S. Indians §§ 46 to 50, 53. |
| Mental Health ☞101. | C.J.S. Mental Health §§ 125, 127. |
| Westlaw Topic Nos. 196, 209, 257A. | |

§ 5-102. Subchapters in Act

The Muscogee (Creek) Nation Guardianship Code shall be composed of the following subchapters:

GENERAL PROVISIONS

Title 6, § 5–103

Subchapter I—General Provisions

Subchapter II—Minors

Subchapter III—Adults

Subchapter IV—Miscellaneous

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞2.	C.J.S. Guardian and Ward §§ 2, 5.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞101.	C.J.S. Mental Health §§ 125, 127.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–103. Purpose of Act; legislative intent

A. It is the purpose of the Muscogee (Creek) Nation Guardianship Code to promote the general welfare of all citizens by establishing a system of general and limited guardianships for minors and for incapacitated and partially incapacitated persons which provides for the protection of their rights and the management of their financial resources.

B. It is the purpose of the system of general and limited guardianships for incapacitated and partially incapacitated persons established by this act to provide for the participation of such persons, as fully as possible, in the decisions which affect them. It is the intent of the Muscogee (Creek) Nation;

1. That the District Court shall exercise the authority conferred by the Muscogee (Creek) Nation Guardianship Code so as to encourage the development of maximum self-reliance and independence of the incapacitated or partially incapacitated person and make appointive and other orders only to the extent necessitated by the mental and adaptive limitations or other condition of the incapacitated or partially incapacitated person warranting the procedure;

2. That in performing their duties and exercising their powers, guardians and limited guardians of incapacitated or partially incapacitated persons shall:

a. assure, to the extent reasonably possible, that the rights of the wards for whom they are appointed are protected;

b. encourage, to the extent reasonably possible, incapacitated or partially incapacitated persons to participate to the maximum extent of their abilities in all decisions which affect them and to act on their own behalf on all matters in which they are able to do so within the limitations imposed by the District Court; and

c. as appropriate, assist their wards to develop or regain to the maximum extent possible their capacity to meet the essential requirements for their health or safety or to manage their financial resources or both.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞2.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward §§ 2, 5.
Mental Health ☞101.	C.J.S. Indians §§ 46 to 50, 53.

Title 6, § 5–103

GUARDIAN AND WARD

C.J.S. Mental Health §§ 125, 127.

§ 5–104. Existing guardianships; compliance with Code; Muscogee (Creek) District Court review of cases

A. Any guardianship in existence on or created on or after the effective date of this Code shall comply with the provisions of the Muscogee (Creek) Nation Guardianship Code.

B. Unless otherwise modified or terminated, all guardianships established prior to the effective date of the Muscogee (Creek) Nation Guardianship Code shall remain in full force and effect.

C. All guardians shall retain the powers assigned to them, unless otherwise modified or terminated by the Muscogee (Creek) District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞2, 25.	C.J.S. Guardian and Ward §§ 2, 5, 45 to 48,
Indians ☞126.	50.
Mental Health ☞179.	C.J.S. Indians §§ 46 to 50, 53.
Westlaw Topic Nos. 196, 209, 257A.	C.J.S. Mental Health §§ 176 to 179.

§ 5–105. Guardian defined

A guardian is a person appointed by the Muscogee (Creek) District Court to take care of the person or property of another.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–106. Guardians ad litem excluded

The term “guardian” includes persons appointed as general and limited guardians of the person, general and limited guardians of property, and special guardians, but does not include persons appointed as guardians ad litem.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Infants ☞77.	C.J.S. Infants §§ 321, 328 to 329.
Mental Health ☞485.	C.J.S. Mental Health §§ 314, 316 to 325.
Westlaw Topic Nos. 196, 209, 211, 257A.	

§ 5–107. Ward defined

A person over whom a guardian is appointed and a person over whose property a guardian or conservator is appointed is called a ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

GENERAL PROVISIONS

Title 6, § 5–111

Library References

Guardian and Ward ☞9.5.	C.J.S. Guardian and Ward §§ 7 to 8.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞104.	C.J.S. Mental Health §§ 128 to 133.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–108. Guardians classified

Guardians are either:

1. General;
2. Limited; or
3. Special.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–109. General guardian

A. A general guardian is a guardian of the person or of all the property of the ward or of both such person and property.

B. A limited guardian is a person authorized by the Muscogee (Creek) Nation District Court to exercise limited powers over the person of the ward, or over the property of the ward or over both such person and property.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–110. Special guardian

A special guardian may be appointed by the Muscogee (Creek) Nation District Court pursuant to Section 5–315 of this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–111. Definitions

A. As used in the Muscogee (Creek) Nation Guardianship Code:

1. “Abuse” means the intentional act which causes physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to

Title 6, § 5–111

GUARDIAN AND WARD

an incapacitated person, partially incapacitated person, or a minor by a guardian or other person responsible for providing these services;

2. “Confidential information” means medical records, physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship plans, reports of guardians, limited guardians and conservators submitted to the District Court in connection with a proceeding pursuant to the provisions of this Code;

3. “District Court” means the Muscogee (Creek) Nation District Court;

4. “Estate” means the property of the person whose affairs are subject to a guardianship proceeding;

5. “Evaluation” means a professional assessment of:

a. the ability of an adult to receive and evaluate information effectively or communicate decisions;

b. the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for his/her physical health or safety, or to manage his/her financial resources; and

c. the services necessary to provide for the ward;

6. “Exploitation” means an unjust or improper use of the resources of an incapacitated person, a partially incapacitated person, or a minor for the profit or advantage, pecuniary or otherwise, of a person other than an incapacitated person, a partially incapacitated person, or a minor through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense;

7. “Guardian of an incapacitated person” means a person who has been appointed by the District Court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of said person are met, to manage the estate or financial resources of said person, or both;

8. “Guardian ad litem” means, with respect to a guardianship proceeding, a person appointed by the District Court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance;

9. “Guardianship plan” means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both;

10. “Guardianship proceeding” means a proceeding for the appointment of a guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a ward;

11. “Guardianship report” means any report required by the provisions of Sections 5–415 and 5–416 of this Title;

12. “Incapacitated person” means a person eighteen (18) years of age or older:

a. who is impaired by reason of:

GENERAL PROVISIONS

Title 6, § 5-111

(1) mental illness as defined by:

(A.) “Mentally ill person” means any person afflicted with a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;

(2) mental retardation or developmental disability as defined by:

(A.) “Developmental disability” means a severely chronic disability of a person, five (5) years of age or older, which

(i.) is attributable to a physical or mental impairment or a combination of physical and mental impairments;

(ii.) is manifested before the person attains the age of twenty-two (22) years

(iii.) is likely to continue indefinitely;

(iv.) results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care,
2. Receptive and expressive language,
3. Learning,
4. Mobility,
5. Self-direction,
6. Capacity for independent living, or
7. Economic self-sufficiency; and

(v.) reflects the person’s need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong or of extended duration and are individually planned and coordinated;

(3) physical illness or disability;

(4) drug or alcohol dependency as defined by:

(a.) An “alcohol-dependent person” is one who uses alcoholic beverages to such an extent that it impairs his/her health, his/her family life, his/her occupation and compromises the health and safety of the community;

(5) such other similar cause; and

b. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:

(1) lacks the capacity to meet essential requirements for his/her physical health or safety; or

(2) is unable to manage his/her financial resources. Whenever in the Muscogee (Creek) Nation Code the term “incompetent person” appears and refers to a person who has been found by the District Court to be an incompetent person because of an impairment or condition described in this paragraph it shall have the same meaning as “incapacitated person” but shall not include a person who is a partially incapacitated person;

13. “Least restrictive dispositional alternative” means the form of assistance that least interferes with the legal ability of an incapacitated or partially incapacitated person to act in his/her own behalf;

14. “Intangible personal property” means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature;

15. “Letters” means a document issued by the District Court subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of said guardian. Such document shall be endorsed thereon with the oath of the guardian that he/she will perform the duties of his/her office as guardian according to law;

16. A “limited guardian” means a person appointed by the District Court to serve as the guardian of a partially incapacitated person and who is authorized by the District Court to exercise only:

a. some of the powers of a guardian of the person or whose power as guardian of the person extends only to certain matters pertaining to the care or control of the ward as specified by the District Court, or

b. certain powers as guardian of the property over the estate or financial resources of the ward, or whose powers as guardian of the property extend only to some portion of the estate or financial resources of the ward;

17. “Manage financial resources” or “manage the estate” means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;

18. “Meet the essential requirements for physical health or safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur;

19. “Minor” means a person under eighteen (18) years of age;

20. “Neglect” means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect the person’s own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person’s own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury;

21. “Organization” means a corporation, trust, business trust, partnership, association, or other legal entity;

22. “Partially incapacitated person” means an incapacitated person whose impairment is only to the extent that without the assistance of a limited guardian said person is unable to:

a. meet the essential requirements for his/her physical health or safety, or

b. manage all of his/her financial resources or to engage in all of the activities necessary for the effective management of his/her financial resources. A finding that an individual is a partially incapacitated person shall not

constitute a finding of legal incompetence. A partially incapacitated person shall be legally competent in all areas other than the area or areas specified by the District Court in its dispositional or subsequent orders. Such person shall retain all legal rights and abilities other than those expressly limited or curtailed in said orders;

23. "Party" means the person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a guardianship proceeding; the guardian, and the guardian ad litem, if any such persons have been appointed;

24. "Person" means an individual;

25. "Property" means real property, personal property, income, any interest in such real or personal property and includes anything that may be the subject of ownership;

26. "Restrictions on the legal capacity of a person to act in his/her own behalf" means powers of an incapacitated or partially incapacitated person which are assigned to a guardian;

27. "Subject of the proceeding" means a minor or an adult:

a. who is the subject of a petition requesting the appointment of a guardian, limited guardian or special guardian,

b. for whom a guardian or limited guardian has been appointed by the District Court, or

c. an adult for whom a conservator is requested or appointed; and

28. "Surcharge" means the imposition of personal liability by the District Court on a guardian or limited guardian for willful or negligent misconduct in the administration of the estate or other financial resources of a ward.

B. Nothing in this section shall be construed to mean an incapacitated person, a partially incapacitated person, or a minor is abused or neglected for the sole reason that a guardian or other person responsible, in good faith, selects and depends upon spiritual means alone, in accordance with the tenets and practices of a recognized church, religious denomination, or traditional medicine for the treatment or cure of disease or remedial care of the person or minor in their trust, and, in the case of an adult, in accordance with the practices of or the express consent of the incapacitated or partially incapacitated person.

C. Nothing contained in this subsection shall prevent the District Court from immediately assuming custody of a minor, pursuant to the Muscogee (Creek) Nation Code, Title 6, Chapter 1, and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-112. Persons and property subject to act; power of appointment; parental rights

A. Except as otherwise specifically provided by law, the Muscogee (Creek) Nation Guardianship Code applies to;

Title 6, § 5–112

GUARDIAN AND WARD

1. Minors who are Creek citizens and reside within the jurisdictional boundaries of the Muscogee (Creek) Nation. Guardianships for minors established pursuant to subsection 3 of this act shall only be subject to provisions of the Muscogee (Creek) Nation Guardianship Code as provided in subsection B of this section;

2. Incapacitated and partially incapacitated Creek citizens who reside within the jurisdictional boundaries of Muscogee (Creek) Nation; and

3. Property located within the jurisdictional boundaries of the Muscogee (Creek) Nation of nondomiciliary Creek citizens who are minors or incapacitated or partially incapacitated persons, or property coming into the control of a guardian who is subject to the laws of this Nation.

B. No person has any power as a guardian, except by appointment by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌9.5.	C.J.S. Guardian and Ward §§ 7 to 8.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇌104.	C.J.S. Mental Health §§ 128 to 133.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–113. Appointment of guardian; jurisdiction

A. A guardian of the person or property, or both, of a Creek citizen who resides within the jurisdictional boundaries of the Nation, who is a minor, or an incapacitated or partially incapacitated person, may be appointed in all cases by the District Court as provided in this Title.

B. After the service of notice in a proceeding seeking the appointment of a guardian or other order, in subsequent proceedings pertaining to the guardianship of a ward and until termination of the proceeding, the District Court has exclusive jurisdiction to determine:

1. The need for a guardian or other order; and
2. How the estate of the ward shall be managed, expended, or distributed to or for the use of the ward or the dependents of the ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌13(1).	C.J.S. Guardian and Ward §§ 13, 28.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Westlaw Topic Nos. 196, 209.	

§ 5–114. Powers of the District Court

A. In all cases the District Court has exclusive jurisdiction to control such guardian in the management and disposition of the person and property of the ward.

B. The District Court has jurisdiction over guardianship proceedings, and has the following powers, this must be exercised in the manner prescribed by law, to:

GENERAL PROVISIONS

Title 6, § 5–115

1. Appoint and remove guardians for minors and for incapacitated and partially incapacitated persons;
2. Issue and revoke letters of guardianship;
3. Control the conduct of guardians with regard to the, care and treatment provided to their wards;
4. Control the conduct of guardians with regard to the management of the financial resources of their wards, including but not limited to the power to:
 - a. compel guardians to submit plans, reports, inventories and accountings to the District Court;
 - b. compel payment and delivery by guardians of property belonging to their wards;
 - c. order the payment of debts, the sale of property, and order and regulate the distribution of property which has been placed under the control or management of a guardian; and
 - d. settle the accounts of guardians;
5. Appoint appraisers of the property of wards;
6. Compel the attendance of witnesses and the production of documents and property;
7. After a petition has been filed for appointment of a guardian for a minor, make or modify any temporary order of guardianship during the progress of the proceedings that would be in the best interest of the ward. Any such temporary order may be entered ex parte with written notice sent to all parties directing them to appear before the District Court, at a time and place therein specified, not more than twenty (20) days from the time of making such order, to show cause why the order should not be granted for temporary guardianship; and
8. Exercise all powers conferred by the Muscogee (Creek) Nation Guardianship Code and to make such orders as may be necessary for the exercise of said powers.
 - C. The District Court shall establish by court rule a system for:
 1. The filing of guardianship cases and records; and
 2. Monitoring the filing of annual reports and inventories required by this title for the purpose of assuring that the District Court will be notified of annual reports as they fall due and whether or not said reports are filed.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 5–115. Place of hearing; order and decree

- A. The power conferred upon the District Court in relation to guardians and wards may be exercised in chambers or elsewhere in the discretion of the

Title 6, § 5–115

GUARDIAN AND WARD

Judge. Any hearing held pursuant to the provisions of this act may be held at such place as the District Court directs.

B. Any order appointing a guardian must be entered as and become a decree of the District Court.

C. Except as otherwise specifically provided by this act, the provisions of Title 47 of the Muscogee (Creek) Nation Code Annotated relative to the estates of decedents, so far as they relate to the practice in the District Courts, apply to proceedings under this title and the rules of civil procedure including the rules concerning discovery, vacation of orders and appellate review, govern proceedings subject to the Muscogee (Creek) Nation Guardianship Code unless otherwise provided in this title or Title 27 of the Muscogee (Creek) Nation Code Annotated.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇨126, 133, 519.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 50, 53, 150 to 179.

§ 5–116. Guardians ad litem; power to appoint; appointment

A. Nothing contained in this title affects or impairs the power of the District Court to appoint a guardian ad litem to defend the interests of any minor interested in any suit or matter pending therein.

B. At any point in a guardianship proceeding, the subject of the proceeding, his/her attorney, the guardian of the subject of the proceeding or anyone interested in the welfare of the subject of the proceeding may file an application to have a guardian ad litem appointed by the District Court, or the District Court on its own motion may appoint a guardian ad litem. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇨126, 133, 534.
Infants ⇨76.
Mental Health ⇨485.
Westlaw Topic Nos. 209, 211, 257A.
C.J.S. Indians §§ 46 to 50, 53, 150 to 179.
C.J.S. Infants §§ 195, 321 to 336, 338 to 343.
C.J.S. Mental Health §§ 314, 316 to 325.

§ 5–117. Guardian of nonresident

A guardian of the property of a person not residing within the Nation, who is a minor, or an incapacitated or partially incapacitated person, may be appointed by the District Court as provided by this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨36.
Indians ⇨126.
Mental Health ⇨211.
Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122.

C.J.S. Indians §§ 46 to 50, 53.
C.J.S. Mental Health § 183.

§ 5–118. Powers of guardian

A guardian has only those powers over the person or the property of the ward, or both such person and property, as ordered by the District Court pursuant to this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇔28, 36.	C.J.S. Guardian and Ward §§ 70 to 78, 100, 122.
Indians ⇔126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇔179, 211.	C.J.S. Mental Health §§ 176 to 179, 183.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–119. Power of guardian of the person; report of change of ward's abode; power of limited guardians

A. A guardian, including a special guardian, of the person is charged with the custody of the ward, and must look to the support, health and education of the ward. Except as provided by Section 5–313 of this Title, he may fix the place of abode of the ward at any place within the Muscogee (Creek) Nation, but not elsewhere, without permission of the District Court and any change in the place of abode of a ward within the Creek Nation shall be reported to the District Court.

B. Limited guardians of partially incapacitated persons shall not have custody of the person of the ward and shall have only those powers or controls over the person of the ward specifically ordered in a dispositional order or other order of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇔29.	C.J.S. Guardian and Ward §§ 51 to 55.
Indians ⇔126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇔179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–120. Guardian of the property; power; fiduciary duty

A. A guardian of the property must keep safely the property of his/her ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the District Court, but must so far as it is in his/her power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward or the successors of the ward at the close of his/her guardianship, in as good condition as he received it.

B. A guardian of the property, in relation to powers conferred pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code, shall act as a fiduciary and shall perform, diligently and in good faith, as a prudent person would in managing his/her own property, not with regard to speculation but

Title 6, § 5–120

GUARDIAN AND WARD

with regard to conservation and growth, and the specific duties and powers assigned by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌36.	C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇌211.	C.J.S. Mental Health § 183.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–121. Confidential information filed with District Court

A. Confidential information filed with or submitted to the District Court in conjunction with any proceeding pursuant to the Muscogee (Creek) Nation Guardianship Code shall not constitute a public record and shall be sealed by the District Court. Access to confidential information shall be strictly controlled. Except upon District Court order, no confidential information shall be disclosed to persons other than:

1. The subject of the proceeding and the subject's attorney;
2. The guardian ad litem;
3. If the subject of the confidential information is a ward, the guardian of such ward;
4. If the subject of the confidential information is the guardian, the ward and the subject's attorney, and the attorney of such guardian;
5. An authorized representative of the United States Department of Veterans Affairs upon presentation of proper identification;
6. An authorized representative of the Oklahoma Department of Human Services or Muscogee (Creek) Nation Children and Family Services upon presentation of proper identification; or
7. An authorized representative of the Attorney General's Office or Lighthouse Police Department or other law enforcement department having jurisdiction.

B. The fact of the existence of a guardianship of a person or that person's estate shall not be considered confidential information.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌13(1).	C.J.S. Bankruptcy §§ 830 to 834.
Indians ⇌126.	C.J.S. Guardian and Ward §§ 13, 28.
Mental Health ⇌21.	C.J.S. Indians §§ 46 to 50, 53.
Records ⇌32.	C.J.S. Mental Health §§ 17 to 21.
Westlaw Topic Nos. 196, 209, 257A, 326.	C.J.S. Records §§ 80, 82 to 88.

§ 5–122. Letters of guardianship

Letters of guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the letters, of a ward to the guardian. An order terminating a guardianship is evidence of transfer of the management or administration of all assets subject to the guardianship from the guardian to the ward, or to successors of the ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌16.
 Indians ⇌126.
 Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward § 11.
 C.J.S. Indians §§ 46 to 50, 53.

§ 5–123. Guardianship handbook and duties summary

The District Court Clerk’s Office of the Muscogee (Creek) Nation shall prepare a guardianship handbook for distribution. The handbook shall be written in clear, simple language and shall include information about the laws and procedures which apply to adult guardianships and the duties and responsibilities of such guardians. In conjunction with the guardianship handbook, the District Court Clerk’s Office of the Muscogee (Creek) Nation shall develop a summary of the duties of guardians including, but not limited to, statutory notices, timetables, and required District Court approvals. The summary shall emphasize the significance of timely accountability to the District Court and to the ward as well as the sanctions and penalties which may be imposed for failure to comply with the requirements of the law or orders of the District Court. Copies of the handbook shall be made available to the public through the District Court Clerk’s Office in English and in Muscogee.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–124. Computation of time

The time within which an act is to be done, as provided for in this Code, shall be computed by excluding the first day and including the last day. If the last day is a weekend or legal holiday, it shall be excluded.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇌126.
 Time ⇌3.
 Westlaw Topic Nos. 209, 378.

C.J.S. Indians §§ 46 to 50, 53.
 C.J.S. Time §§ 2, 4, 14.

SUBCHAPTER 2. MINORS**Section**

- 5–201. When guardian of minor to be appointed; petition; notice.
- 5–202. Nominations of guardian.
- 5–203. Nomination and appointment of guardian; age of minor.
- 5–204. Nomination of guardian by minor at 14 years of age; approval of District Court.
- 5–205. Appointment when ward’s nominee ineligible.
- 5–206. Guardian in charge of education.
- 5–207. Education and maintenance of minor; income from property of minor; orders appointing guardian.
- 5–208. Conditions of appointment.
- 5–209. Investments authorized.
- 5–210. Contracts on lives of wards and beneficiaries of trust funds.
- 5–211. Interest of guardian.
- 5–212. When power of guardian appointed by parent ceases.
- 5–213. Release of minor ward at majority.
- 5–214. Limitation of discharge by the District Court.
- 5–215. Delivery of up to \$10,000 of minor’s estate to custodian, parent or minor.

§ 5–201. When guardian of minor to be appointed; petition; notice

A. The Muscogee (Creek) Nation District Court when it appears necessary or convenient may appoint guardians for the persons and estates, or either, or both of them, of minors.

B. Such appointment shall be made on the verified petition of a relative or other person on behalf of such minor.

C. Before making the appointment, the District Court must cause notice of the hearing on the petition for appointment of a guardian for a minor to be given to the minor himself if the minor has attained the age of fourteen (14) as of the date the petition is filed. The District Court shall also cause notice to be sent to the following persons:

1. The then-living parents of the minor and any other person having care of the minor, if such parent or person is not one of the petitioners;

2. If the minor has no then-living parent, then to one of the then-living grandparents who is not one of the petitioners and who is not married to one of the petitioners; and

3. If there is no such then-living grandparent or if there is no such then-living grandparent whose address is known to the petitioner, then notice shall be given to an adult relative, if any, of the minor residing within the Muscogee (Creek) Nation.

D. Such notice shall be mailed to each person, entitled to notice pursuant to this section, at that person’s address as last-known to the petitioner, at least ten (10) days prior to the date set by the District Court for hearing on the petition. Provided the District Court may direct a shorter notice period if the District Court deems such shorter notice period to be appropriate under the circumstances. If there is no person other than the minor who is entitled to notice, or if the address of any person, other than the minor, who is entitled to notice is not known to the petitioner, the petition shall so allege. The District Court may direct that notice, other than notice to the minor if the minor has attained the age of fourteen (14), be waived or be given to any person or persons other than the minor in such manner as the District Court determines and directs.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Cross References

Application for relief, notice, see Title 6, § 5–417.

Hearing, notice and order, see Title 6, § 5–445.

Copies of annual report, objections, hearing, see Title 6, § 5–416.

Termination of authority and responsibility of guardian, notice and hearing, see Title 6, § 5–463.

Library References

Guardian and Ward ⇔9.5, 13(3).

Indians ⇔133, 519.

Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 7 to 8, 29 to 31.

C.J.S. Indians §§ 150 to 179.

§ 5–202. Nominations of guardian

A. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be nominated by will or by other written instrument, to take effect upon the death of the parent so nominating:

1. If the child is born in wedlock, by either parent or by both parents.
2. If the child is born out of wedlock, by the mother of the child or by the natural father of the child, if said natural father has acknowledged paternity or has been judicially determined to be the father of the child at a paternity proceeding, or by both such mother and father.

B. A nomination made by a parent who has relinquished parental rights or whose parental rights have been terminated shall have no effect.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞10, 11.
Indians ☞133.
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 17 to 27.
C.J.S. Indians § 150.

§ 5–203. Nomination and appointment of guardian; age of minor

A. If the minor is under the age of fourteen (14) years, the District Court may name and appoint his/her guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his/her own guardian, who, if approved by the District Court, must be appointed accordingly.

B. The District Court, in appointing a guardian for a minor, is to be guided by this Title.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞10, 13.
Indians ☞133.
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 13, 19 to 35,
49.
C.J.S. Indians § 150.

§ 5–204. Nomination of guardian by minor at 14 years of age; approval of District Court

When a guardian has been appointed by the District Court for a minor under the age of fourteen (14) years, the minor, at any time after he has attained age fourteen (14), may nominate his/her own guardian, subject to the approval of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞10, 13.
Indians ☞133.
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward §§ 13, 19 to 35,
49.
C.J.S. Indians § 150.

§ 5–205. Appointment when ward's nominee ineligible

If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the District Court or if, after being notified by the District Court, the minor neglects for ten (10) days to nominate a suitable person, the District Court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen (14) years.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞10, 13.	C.J.S. Guardian and Ward §§ 13, 19 to 35,
Indians ☞133.	49.
Westlaw Topic Nos. 196, 209.	C.J.S. Indians § 150.

§ 5–206. Guardian in charge of education

If the minor has no father or mother living who is competent to have charge of the education of the minor, the guardian appointed by the District Court shall have the same.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞30.	C.J.S. Guardian and Ward §§ 58 to 69.
Indians ☞140.	C.J.S. Indians § 56.
Westlaw Topic Nos. 196, 209.	

§ 5–207. Education and maintenance of minor; income from property of minor; orders appointing guardian

A. If any minor, having a parent or parents living, has property, the income of which is sufficient for his/her maintenance and education in a manner more expensive than such parent or parents can reasonably afford, regard being had to all of the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of the property of the minor in whole or in part, as judged reasonable and as directed by the District Court. The charges therefore may be allowed accordingly in the settlement of the accounts of the guardian of the minor.

B. 1. Any order appointing a guardian of the minor who has a parent living or other person legally responsible for the support of the child shall:

- a. provide for the payment of child support by the parent or other responsible party; and
- b. contain an income assignment provision pursuant to this title.

2. Any guardianship for a minor created on or after the effective date of this Code, shall comply with the provisions of this subsection. Guardianships for a minor in existence prior to the effective date of this Code, shall comply with the provisions of this subsection as ordered by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞30, 58.	C.J.S. Guardian and Ward §§ 58 to 69, 103 to
Indians ☞139 to 141.	109.
Westlaw Topic Nos. 196, 209.	C.J.S. Indians §§ 36, 54 to 56.

§ 5–208. Conditions of appointment

A. When any person is appointed guardian of a minor, the District Court may include in the order of appointment conditions providing for the care, treatment, education and welfare of the minor.

B. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞13(7).	C.J.S. Guardian and Ward §§ 33 to 35, 49.
Indians ☞133.	C.J.S. Indians § 150.
Westlaw Topic Nos. 196, 209.	

§ 5–209. Investments authorized

A guardian legally holding funds or assets belonging to or for the benefit of a minor may with the approval of the District Court, invest such funds or assets or any part thereof, in single premium life, single premium endowment, or single premium annuity contracts of legal reserve life insurance companies as are duly licensed and qualified to transact business.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞53.	C.J.S. Guardian and Ward §§ 115 to 121.
Indians ☞133, 141(1).	C.J.S. Indians §§ 36, 150.
Westlaw Topic Nos. 196, 209.	

§ 5–210. Contracts on lives of wards and beneficiaries of trust funds

Such contracts may be issued on the life of a ward or beneficiary of a trust fund, and shall be so drawn by the insuring company so that the proceeds or avails thereof shall be the sole property of the person whose funds are invested.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–211. Interest of guardian

Such contracts may not be purchased from any company for which the guardian is acting as agent, or receives any commission, or part of any commission, directly or indirectly paid by such company to its agent soliciting or selling such contract.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–212. When power of guardian appointed by parent ceases

The power of a guardian appointed for a minor ceases upon:

1. The removal of the guardian;
2. The solemnized marriage of the ward; or
3. The ward's attaining majority.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞20, 21, 25.	C.J.S. Guardian and Ward §§ 39 to 40, 45 to 48, 50.
Indians ☞133.	C.J.S. Indians § 150.
Westlaw Topic Nos. 196, 209.	

§ 5–213. Release of minor ward at majority

After a minor ward has come to his/her majority, such ward may settle accounts with his/her guardian and give him a release, which is valid, subject to approval of the District Court, if obtained fairly and without undue influence.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨20.
Indians ⇨133.
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward § 39.
C.J.S. Indians § 150.

§ 5–214. Limitation of discharge by the District Court

A guardian of a minor appointed by the District Court is not entitled to his/her discharge until one (1) year after the majority of the ward unless the District Court determines that the minor has earlier validly released said guardian after a final accounting.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨20.
Indians ⇨133.
Westlaw Topic Nos. 196, 209.

C.J.S. Guardian and Ward § 39.
C.J.S. Indians § 150.

§ 5–215. Delivery of up to \$10,000 of minor's estate to custodian, parent or minor

A. 1. When the whole estate of a minor does not exceed the value of ten thousand dollars (\$10,000.00), the District Court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize and direct:

a. the delivery of the property or any portion thereof to one or more custodians or to one or more other custodians designated by the District Court, or

b. the payment or delivery of the property or any portion thereof to the parent of the minor, or to the person having the care or custody of the minor, or to the minor. The person receiving the property shall pay necessary expenses of the minor and hold, manage, and dispose of the property in the manner directed by the District Court.

2. When the whole estate of a minor exceeds the value of ten thousand dollars (\$10,000.00), the District Court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize and direct:

a. the delivery of property having a value of up to ten thousand dollars (\$10,000.00) to one or more custodians or to one or more other custodians designated by the District Court, or

b. the payment or delivery of up to ten thousand dollars (\$10,000.00) of the property or any portion thereof to the parent of the minor, or to the person having the care or custody of the minor, or to the minor. The person receiving the property shall pay necessary expenses of the minor and hold, manage, and dispose of the property in the manner directed by the District Court.

B. The person making payment, delivery, transfer or issuance of property or evidence thereof to the individual or custodian designated by the District Court pursuant to this section is discharged and released to the same extent as if payment, delivery, transfer, or issuance was made to a guardian of the minor, and the person is not required to see to the application thereof. A person making payment, delivery, transfer, or issuance of property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for by this act.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞133, 141(1).	C.J.S. Indians §§ 36, 150.
Infants ☞32.	C.J.S. Infants §§ 167 to 168.
Westlaw Topic Nos. 209, 211.	

SUBCHAPTER 3. ADULTS

Section

- 5-301. Petition for appointment of guardian.
- 5-302. Nomination of guardians or alternate guardians by adult; priorities of nominations.
- 5-303. Nomination of guardian or limited guardian by will.
- 5-304. Priorities for selection by District Court of guardian or limited guardian; appointment of organization; determination of suitability; appointment of public agency.
- 5-305. District Court appointment where nominee is unable, unwilling or cannot qualify to serve.
- 5-306. Rights of individual alleged to be or found to be incapacitated or partially incapacitated; confidentiality; relief from costs and fees; record.
- 5-306.1. District Court-appointed advocates for vulnerable adults programs.
- 5-307. Appointment of counsel; explanation and inquiry by District Court; replacement of appointed counsel; determination of independence of retained counsel; record.
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- 5-313. Order appointing guardian; specific determinations of capacity; submission of guardianship plan; other orders.
- 5-314. Assignment of powers to limited guardian; endorsement of limitation or specification of assets upon letters of guardianship.
- 5-315. Appointment of special guardian; powers; duration; bond; removal.
- 5-316. Proceedings to determine restoration to capacity.
- 5-317. Presumption of capacity when guardian discharged without appointment of another.
- 5-318. Duties and powers of guardian or limited guardian.
- 5-319. Limitation of powers of guardian.
- 5-320. Proposed plan for care and treatment of ward.
- 5-321. Disposition of financial resources under supervision and control of guardian or limited guardian; petition for restoration of capacity.
- 5-322. Proposed plan for management of financial resources of ward.
- 5-323. Sale or lease of homestead of incapacitated or partially incapacitated person.
- 5-324. Sale or lease of real property by guardian; approval; joinder of spouse.

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5-325. Application; Sections 5–323 and 5–324 cumulative.

5-326. Estates of incapacitated or partially incapacitated persons not exceeding \$10,000.00; disposition; discharge and release.

§ 5–301. Petition for appointment of guardian

A. Any person interested in the welfare of a person believed to be an incapacitated person or partially incapacitated person may file a verified petition alleging that such person is an incapacitated or partially incapacitated person, and request the appointment of a guardian.

B. The petition shall be verified and shall specify:

1. The names and addresses of persons entitled to notice pursuant to Section 5–310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner;

2. The nature and degree of the alleged incapacity;

3. The relief requested and the facts and reasons supporting the need for such relief including, where applicable, a description of any acts or behavior of the subject of the proceeding which gave rise to the allegations; and

4. The estimated value of all intangible personal property of the ward.

C. A copy of the results of any physical, psychological or other appropriate professional evaluation of the condition of the subject of the proceeding which has been completed within sixty (60) days prior to the filing of the petition, may be attached to the petition at the time it is filed.

D. A guardianship plan or plans substantially in the form required by Section 5–320 or Section 5–322 of this Title or both, as appropriate, may be attached to the petition at the time it is filed or may be submitted to the District Court at the time of the hearing.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 511.

Mental Health ☞104, 126.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 128 to 133, 155.

§ 5–302. Nomination of guardians or alternate guardians by adult; priorities of nominations

A. Every person eighteen (18) years of age or older who is of sound mind and not acting under duress, menace, fraud or undue influence, may nominate a guardian of his/her person and property, or of either, as provided by this section. Such nomination shall, in the event of the incapacity or partial incapacity of said person be proved in the same manner as any other writing. The nomination shall be binding on the District Court subject to the disqualification of the nominee by the District Court.

B. Such nomination shall be in writing and shall be signed by the person making such nomination and witnessed by someone other than the nominated guardian. The nomination shall be substantially in the following form:

Nomination of Guardian by an Adult

I, _____, being of sound mind and not acting under any duress, (name) menace, fraud, or other undue influence do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as the guardian of my (person, property, both) in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state) on this _____ day of _____, 20____.

C. In such nomination, the person making it may nominate an alternate guardian or guardians to act in the event a previously named nominee is unable or unwilling to act as guardian.

D. If the same person has executed more than one nomination of a guardian:

- 1. The most recent nomination shall control; or
- 2. If two or more nominations bear the same most recent date the District Court may appoint one of the nominees or may appoint more than one of the nominees as co-guardians upon determining the nominator to be an incapacitated or partially incapacitated person.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇄126. C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇄116, 120. C.J.S. Mental Health §§ 145 to 149, 151, 153
Westlaw Topic Nos. 209, 257A. to 154.

§ 5-303. Nomination of guardian or limited guardian by will

A parent of an unmarried incapacitated or partially incapacitated person, the spouse of a married incapacitated or partially incapacitated person, or an adult child of such person who is serving as guardian or limited guardian may nominate by will, or by affidavit executed by the nominating parent or parents, spouse, or adult child, an individual to serve as guardian or limited guardian upon the death or incapacity of the nominator. Such nomination shall be executed by the nominator in the same manner as provided for nominations made pursuant to Section 5-302 of this Title.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇄126. C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇄116. C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 209, 257A.

§ 5–304. Priorities for selection by District Court of guardian or limited guardian; appointment of organization; determination of suitability; appointment of public agency

A. The following priorities shall guide the selection, by the District Court of a guardian or limited guardian of an incapacitated or partially incapacitated person from among those eligible:

1. The individual or individuals nominated by the subject of the proceeding pursuant to Section 5–302 of this Title;

2. The current guardian or limited guardian appointed or recognized by the appropriate District Court of any other jurisdiction in which the incapacitated or partially incapacitated person resides;

3. An individual nominated by the will or by other writing of a deceased parent, spouse, or an adult child who was serving as the guardian or limited guardian of the subject of the proceeding;

4. The spouse of the subject of the proceeding;

5. An adult child of the subject of the proceeding;

6. A parent of the subject of the proceeding;

7. A sibling of the subject of the proceeding; or

8. Any individual approved by the District Court with whom the subject of the proceeding has been living for more than six (6) months prior to the filing of the petition. Provided that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act,¹ the Residential Care Act,² the Group Homes for Persons with Developmental or Physical Disabilities Act,³ and all other applicable federal statutes shall not be appointed guardian or limited guardian of a resident of such facility unless said owner, operator, administrator or employee is the spouse of said resident, or a relative of said resident within the second degree of consanguinity and is otherwise eligible for appointment.

B. When the guardian or limited guardian of an incapacitated or partially incapacitated person is the guardian of property only, the District Court may appoint an organization which is eligible to manage the financial resources of an individual and has fiduciary powers, or its successor in interest, when:

1. Such organization is nominated by the subject of the proceeding pursuant to Section 5–302 of this Title; or

2. Such organization is nominated by a person eligible to make such nomination pursuant to Section 5–303 of this Title; or

3. The appointment of such organization is in the best interest of the subject of the proceeding.

C. The District Court shall make reasonable inquiry to determine whether the person or organization proposed to serve as the guardian or limited guardian of an incapacitated or partially incapacitated person is suitable and will exercise the powers and carry out the duties and responsibilities of guardian or limited guardian in the best interest of the ward. The District

Court shall also inquire of the proposed guardian of the person of the ward as to how the guardian proposes to provide for the care of the ward, and of the proposed guardian of the estate of the ward as to how the guardian proposes to manage the property of the ward and to provide for the ward's financial care. The District Court shall make such orders with respect thereto as the District Court deems to be for the best interest of the ward.

D. A public agency shall not be appointed to serve as guardian for an adult except as provided in the Muscogee (Creek) Nation Code Annotated.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

¹ 63 O.S. § 1-1901 et seq.

² 63 O.S. § 1-819 et seq.

³ 10 O.S. § 1430.1 et seq.

Library References

Indians ☞126.

Mental Health ☞103, 115.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health §§ 137, 150.

§ 5-305. District Court appointment where nominee is unable, unwilling or cannot qualify to serve

In the event the person nominated is unable, unwilling, or cannot qualify to so serve, the District Court shall make a finding of such fact and shall proceed to the appointment of a guardian as if such nomination had not been made, taking into account any alternative guardian named in the nomination.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 534.

Mental Health ☞116, 143.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 145 to 149.

§ 5-306. Rights of individual alleged to be or found to be incapacitated or partially incapacitated; confidentiality; relief from costs and fees; record

A. In all hearings conducted pursuant to this Code, an individual who is alleged to be or found to be an incapacitated or partially incapacitated person shall have a right to:

1. Notice as provided in Section 5-310 of this Title;
2. Be present at such hearings;
3. Compel the attendance of witnesses;
4. Present evidence;
5. Cross-examine witnesses;
6. Appeal adverse orders and judgments as provided by the rules of civil procedure;
7. Representation by District Court-appointed counsel or private counsel upon request; and
8. Request that the proceedings be closed to the public.

B. The requirement of notice to the subject of the proceeding shall not be waived. The requirement that the subject of the proceeding be present at a hearing may be waived only for good cause shown. The District Court shall make inquiries to determine whether there is sufficient cause to waive the right to be present. Whenever the requirement that the subject of the proceeding be present is waived, the District Court shall make a finding on the record as to the reason the subject of the proceeding is not present at the proceeding and the alternatives which were considered to enable the subject of the proceeding to be present.

C. Any person may apply for permission to participate in a proceeding or to be admitted to a proceeding which has been closed to the public. The District Court may grant the request to participate upon determining that the best interest of the subject of the proceeding will be served thereby. The District Court may, for good cause shown, grant the request of such person for permission to be admitted to the closed proceeding upon determining that said person has a legitimate interest in the proceedings. In granting either request, the District Court may impose any appropriate conditions it deems necessary.

D. If the subject of the proceeding is under the influence of psycho tropic medication, during any judicial hearing held pursuant to the Muscogee (Creek) Nation Guardianship Code, the District Court shall be advised of this fact, the purpose of the medication, and the effect which it may have on the individual's actions, demeanor and participation at the hearing.

E. Statements of individuals alleged or found to be partially incapacitated or incapacitated persons made during the course of the evaluations, examinations and treatment pursuant to this Code shall be privileged and confidential. Such statements shall not be admissible without the individual's consent in any civil or criminal proceeding other than a proceeding held pursuant to this Code.

F. Costs and filing fees may be waived for a party to a proceeding held pursuant to this Code.

G. At the request of any party to a proceeding pursuant to the provisions of this Code, the District Court shall order that a stenographic or mechanical record of the proceeding be made.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 510, 518.

Mental Health ☞127, 133, 137.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 156 to 162.

§ 5–306.1. District Court-appointed advocates for vulnerable adults programs

A. As used in this section:

1. “District Court-Appointed Advocates for Vulnerable Adults” or “DCAA-VA” means a responsible adult who has been trained and is supervised by a District Court-Appointed Advocates for Vulnerable Adults program recognized by the District Court, and who has volunteered to be available for appointment

under this section to serve as an officer of the District Court, as a Guardian Ad Litem to represent the best interests of any vulnerable adult over whom the District Court exercises jurisdiction, until discharged by the District Court;

2. "District Court–Appointed Advocates for Vulnerable Adults Program" means an organized program, administered by the Division of Children and Family Services, which recruits, screens, trains, assigns, supervises and supports volunteers to be available for appointment by the District Court as guardian's ad litem, to represent the best interests of a vulnerable adult;

3. "Vulnerable adult" means a person, eighteen (18) years of age or older, who is a victim of abuse, neglect or exploitation, or who is disabled; and

4. "Best interests" means a determination with regard to a vulnerable adult that is made from the perspective of the vulnerable adult, considering, but without giving primary importance to, the convenience of the vulnerable adult's relatives, care givers or health care providers, and without regard for the perceived quality of life of the vulnerable adult or the vulnerable adult's perceived nearness to death.

B. Children and Family Services shall develop policy guidelines for District Court–Appointed Advocates for Vulnerable Adults Program.

C. 1. Whenever a petition is filed alleging that a potential ward, hereinafter referred to as a vulnerable adult, is abused, neglected, exploited or disabled, or for any other action related to the vulnerable adult, the District Court may appoint a Guardian Ad Litem for the vulnerable adult at any time subsequent to the filing of the petition.

2. The District Court may appoint a Guardian Ad Litem upon the request of the vulnerable adult, the attorney of the vulnerable adult, or any other party to the action.

3. A Guardian Ad Litem shall not be the Attorney General, an employee of the Attorney General's office, the vulnerable adult's attorney, an employee of the District Court, or an employee of any agency having duties or responsibilities related to the vulnerable adult.

4. The Guardian Ad Litem shall be appointed to advocate objectively on behalf of the vulnerable adult and act as an officer of the District Court to investigate all matters concerning the best interests of the vulnerable adult. In addition to other duties required by the District Court and as specified by the District Court, a Guardian Ad Litem shall have the following responsibilities:

a. review documents, reports, records and other information relevant to the case, meet with and observe the vulnerable adult in appropriate settings, and interview relatives, health care providers, adult protective services workers and any other persons with knowledge relevant to the case,

b. advocate for the vulnerable adult's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the vulnerable adult when necessary,

c. maintain the confidentiality of information related to the case,

d. monitor the vulnerable adult's best interests throughout any judicial proceeding, and

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e. present written reports on the vulnerable adult's best interests that include conclusions and recommendations, and the facts upon which they are based.

5. The Guardian Ad Litem shall be given access to the District Court files and agency files and access to all documents, reports, records and other information relevant to the case and to any records and reports of examination of the vulnerable adult's relatives, guardian or custodian, made pursuant to the laws relating to adult abuse and neglect, including reports generated by service providers.

D. Whenever a District Court-Appointed Advocate for Vulnerable Adults program is available to the District Court to serve as a guardian ad litem, priority shall be given to appointment of the District Court-Appointed Advocate for Vulnerable Adults to serve as Guardian Ad Litem for the vulnerable adult regardless of whether a Guardian Ad Litem has been requested pursuant to the provisions of this subsection.

1. For purposes of this section, the terms "District Court-Appointed Advocate for Vulnerable Adults" and "Guardian Ad Litem" shall have the same function. In like manner, a District Court-Appointed Advocate for Vulnerable Adults, except as specifically otherwise provided by law or by the District Court, shall have the same power, duties and responsibilities as assigned to a Guardian Ad Litem by law and shall have such other qualifications, duties and responsibilities as may be prescribed by rule of the Supreme Court.

2. A District Court-Appointed Advocate for Vulnerable Adults shall serve without compensation.

E. Any person participating in a judicial proceeding as a District Court-Appointed Advocate for Vulnerable Adults shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

1. Any person serving in a management position of a District Court-Appointed Advocate for Vulnerable Adults organization, including a member of the Board of Directors acting in good faith shall be immune from any civil liability or any vicarious liability for the negligence of any District Court-Appointed Advocate for Vulnerable Adults organization advocates, managers or directors.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–307. Appointment of counsel; explanation and inquiry by District Court; replacement of appointed counsel; determination of independence of retained counsel; record

A. If at or prior to a hearing on a petition alleging a person to be an incapacitated or partially incapacitated person, or if at any point in the course of a proceeding pursuant to said petition, the subject of the proceeding is not represented by counsel, the District Court may appoint an attorney as provided in this section, and the District Court may at any time subsequent to the filing of said petition appoint a Guardian Ad Litem to assist the District Court in making a determination as to whether or not an attorney should be appointed for the subject of the proceeding.

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B. If the subject of the proceeding is present at the hearing on the petition and is not represented by counsel at said hearing:

1. The District Court shall explain on the record:

a. the purpose and potential consequences of the proceeding; and
b. the right to be represented by counsel upon request and that if the subject of the proceeding wishes to be represented by counsel, the District Court will appoint an attorney to represent the subject of the proceeding at the hearing on the petition.

2. Following such explanation the District Court shall inquire of the subject of the proceeding whether he wishes to have an attorney appointed.

a. If the subject of the proceeding requests the appointment of an attorney, the District Court shall appoint an attorney.

b. If the subject of the proceeding does not request the appointment of an attorney and the District Court is in doubt as to whether the subject of the proceeding is capable of making an informed decision regarding the appointment of an attorney and the District Court determines that it is in the best interest of the subject of the proceeding to be represented by counsel, the District Court shall appoint an attorney for the subject of the proceeding, or if the District Court determines that the appointment of counsel is not in the best interest of the subject of the proceeding, the District Court shall not appoint an attorney.

c. If the subject of the proceeding does not request the appointment of an attorney and the District Court determines that the subject of the proceeding is capable of making an informed decision regarding the appointment of an attorney, the District Court shall not appoint an attorney.

3. The District Court may make the explanation and inquiry required by this subsection, regarding the purpose and potential consequences of the proceeding and the appointment of an attorney, prior to the hearing on the petition. At the hearing on the petition the District Court shall include on the record the facts related to said explanation and inquiry, the determinations made by the District Court with respect thereto and the reasons for such determinations.

C. If the subject of the proceeding is not present at the hearing on a petition alleging him to be an incapacitated or partially incapacitated person and is not represented by counsel and the District Court has not made the explanation and inquiry as provided by paragraph 3 of subsection B of this section, the District Court shall make sufficient inquiry to determine affirmatively whether it would be in the best interest of the subject of the proceeding to appoint counsel to represent the subject of the proceeding at the hearing on the petition.

1. If the District Court determines that it is in the best interest of the subject of the proceeding to be represented by counsel, the District Court shall appoint an attorney.

2. If the District Court determines that the appointment of counsel is not in the best interest of the subject of the proceeding, the District Court shall not appoint an attorney.

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D. Whenever the District Court determines that the appointment of counsel is not in the best interests of the subject of the proceeding, or if the subject of the proceeding does not request the appointment of an attorney and the District Court determines that the subject of the proceeding is capable of making an informed decision regarding the appointment of counsel, the District Court shall explain on the record the reason for such determination.

E. 1. If an attorney is appointed, the District Court shall delay the hearing on the petition only for the period of time necessary for the attorney to prepare the case for the hearing but in no event less than five (5) days after such appointment.

2. The attorney appointed by the District Court shall be replaced by another attorney if:

- a. the subject of the proceeding prefers the services of an attorney other than the one initially appointed for him;
- b. the preferred attorney agrees to accept the responsibility; and
- c. the subject of the proceeding or the attorney whom he prefers notifies the District Court of the preference and the attorney's acceptance of employment.

3. An attorney appointed pursuant to this section shall contact the subject of the proceeding promptly after receiving notification of his/her appointment. An attorney appointed pursuant to the provisions of this section shall be compensated.

F.1. Except as provided by paragraph 2 of this subsection or as otherwise ordered by the District Court, the responsibility of an attorney appointed pursuant to the provisions of this section ceases upon the appointment of a guardian or limited guardian of the subject of the proceeding or when a determination not to appeal the decision is made. The District Court may appoint an attorney to represent a ward at any subsequent proceeding.

2. Whenever there is an appeal of a decision made subsequent to a hearing on a petition requesting the appointment of a guardian or limited guardian, the responsibility of an attorney appointed pursuant to this subsection continues with respect to the appeal until the conclusion of the appeal proceedings. Upon application of the attorney, the District Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceedings.

G. In all cases where independent counsel is retained by or on behalf of the subject of the proceeding, the District Court shall make independent inquiry to determine whether counsel is independent and whether any conflict of interest exists which would preclude proper representation of the subject of the proceeding or which would be detrimental to the best interest of the subject of the proceeding. The District Court shall appoint other counsel where retained counsel is found not to be independent.

H. Proceedings brought pursuant to the provisions of this section shall be made a part of the record in the guardianship proceeding.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇨126, 500.

Mental Health ⇨133.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 161 to 162.

§ 5-308. Evaluations of subject of proceeding

A. After the filing of the petition, the District Court may, on its own motion or at the request of any party to the proceeding, if the District Court determines it to be for the best interest of the ward, order an evaluation of the subject of the proceeding in connection with any proceeding pursuant to the provisions of this Code where the capacity of said person is a material issue.

B. Any evaluations made pursuant to this Code, as appropriate for the condition or alleged condition of the person being evaluated, shall be performed by:

1. A physician;
2. A psychologist;
3. A social worker with a graduate degree in social work and field training or experience in working with incapacitated or partially incapacitated persons; or
4. Other expert with knowledge of the particular incapacity or disability which the individual is alleged or has been found to have, or knowledge of the skills required to meet the essential requirements for the individual's physical health or safety or to manage that individual's financial resources.

C. An evaluation report prepared and signed by the person or persons performing the evaluation shall be submitted to the District Court prior to the hearing at which the District Court shall consider the report. The report shall include, but not be limited to:

1. A description of the nature and extent of the incapacity of the person, if any;
2. A description of the mental, emotional and physical condition of the person, his/her ability to function in the ordinary activities of daily life and, if appropriate, the educational condition, adaptive behavior and social skills of the person;
3. An opinion regarding the kind and extent of assistance, if any, required by the person;
4. An assessment and review of any services necessary to provide for the well-being of the person in the following areas:
 - a. physical health,
 - b. mental health,
 - c. social skills, and
 - d. adequate and appropriate living conditions;
5. An opinion regarding:
 - a. the probability that the extent of the incapacity, if any, of the person may significantly lessen or increase, and

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b. the type of services or treatment, if any, appropriate for the subject of the proceeding or which could facilitate improvement in the condition of the subject of the proceeding; and

6. A description of any tests or other evaluative techniques used.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 513, 518.
Mental Health ☞142.

Westlaw Topic Nos. 209, 257A.
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 5–309. Hearing on petition; setting of date

When it is represented to the District Court in a petition filed pursuant to this act alleging that a person is an incapacitated person or partially incapacitated person, the District Court shall set a date for a hearing on the petition which date shall be no more than thirty (30) days after the filing of the petition. The District Court shall cause notice to be served pursuant to the provisions of Section 5–310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 519.
Mental Health ☞137.

Westlaw Topic Nos. 209, 257A.
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 5–310. Notice of hearing

A. The District Court shall cause notice to be served of the time and place of the hearing on the petition requesting the appointment of a guardian for an incapacitated or partially incapacitated person on:

1. The subject of the proceeding; and
2. The following persons, other than the petitioner, who are known to the petitioner or whose existence and address can be ascertained by the petitioner with reasonably diligent efforts:
 - a. the spouse, if any, of the subject of the proceeding,
 - b. the attorney, if any, of the subject of the proceeding,
 - c. all adult children of the subject of the proceeding,
 - d. if there is no such adult child, the then living parent or parents of the subject of the proceeding, or
 - e. if there is no such parent, all adult brothers and sisters of the subject of the proceeding and all adult grandchildren of the subject of the proceeding;
3. In case no person listed in paragraph 2 of this subsection is given notice, notice shall be given to at least one and not more than three of the nearest adult relatives of the subject of the proceeding who are known to the petitioner or whose existence and address can be ascertained with reasonably diligent efforts;

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4. If not the petitioner, any person or organization which, in the petition, is proposed to serve as guardian or limited guardian or, to the extent such nomination is known to the petitioner, who is nominated by will or other writing to serve as guardian or limited guardian;

5. To the extent known to the petitioner:

a. the person or facility having care or custody of the subject of the proceeding, and

b. any department providing services to the subject of the proceeding;

6. As appropriate, the Veterans Administration;

7. Any other person as directed by the District Court.

B. A copy of the pleading which gave rise to the notice shall be attached to any notice served pursuant to this section.

C. Except for actions appointing a special guardian pursuant to Section 5-315 of this Title:

1. Notice shall be served personally on the individual who is the subject of the proceeding at least ten (10) days before the time set for hearing. Such personal service may be made by the attorney for the petitioner, Lighthorse, or licensed process server. The person making such services shall make proper return thereof.

2. Notice to other persons entitled to notice of a hearing on the original petition requesting the appointment of a guardian shall be mailed by regular first-class mail at least ten (10) days before the time set for the hearing. Such service by mail may be made by the District Court Clerk, Deputy District Court Clerk or attorney for the petitioner.

D. The notice to the subject of the proceeding shall set forth the date, time, place, and purpose of the hearing to which the notice refers. Such notice shall be substantially in the following form:

NOTICE OF HEARING

TO: _____
(Name of subject of proceeding)

Service
Address: _____

You are hereby notified that a petition has been filed alleging that you are an ___ incapacitated, ___ partially incapacitated person and are incapable of ___ caring for yourself, ___ managing your property. The petition requests that a ___ guardian, ___ limited guardian be appointed by the District Court to make decisions for you regarding _____ yourself, _____ your property. A copy of the petition is attached.

The hearing on the petition will be held on

(date, time and place of the hearing)

At the hearing a () guardian, () limited guardian may be appointed for your () person, () property. The judge will explain to you the nature, purpose and effect of the proceedings. You have the right to attend the hearing. You may

confront and cross-examine all witnesses and present your own witnesses. You have the right to request that your hearing be closed to the public. You may request that an expert be appointed to examine you and if the judge believes that an examination is necessary, the judge will order an evaluation to be done. You have the right to hire an attorney of your choice to represent you. If you do not have an attorney and you wish to be represented by an attorney at the hearing, the District Court will appoint one for you. You may request the appointment of an attorney orally or in writing prior to the hearing or at the hearing. If you are able, you will be required to pay the cost of an attorney appointed by the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Cross References

Application for relief, notice, see Title 6, § 5–417.
 Hearing, notice and order, see Title 6, § 5–445.
 Copies of annual report, objections, hearing, see Title 6, § 5–416.
 Termination of authority and responsibility of guardian, notice and hearing, see Title 6, § 5–463.

Library References

Indians ☞126, 519.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ☞127, 137.	C.J.S. Mental Health §§ 156 to 160.
Westlaw Topic Nos. 209, 257A.	

§ 5–311. Determination by District Court; order appointing guardian; explanation on record

A. At the hearing on the petition the District Court shall determine whether or not it is necessary to appoint a guardian of the person, property or both. If a guardian is needed, the District Court shall determine:

1. When a general or limited guardian of the person of the subject of the proceeding is requested, the essential requirements for the health and safety of the subject of the proceeding and the skills and knowledge necessary to meet those requirements;
2. When a general or limited guardian of the property of the subject of the proceeding is requested, the type and amount of the financial resources of the subject of the proceeding, the essential requirements for managing the financial resources, and the skills and knowledge necessary to manage the financial resources;
3. The nature and extent of the incapacity of the subject of the proceeding, if any; and
4. Whether by clear and convincing evidence the subject of the proceeding is an incapacitated or partially incapacitated person.

B. If after a full hearing and examination upon such petition, the District Court finds by clear and convincing evidence that the subject of the proceeding is an incapacitated or partially incapacitated person; the District Court shall appoint a guardian or limited guardian and shall issue an order appointing a guardian. The District Court shall explain on the record the facts and reasons supporting the decision not to impose any less restrictive alternatives.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 523, 526, 533.
Mental Health ☞143, 146.

Westlaw Topic Nos. 209, 257A.
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 5-312. Appointment of guardians or limited guardians

A. Whenever the District Court finds the subject of the proceeding to be an incapacitated person the District Court shall appoint:

1. A general guardian of the person; and
2. As the District Court determines to be necessary and appropriate, a guardian of the property of the ward.

B. Whenever the District Court finds the subject of the proceeding to be a partially incapacitated person the District Court shall appoint, as necessary and appropriate for said person:

1. A limited guardian of the person; or
2. A general or a limited guardian of the property of said person; or
3. A limited guardian of the person and a general or limited guardian of the property of said person.

C. The District Court may appoint the same or separate persons to serve as guardian or limited guardian of the person and guardian or limited guardian of the property of a ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126.
Mental Health ☞115.
Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.
C.J.S. Mental Health § 137.

§ 5-313. Order appointing guardian; specific determinations of capacity; submission of guardianship plan; other orders

A. The order appointing a guardian, based upon evidence adduced, shall set forth:

1. The determinations made by the District Court at the hearing;
2. The name and address of the individual, if any, appointed to serve as the limited guardian or guardian;
3. The specific limitations imposed upon the ward, if the ward is a partially incapacitated person;
4. Any authority granted a guardian of the person of the ward to change the place of abode of the ward outside of the Muscogee (Creek) Nation without the prior permission of the District Court; and
5. Whenever the District Court determines a review hearing is necessary or desirable, the date of the review hearing.

B. In establishing the specific limitations on the legal activities of a ward for whom a limited guardian of the person is appointed, the District Court shall make specific determinations regarding the capacity of the subject of the

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proceeding, including but not limited to determining whether the ward retains sufficient capacity:

1. To vote;
2. To serve as a juror;
3. To operate a motor vehicle;
4. To be licensed or continue to practice any profession of the ward; and
5. To make personal medical decisions including but not limited to decisions to withhold or withdraw life-sustaining procedures, to donate organs, to undergo elective surgery, or to consent to routine or necessary medical or other professional care, treatment or advice.

C. In establishing the specific limitations on the legal abilities of a ward for whom a limited guardian of the property is appointed, the District Court shall make specific determinations regarding the capacity of the subject of the proceeding, including but not limited to determining whether the ward retains sufficient capacity to:

1. Appoint an agent to act on his/her behalf;
2. Enter into contracts;
3. Grant conveyances; or
4. Make gifts of property.

D. If not submitted with the petition or at the hearing, the guardian or limited guardian shall submit a guardianship plan as required by Sections 5-320 or 5-322 of this Title, or both, as appropriate and a copy of said plan shall be mailed to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title. The guardianship plan as approved by the District Court shall be made a part of the order of the District Court. Said plan may be modified as provided by this act.

E. The District Court may, in its discretion, make such further orders as the District Court deems necessary for the best interest of the ward for care of the ward and maintenance or management of the ward's property, including but not limited to:

1. Order the guardian of the property of the ward to provide the ward from such property with specified amounts of money, monthly, or from time to time, which the ward may dispose of as the ward shall determine and for which, other than a showing of the amounts paid to the ward, the guardian will not be required to account. Such order may be modified upon application of the guardian or any interested person, and a hearing conducted thereon, with notice of the hearing on such application to be given to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title and shall be given as provided in Section 5-310 of this Title; and
2. The amount of the bond as required by Section 5-406 of this Title.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Cross References

Power of guardian, report of change of ward's abode, see Title 6, § 5-119.

Library References

Indians ☞126, 523, 526, 533.
Mental Health ☞146.1.

Westlaw Topic Nos. 209, 257A.
C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 5-314. Assignment of powers to limited guardian; endorsement of limitation or specification of assets upon letters of guardianship

A. The District Court may assign to a limited guardian of the person any portion of the powers and duties of a general guardian of the person except the power to take custody of the person of the ward. The District Court may also assign to the limited guardian the duty to assist the ward in those particular areas in which the capacity of the ward is impaired including, but not limited to, the duty to assist the ward in:

1. Meeting the requirements for his/her health or safety;
2. Protecting his/her rights;
3. Obtaining necessary services;
4. Fulfilling his/her civic duties; and
5. Any other areas as determined necessary by the District Court and which are not specifically prohibited.

B. An order specifying that only part of the property or estate of a ward is under the control or management of the guardian creates a limited guardianship of the property.

1. The District Court may assign to a limited guardian of property any of the duties and powers of a general guardian of the property regarding the management of financial resources which the partially incapacitated person lacks the capacity to perform; or

2. The District Court may assign to a limited guardian of property the duty of assisting the ward to perform any of such functions with regard to any financial resource of the ward.

C. If the District Court limits any power conferred on the guardian of property or specifies that management of some but not all assets of the ward be placed under the control of a guardian of the property, the limitation or specification of assets subject to the guardianship must be endorsed upon the letters of guardianship.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126.
Mental Health ☞179, 216.
Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.
C.J.S. Mental Health §§ 176 to 179, 185, 191 to 192, 194.

§ 5-315. Appointment of special guardian; powers; duration; bond; removal

A. The District Court may appoint a special guardian for a person who appears to be or has been found to be an incapacitated or partially incapacitated person when it appears:

1. There is imminent danger that the health or safety of said person will be seriously impaired or that the financial resources of said person will be seriously damaged or dissipated unless immediate action is taken; and

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2. No other person appears to have authority to act in the circumstances or the guardian previously appointed is unable to or refuses to take action.

B. The request for appointment of a special guardian may be included in the petition to appoint a guardian or by separate petition, either of which must be verified.

C. The District Court may appoint an attorney, separate and apart from the petitioner's attorney, for the subject of the proceeding who does not have legal representation and either cannot afford a private attorney or cannot retain counsel due to incapacity and may proceed to hear the petition as same pertains to appointment of a special guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be served on:

1. The subject of the proceeding;
2. The attorney of the subject of the proceeding, if any;
3. The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner; and

4. At least one other adult relative of the subject of the proceeding or any other person who is not the petitioner, as directed by the District Court. Notice shall be personally served in the manner as the District Court directs on the subject of the proceeding and on other persons receiving notice as directed by the District Court.

D. The District Court may without notice appoint a special guardian upon the filing of the petition, upon presentation of evidence of the incapacity of the subject of the proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay, and upon presentation of a proposed emergency plan of care for the subject of the proceeding. Whenever a special guardian is immediately appointed as provided by this subsection, the District Court shall cause a copy of the petition, order and letters of special guardianship to be served on;

1. The subject of the proceeding;
2. The spouse of the subject of the proceeding, if any, if the spouse is not the petitioner; and

3. At least one other adult relative of the subject of the proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other person who is not the petitioner, as directed by the District Court. The notice shall be served in the manner the District Court directs.

E. The District Court shall grant the special guardian only those powers necessary to act with respect to the particular emergency, as determined by the District Court. The special guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the District Court. Power to change the place of residence of the subject of the proceeding shall be specifically granted by the District Court upon a showing that the needs of the subject of the proceeding cannot be met within such subject's present residential arrangements. The District

Court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the special guardian. The letters for a special guardian shall state that the person is a special guardian, the date of the expiration of the special guardianship, and the specific power or powers of the special guardian.

F. The appointment of a special guardian shall be effective from the date of appointment until a guardian is appointed pursuant to Section 5–112 of this Title, or for thirty (30) days, whichever is less.

G. The District Court shall not require bond if the appointment is over the person only, and may require or waive bond if the appointment is as to the property of the ward.

H. The authority of any guardian or limited guardian previously appointed by the District Court is suspended with regard to the powers granted to the special guardian, but not otherwise, for as long as a special guardian has authority as provided by this section.

I. The District Court may remove a special guardian at any time. The special guardian shall file a report showing all actions taken during the special guardianship and shall make any other report the District Court requires. [Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Cross References

Special guardians, see Title 6, § 5–110.

Library References

Indians ☞126, 519, 533.

Mental Health ☞104, 133.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 128 to 133, 161 to

162.

§ 5–316. Proceedings to determine restoration to capacity

A. Any person who has been judicially determined to be an incapacitated or partially incapacitated person, the guardian or limited guardian, any relative of the ward or any friend of the ward may apply by petition to the District Court to have the fact of the ward's restoration to capacity judicially determined. The petition shall be verified, and shall state that such person is no longer incapacitated or partially incapacitated.

B. Upon receiving the petition, the District Court shall appoint a day for the hearing. Such hearing shall be set within thirty (30) days after the date of the filing of the petition. The District Court shall cause notice to be served as provided by Section 5–310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner. At the hearing, the guardian or relative of the petitioner, and in the discretion of the District Court, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in all other civil matters, and may be called and examined by the Judge on his/her own motion. If it is found that the petitioner is no longer incapacitated or partially incapacitated and capable of taking care of himself or his/her property, or both, his/her restoration to capacity shall be adjudged, and the guardianship of such person shall cease.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 519, 520.

Mental Health ☞168.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 180 to 182.

§ 5–317. Presumption of capacity when guardian discharged without appointment of another

Whenever a guardian or limited guardian who has been appointed for an incapacitated or partially incapacitated person has been discharged by the final order of a District Court having jurisdiction thereof, and no other guardian has been appointed for said person by a District Court of competent jurisdiction, the person for whom said guardian had been appointed shall be presumed to be fully restored and shall be presumed to be fully capable and competent to make contracts and transact any and all business as though said person had never been declared to be incapacitated or partially incapacitated.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 520(2).

Mental Health ☞168, 178.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

C.J.S. Mental Health §§ 174 to 175, 180 to 182.

§ 5–318. Duties and powers of guardian or limited guardian

A. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person is responsible for the care or control of the ward pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code, and the orders of the District Court, and the guardianship plan approved by the District Court and shall perform diligently and in good faith any specific duties and powers assigned by the District Court.

B.1. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall:

a. become or remain sufficiently acquainted with the ward and maintain sufficient contact with the ward to know of the capacities, limitations, needs, opportunities, and physical and mental health of the ward;

b. assure that the ward has a place of abode in the least restrictive, most normal setting consistent with the requirements for his/her health or safety; and

c. provide any required consents or approvals on behalf of the ward as authorized by the District Court.

2. A guardian or limited guardian of the person, if consistent with the terms of an order of the District Court, may:

a. if no guardian of the property or conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward; and

b. consent to routine or necessary medical or other professional care, treatment or advice for the ward without liability by reason of the consent for

injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances.

C. If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126.

Mental Health ☞179.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health §§ 176 to 179.

§ 5-319. Limitation of powers of guardian

A guardian shall have no powers except as provided by the Muscogee (Creek) Nation Code of Laws or given to such guardian in the orders in the guardianship proceeding. This limitation of powers includes but is not limited to the following:

1. No guardian shall have the power to consent on behalf of the ward to the withholding or withdrawal of life-sustaining procedures from the ward, except:
 - a. with specific authorization of the District Court having jurisdiction over the guardianship proceedings. Such authorization must be granted in a separate order and only at such time when the ward is in need of life-sustaining treatment,
 - b. as authorized by an advance directive executed pursuant to the applicable law, or
 - c. as authorized by consent not to resuscitate made pursuant to applicable law;
2. No guardian or District Court having jurisdiction of the guardianship proceeding shall have the power to consent on behalf of the ward or order the consent on behalf of the ward to the termination or relinquishment of parental rights of the ward;
3. Except in an emergency and only as necessary to preserve the life of the ward, no guardian shall have the power to consent on behalf of the ward to an abortion, psychosurgery, removal of a bodily organ, performance of any experimental biomedical or behavioral procedure, or participation in any biomedical or behavioral experiment, except with specific authorization of the District Court;
4. No guardian shall have the power to prohibit the marriage or divorce of a ward except with specific authorization of the District Court; and
5. No guardian shall have the power to consent on behalf of the ward to placement of the ward in a facility or institution to which a person without a guardian would have to be committed absent formal commitment proceedings in which the ward has independent counsel.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ⇨126.

Mental Health ⇨179.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health §§ 176 to 179.

§ 5-320. Proposed plan for care and treatment of ward

A. If not filed with the petition or submitted to the District Court at the time of the hearing, within ten (10) days after his/her appointment the guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file with the District Court, for its approval, a proposed plan for the care and treatment of the ward and shall submit subsequent or modified plans as required by this title. Upon the application of the guardian or limited guardian, the District Court may extend the time for filing the plan for not more than thirty (30) days. The District Court may approve a plan acceptable to the District Court without notice or hearing or may, as necessary, order the modification of the plan at the initial review hearing.

B.1. The proposed guardianship plan and any subsequent guardianship plans for the care and treatment of the ward shall state:

- a. the services which are necessary to meet the essential requirements for the physical health or safety of the ward taking into account the contents and recommendations of an evaluation report made with respect to the ward, if any;
- b. the means for obtaining those services;
- c. the manner in which the guardian or limited guardian, the ward, and the guardian of the property of the ward or the conservator, or if an organization or another person has been appointed to serve in that capacity, will exercise and share decision-making authority; and
- d. such other services necessary to assist in fulfilling the needs of the ward, the terms of the most recent dispositional order applying to such guardian or limited guardian, and the duties of such guardian or limited guardian.

2. Each such plan shall be substantially in the following form:

Plan for the Care and Treatment of a Ward

I, _____, the (guardian, limited guardian) for (Name)

(Name and the current place of abode of the ward)

hereby submit this (initial, annual or as ordered by the District Court) Guardianship Plan for the care and treatment of said ward.

1. I believe the services necessary for the physical health and safety of the ward are:

2. Those services will be obtained or provided as follows:

3. The guardian (or conservator) of the property (Name or indicate as not applicable) of the ward, the ward, and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the disposi-

tional order as follows:

4. I believe the following services will assist in fulfilling the needs of the ward, implementing the terms of the most recent dispositional order applying to me as (guardian or limited guardian):

(date) (Signature of guardian or limited guardian)

C. If ordered by the District Court, the plan for the care and treatment of the ward shall be prepared with the assistance of any person designated by the District Court to provide such assistance.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Cross References

Report on guardianship, requirements, see Title 6, § 5-414.

Library References

Indians ⇨126, 533.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

Mental Health ⇨179.

C.J.S. Mental Health §§ 176 to 179.

Westlaw Topic Nos. 209, 257A.

§ 5-321. Disposition of financial resources under supervision and control of guardian or limited guardian; petition for restoration of capacity

A. A guardian of the property must keep safe the property of his/her ward and shall act as a fiduciary as provided by Section 5-121 of this Title. Subject to the order and the guardianship plan for the management of the financial resources of the ward, a guardian or limited guardian of the property of the ward:

1. Shall expend or distribute, authorize the expenditure or distribution of, and assist in the expenditure or distribution of, the principal of or income from the financial resources placed under his/her supervision and control to assure that:

a. the essential requirements for the physical health or safety of the ward are met,

b. the property rights of the ward are protected,

c. the financial resources of the ward which are subject to the guardianship are prudently managed, and

d. the guardian or limited guardian of the person of the ward, if any, or if other than the guardian or limited guardian of the property, is able to perform the duties and powers assigned by the District Court;

2. May expend funds of the estate for the support of persons legally dependent on the ward and others who are members of the ward's household who are unable to support themselves, and who are in need of support;

3. May, subject to prior specific approval by the District Court, make gifts to charity, persons, which may include the guardian or limited guardian, or both such charity and persons, as the ward might have been expected to make, based

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upon an established pattern of giving made by the ward prior to the appointment of a guardian or limited guardian or if the District Court finds it is in the best interest of the subject of the proceeding on the basis of tax or estate planning. The District Court may approve gifts of small amounts for holidays, birthdays or similar occasions and shall specify in the order the maximum amount which may be expended for such purpose and the person or persons to whom such gifts can be made, which may include guardians or limited guardians.

B. Limited guardians of property shall consider the size of the financial resources of the ward which have not been placed under their supervision or control.

C. If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian of the property shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 141.

Mental Health ☞168, 217.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 36, 46 to 50, 53.

C.J.S. Mental Health §§ 180 to 182, 203, 206 to 207.

§ 5–322. Proposed plan for management of financial resources of ward

A. If not filed with the petition or submitted to the District Court at the time of the hearing, within two (2) months after his/her appointment, a guardian or limited guardian of the property of an incapacitated or partially incapacitated person shall file with the District Court for its approval a proposed plan for the management of the financial resources of the ward that are under his/her management or administration, and an inventory as required pursuant to Section 5–411 of this Title. Said guardian or limited guardian shall submit subsequent or modified plans as required by this Title.

B. Initial and subsequent guardianship plans for the management of the financial resources of the ward shall state:

1. The services which are necessary to manage the property of the ward placed under the control of the guardian or limited guardian;

2. The means for obtaining those services;

3. The manner in which the guardian or limited guardian of the property of the ward, the ward, and the guardian or limited guardian of the person, or if another individual has been appointed to serve in that capacity, will exercise and share decision-making authority;

4. Such other services necessary to assist in the management of the property placed under the guardian or limited guardian in fulfilling the needs of the ward and the duties of such guardian or limited guardian, and the terms of the most recent dispositional order.

C. Each such plan shall be substantially in the following form:

Plan for the Management of the Property of the Ward

I, _____, the petitioner, guardian or limited (Name) guardian for

(Name and current place of abode)

hereby submit this (initial, annual or as ordered by the District Court) Guardianship Plan.

1. I believe the services necessary to manage the property of the ward which is subject to this Plan are as follows:

2. Those services will be provided in the following manner: _____

3. The guardian (or limited guardian) of the person, (Name, or indicate as not applicable) the ward and I plan to cooperate and share decision-making authority with regard to the ward within the provisions of the dispositional order as follows: _____

4. I believe the following services will assist in the management of the property of the ward subject to my control, implementing the terms of the most recent dispositional order applying to me as guardian or limited guardian of the property: _____

Date (Signature of guardian or limited guardian)

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Cross References

Guardianship or limited guardianship of property, report, see Title 6, § 5-415.

Library References

Indians ¶126, 141. C.J.S. Indians §§ 36, 46 to 50, 53.
Mental Health ¶217. C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 209, 257A.

§ 5-323. Sale or lease of homestead of incapacitated or partially incapacitated person

Guardians of incapacitated and partially incapacitated persons are authorized and empowered subject to the dispositional order and the guardianship plan to sell and convey all or part of the homestead of the incapacitated or partially incapacitated person, and to lease all or part of the homestead of the incapacitated or partially incapacitated person for oil, gas, and other mineral exploration, development and production purposes and for agricultural purposes.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

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Library References

Indians ☞126, 172.

Mental Health ☞258.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 37 to 38, 46 to 50, 53, 96 to 97, 101 to 108, 110 to 111, 128.

§ 5–324. Sale or lease of real property by guardian; approval; joinder of spouse

When the ward owns an interest in a tract of real property in addition to a homestead interest, no conveyance, deed, contract or lease executed pursuant to the authority granted by Section 5–323 of this Title shall be valid, unless the sale or leasing be conducted in the manner provided by law for the sale or leasing of other lands of an incapacitated or partially incapacitated person, be approved by the District Court in which the guardianship proceeding is pending, and the spouse of the ward be a party to such conveyance, deed, contract or lease and join in the execution and acknowledgment thereof, but when the ward owns no interest in a tract of real property other than a homestead interest or possible homestead interest, a guardian may execute a conveyance thereof on behalf of the ward for the purpose of waiving such homestead interest or possible homestead interest, if so authorized by order of the District Court in which such proceeding is pending, made pursuant to application and notice sent by ordinary mail to the persons set forth in Section 5–310 of this Title at least ten (10) days prior to the hearing of such application.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞172, 176.

Mental Health ☞258.

Westlaw Topic Nos. 209, 257A.

C.J.S. Indians §§ 37 to 38, 96 to 97, 101 to 111, 128.

§ 5–325. Application; Sections 5–323 and 5–324 cumulative

Sections 5–323 and 5–324 of this Title apply only to the homestead and are cumulative and in addition to any such procedures now provided or permissible under existing laws.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–326. Estates of incapacitated or partially incapacitated persons not exceeding \$10,000.00; disposition; discharge and release

A. When the whole estate of an adult who has been adjudicated to be incapacitated or partially incapacitated does not exceed the value of ten thousand dollars (\$10,000.00), the District Court may, in its discretion, without the appointment of a guardian or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the District Court, or, if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by the District Court. The person receiving such property shall hold and dispose of the same in such manner as the District Court directs.

B. The person making payment, delivery, transfer or issuance of property or evidence thereof to the person designated by the District Court under this

section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a guardian of the incapacitated or partially incapacitated person, and he is not required to see to the application thereof. A person making payment, delivery, transfer or issuance of property, or evidence thereof, to a next friend or Guardian Ad Litem may be discharged and released as provided for in the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞126, 141, 533.	C.J.S. Indians §§ 36, 46 to 50, 53, 151 to 179.
Mental Health ☞211.	C.J.S. Mental Health § 183.
Westlaw Topic Nos. 209, 257A.	

SUBCHAPTER 4. MISCELLANEOUS

Section

- 5-401. Appointment as guardian of more than five wards prohibited; exceptions.
- 5-402. Violations; punishment.
- 5-403. Disqualification by financial relations with the Judge of the District Court; removal of ineligible guardians; liability for continuing to act; removal of the Judge.
- 5-404. Eligibility of nonresidents; foreign trust companies or institutions; domestic corporations or trust companies.
- 5-405. Inquiry into suitability of person proposed to serve as guardian.
- 5-406. Guardian's bond.
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- 5-409. Preservation of bonds; breach of condition; actions on bonds.
- 5-410. Limitation of action on bond; effect of disability.
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- 5-412. Settlement and allowance of accounts; reports to District Court; accounting information; date certain for next annual report.
- 5-413. Account by one of joint guardians.
- 5-414. Report on guardianship of person; requirements; attachments.
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- 5-428. Bond of guardian of nonresident.
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- 5-461. Removal of guardians.
- 5-462. Suspension of power of guardian; marriage of incapacitated or partially incapacitated person.
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- 5-465. Civil liability of guardians or petitioners; damages.
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- 5-467. Reporting of abuse, neglect, or exploitation; violation and penalty; civil liability.

§ 5-401. Appointment as guardian of more than five wards prohibited; exceptions

No person shall be appointed guardian of any minor or incapacitated or partially incapacitated person, who is, at the time of the hearing of the application for appointment, the guardian of as many as five persons, other than his/her own family or relatives. The provisions of this section and Section 5-402 of this Title shall not apply to boards of control and directors of eleemosynary or charitable institutions, under the control and charge of the

Muscogee (Creek) Nation, where under the law such boards of control and directors may be appointed as guardians of the estates, or of the persons, of those committed to their charge or safekeeping. The provisions of this section shall not prohibit the appointment of officers or managers of fraternal or benevolent orders or homes and church orphanages as to inmates of such institutions.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ⇨126, 133.	C.J.S. Indians §§ 46 to 50, 53, 150.
Mental Health ⇨116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–402. Violations; punishment

Any person or official violating the provisions of Section 5–401 of this Title shall be guilty of a misdemeanor and punished in accordance with Title 14.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–403. Disqualification by financial relations with the Judge of the District Court; removal of ineligible guardians; liability for continuing to act; removal of the Judge

No natural person shall be eligible to act as guardian of an estate under the jurisdiction of the Judge of the District Court, if said Judge of the District Court is under any financial obligation whatsoever to such person or such person is under financial obligation to the Judge. If the Judge of the District Court, while holding the office of judge of the District Court, becomes pecuniarily liable to any guardian of any minor or incapacitated or partially incapacitated person, such liability shall operate to disqualify such guardian. It is hereby made the duty of the Judge of the District Court to enter on the District Court docket such disqualifying conditions. Persons who have heretofore been appointed guardians, who are not eligible to act under this section, shall be by the Judge of the District Court removed and successors appointed, as provided by law. If any person not eligible to act under this section continues to act as guardian, after such ineligibility has been legally determined, such person and the surety upon his/her bond shall be liable to the estate of the minor or incapacitated or partially incapacitated person for all money unlawfully paid by such ineligible guardian out of the estate of such minor or incapacitated or partially incapacitated person, and if the Judge of the District Court knowingly permits an ineligible person to act, he shall be removed from office.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ⇨126.	C.J.S. Indians §§ 46 to 50, 53.
Judges ⇨42.	C.J.S. Judges §§ 267, 269 to 276, 278 to 280.
Mental Health ⇨116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 227, 257A.	

§ 5-404. Eligibility of nonresidents; foreign trust companies or institutions; domestic corporations or trust companies

No person who has not been a resident, in good faith, of the Muscogee (Creek) Nation for one (1) year past shall be appointed guardian of the property or person of a minor or an incapacitated or partially incapacitated person by the District Court, and no foreign trust company or institution shall be appointed guardian of the property or person of any minor or an incapacitated or partially incapacitated person by the District Court. Provided that this shall not prevent one from being appointed guardian of his/her own spouse, child, children, grandchild, grandchildren, parent, grandparent, brother, sister, aunt, uncle, niece or nephew even though he be a nonresident. No domestic corporation or trust company shall be appointed or qualify as guardian of a minor or incapacitated or partially incapacitated person unless such company is at the time a resident of and maintains its usual place of business in the boundaries of the Muscogee (Creek) Nation. Such a domestic corporation or a natural person not a resident of the Muscogee (Creek) Nation may be appointed as such guardian upon the written request in a will or otherwise of a person eligible to make such nomination pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-405. Inquiry into suitability of person proposed to serve as guardian

A. In conducting an inquiry to determine whether a person is suitable to serve as a guardian, the District Court shall determine if:

1. The person proposed to serve as guardian is a minor or an incapacitated or partially incapacitated person;
2. The person proposed to serve as guardian is a convicted felon;
3. The person proposed to serve as guardian is insolvent or has declared bankruptcy during five (5) years prior to the filing of the pleading proposing such person to serve as guardian;
4. The person proposed to serve as guardian or is under any financial obligation to the ward; or
5. There exists a conflict of interest which would preclude or be substantially detrimental to the ability of the person to act in the best interest of the subject of the proceeding if such person is appointed.

B. No minor or incapacitated person shall be appointed guardian of an incapacitated or partially incapacitated person.

C. If the person proposed to serve is a convicted felon, the District Court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The District Court shall appoint such person proposed to serve only upon determining that the facts underlying the conviction

tion do not give rise to a reasonable belief that that person proposed to serve will be unfaithful to or neglectful of his/her fiduciary responsibilities, and that the appointment is in the best interest of the ward.

D. If the person proposed to serve as guardian or limited guardian of the property of an incapacitated or partially incapacitated person is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such person serve, the District Court shall appoint such person only after giving due consideration to the nature and extent of the property of the ward and the anticipated actions necessary to manage the estate of the ward, and only upon a determination that such appointment is in the best interest of the ward. Insolvency or bankruptcy shall have no effect on the qualification of a person proposed to serve as guardian or limited guardian of the person of an incapacitated or partially incapacitated person.

E. If the person proposed to serve as guardian or limited guardian of the property of an incapacitated or partially incapacitated person is under any financial obligation to the ward, the District Court shall make further inquiry into the nature and extent of such obligation. The District Court shall appoint the person proposed to serve only after a determination that such obligation will not impair the ability of the person proposed to serve to discharge his/her fiduciary responsibilities, and that the appointment is in the best interest of the ward. Being under financial obligation to the ward shall have no effect on the qualification of a person proposed to serve as guardian or limited guardian of the person of an incapacitated or partially incapacitated person.

F. A current or potential conflict of interest which is not substantial and not likely to preclude or impair the ability of a person proposed to serve as a guardian acting in the best interest of his/her ward shall not, by itself, disqualify such person from appointment.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞10.	C.J.S. Guardian and Ward §§ 19 to 27.
Indians ☞126, 133.	C.J.S. Indians §§ 46 to 50, 53, 150.
Mental Health ☞116.	C.J.S. Mental Health §§ 145 to 149.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-406. Guardian's bond

A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the District Court may require the person or organization to be appointed to provide a bond to this Nation, with sufficient sureties, to be approved by the District Court, and in such penal sum as the District Court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

B.1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the District Court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the

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District Court at the hearing on the petition, to this Nation, with sufficient sureties, to be approved by the District Court, and in such penal sum as the District Court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

2. Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the District Court that:

a. the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than forty thousand dollars (\$40,000.00); and

b. the guardian of the ward is either a parent, spouse, brother, sister, grandparent, child, or grandchild of the ward, the District Court may order that a bond is not necessary. For purposes of this paragraph, personal property shall not include property owned with a joint tenant.

3. The provisions of this section shall not apply to cases subject to the Uniform Veterans’ Guardianship Act and 72 O.S. § 126.1 et seq.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the District Court at the hearing on the petition, the guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞15.
Indians ☞126.
Mental Health ☞166.

Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Guardian and Ward § 10.
C.J.S. Indians §§ 46 to 50, 53.

§ 5–407. Request for security or bond; suspension of powers; order

When a petition is presented praying that a guardian be required to give further security, or to give bond where, by order of the District Court no bond was originally required, and it is alleged on oath that such is necessary to serve the best interest of the ward or his/her estate, the Judge may, by order, suspend his/her powers until the matter can be heard and determined. If the Judge determines a bond or other security is in the best interests of the ward or his/her estate, the Judge shall order the same to be posted, and if it is not given within a reasonable time, to be fixed by the Judge, the guardian shall be removed.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞15.
Indians ☞126.
Mental Health ☞166.

Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Guardian and Ward § 10.
C.J.S. Indians §§ 46 to 50, 53.

§ 5-408. Requirement of new bonds; discharge of sureties on old bond

The District Court may require a new bond to be given by a guardian whenever the District Court deems it necessary, and may discharge the existing sureties from further liability, after due notice is given as the District Court may direct, when it shall appear that no injury can result there from to those interested in the estate.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞15.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward § 10.
Mental Health ☞166.	C.J.S. Indians §§ 46 to 50, 53.

§ 5-409. Preservation of bonds; breach of condition; actions on bonds

Every bond given by a guardian must be filed and preserved by the District Court Clerk, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the person or estate of the ward. Any interest earned during the preservation of a bond shall be distributed to the ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞15.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward § 10.
Mental Health ☞166.	C.J.S. Indians §§ 46 to 50, 53.

§ 5-410. Limitation of action on bond; effect of disability

No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three (3) years from the discharge or removal of the guardian; but if at the time of such discharge a person entitled to bring such action is under any legal disability to sue, the action may be commenced by such person at any time within three (3) years after such disability is removed.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞182.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞508.	C.J.S. Guardian and Ward §§ 297 to 307.
Mental Health ☞478.	C.J.S. Indians §§ 151 to 179.

§ 5-411. Inventory and account of estate of ward; appraisal; waiver of inventory prohibited

A. Every guardian or limited guardian of the property of a ward shall file an inventory of the estate of his/her ward within two (2) months after his/her appointment. The time to file an inventory may be extended by the District Court for good cause shown. The District Court may, upon application made for that purpose by any interested person, compel the guardian or limited guardian of the property of a ward to render a revised inventory or account to

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the District Court of the estate of his/her ward. Each inventory and account returned or rendered must be sworn to by the guardian or limited guardian.

B. The guardian shall state his/her opinion of the value of the estate of the ward described in the first inventory. Such inventory shall be filed with the District Court Clerk. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward, or for his/her benefit, like proceedings must be had for the return thereof. If requested by the ward, Judge or any interested person, such property must be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the estate of decedents.

C. The District Court shall not waive any inventory of property of the ward which is required by this section.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Cross References

Proposed plan for management of financial resources of ward, see Title 6, § 5–322.

Library References

Guardian and Ward ⇌143.

Indians ⇌126.

Mental Health ⇌299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

§ 5–412. Settlement and allowance of accounts; reports to District Court; accounting information; date certain for next annual report

A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the District Court for settlement and allowance as part of the guardianship report as required by Section 5–416 of this Title.

B.1. In addition, a guardian or limited guardian of the property shall:

a. present accounts whenever the District Court requires that such report or accounts be presented, and

b. with the annual report of accounts, report any changes of property listed on the inventory required by Section 5–411 of this Title. The report shall state the compensation requested by the guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.

3. Except as otherwise directed by the District Court or required by the Uniform Veteran's Guardianship Act (72 O.S. § 126.1, et seq.), the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than forty thousand dollars (\$40,000.00) if a bond has been posted, or are worth less than ten thousand dollars (\$10,000.00) regardless of whether or not a bond has been

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posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.

C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:

1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for the physical health or safety of the ward or to manage the financial resources of the ward;

2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the estate of the minor;

3. When the guardian or limited guardian resigns or is removed; and

4. When the guardianship is terminated.

D. Unless waived at the discretion of the District Court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 5-415 of this Title.

1. Unless waived at the discretion of the District Court, or not required by Title 6 of the Muscogee (Creek) Nation Code, a guardian of the person of a minor ward shall file such reports of the guardianship of the person of the ward as required by the District Court in such form as the District Court may require.

2. A guardian or limited guardian of the property of a ward shall file a report on the guardianship of the property pursuant to Section 5-416 of this Title.

E. The District Court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

G. Any accounting information submitted by a guardian or limited guardian of the property of a ward shall be verified. Such information shall also set forth any charges to the property of the ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the property of the ward placed under the control of the guardian or limited guardian.

H. In addition to other specified information any order of the District Court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞143.

Indians ☞126.

Mental Health ☞299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

§ 5-413. Account by one of joint guardians

When an account is rendered by two (2) or more joint guardians, the Judge of the District Court may allow the same upon oath of any of them.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

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| Guardian and Ward ⚡143. | C.J.S. Guardian and Ward § 226. |
| Indians ⚡126. | C.J.S. Indians §§ 46 to 50, 53. |
| Mental Health ⚡299. | C.J.S. Mental Health § 214. |
| Westlaw Topic Nos. 196, 209, 257A. | |

§ 5-414. Report on guardianship of person; requirements; attachments

A. A report on the guardianship of the person of an incapacitated or partially incapacitated person shall set forth:

1. The name and place of abode of the ward and the name and address of the guardian or limited guardian;
2. Any significant change in the capacity of the ward to meet the essential requirements for his/her physical health or safety;
3. The services being provided to the ward and the relationship of those services to the individual guardianship plan;
4. Any significant actions taken by the guardian or limited guardian or guardian during the reporting period;
5. Any significant problems relating to the guardianship which have arisen during the reporting period;
6. The reasons, if any, why the appointment should be continued; and
7. The reasons, if any, why no less restrictive alternative will permit the incapacitated or partially incapacitated person to meet the essential requirements for his/her physical health or safety.

B. The report shall be substantially in the following form:

Report on the Guardianship of the Person

I, _____ (Name) the (Guardian/Limited Guardian of the person) for _____ (Name), an incapacitated/partially incapacitated person hereby submit this (annual, District Court-ordered) Guardianship Report.

1. The present place of abode of the ward is: _____

2. The type of home or facility in which the ward lives is _____
_____ and the name of the person in charge of the home or facility is _____
3. My present street address and telephone number is: _____

4. During the last year, I have seen the ward _____ times. I otherwise or also have become or remained familiar with the needs and care of the ward as follows: _____

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The nature of my visits to the ward have been: _____

5. The following services are currently being provided to the ward:

6. These services (are, are not) provided for in the current Guardianship Plan. The reason they are not shown in the current Guardianship Plan is:

7. The ward was last seen by a physician on: The purpose of the visit was:

8. I (have, have not) observed any major change in the ward’s physical or mental condition during the last year. (If so, these are my observations: _____)

9. I (have, have not) taken any significant action for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so, I took the following actions: _____)

10. There (have, have not) been any significant problems relating to the ward or to my guardianship of the ward since the last time I submitted a Guardianship Report or, if this is an initial report, since the issuance of my letters. (If so, I have observed these problems: _____)

11. It is my opinion that the guardianship (should, should not) be continued. (If so, the basis for my belief is as follows: _____)

12. I believe the ward (would, would not) be able to manage essential requirements for physical health and safety with fewer restrictions on the ward’s ability to act for himself or herself. (If so, the basis for my belief is as follows: _____)

13. My opinion of the present care being provided to the ward is as follows: _____

14. The place of abode of the ward (has, has not) changed since the last guardianship report. (If so,) the place of abode of the ward was changed for the following reasons: _____

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: _____

(Signature of Guardian or Limited Guardian)

Telephone: _____

C. Whenever there are changes or proposed changes to the guardianship plan, an individual guardianship plan, substantially in the same form as provided in Section 5-320 of this Title, shall be submitted with the guardian-

ship report and shall show any such changes or proposed changes in the guardianship plan since last submitted to and approved by the District Court.

D. Attached to the report shall be:

1. An accounting of any monies received by the guardian or limited guardian on behalf of the ward;
2. Any expenditure made by the limited guardian or guardian on behalf of the ward;
3. Any compensation requested by the guardian or limited guardian; and
4. Copies of any appropriate medical records, evaluations, or other similar documentation pertinent to the reporting period.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞143.	C.J.S. Guardian and Ward § 226.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞299.	C.J.S. Mental Health § 214.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-415. Report on guardianship or limited guardianship of property; requirements; attachments; review of financial resources

A. A report on the guardianship or limited guardianship of the property of a ward shall set forth:

1. The name and place of abode of the ward, and the name and address of the guardian or limited guardian;
2. If the ward is an incapacitated or partially incapacitated person, significant changes in the capacity of the ward to manage his/her financial resources and the services being provided to the ward and the relationship of those services to the individual guardianship plan—for the management of financial resources;
3. Any significant actions taken by the guardian or limited guardian during the reporting period;
4. Any significant problems relating to the guardianship which have arisen during the reporting period; and
5. If the ward is an incapacitated or partially incapacitated person, the reasons, if any, why the guardianship should not be terminated, or why no less restrictive alternatives would permit the ward to manage his/her financial resources.

B. If the ward is an incapacitated or partially incapacitated person, reports on the guardianship of the property shall be substantially in the following form:

Report on the Guardianship of Property

I, _____ (name) the (Guardian or Limited Guardian of the property) of _____ (Name) an incapacitated (or a partially incapacitated) person, hereby submit this (annual, District Court-ordered) Report.

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1. List any significant changes in the capacity of the ward to manage his/her or her financial resources:

2. The services currently being provided to the ward are as follows: _____

3. These services (are, are not) provided for in the current Guardianship Plan as approved by the District Court. The reasons these services are not shown in the current plan are as follows: _____

4. I (have, have not) taken any significant actions for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so) These actions are as follows: _____

5. There (have, have not) been any significant problems relating to the guardianship since the last time I submitted a Guardianship Report. (If so) The problems are as follows: _____

6. In my opinion, the guardianship (should, should not) be continued. The reasons for my belief are as follows:

7. It is my belief that the ward (would, would not) be able to manage his/her or her financial resources with fewer restrictions on the ward's ability to act for him or herself. The reasons for my belief are as follows: _____

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration. _____

(date of report)

(Signature of Guardian or Limited Guardian)

C. If the ward is a minor, reports on the guardianship of the property shall be substantially in the following form:

I, _____ (name) the (Guardian or Limited Guardian of the property) of _____ (name), a minor, hereby submit this (annual, District Court-ordered) Report.

1. The services currently being provided to the ward are as follows: _____

2. These services (are, are not) provided for in the current Guardianship Plan as approved by the District Court. The reasons these services are not shown in the current plan are as follows: _____

3. I (have, have not) taken any significant actions for or on behalf of the ward since the last time I submitted a Guardianship Report. (If so) These actions are as follows: _____

4. There (have, have not) been any significant problems relating to the guardianship since the last time I submitted a Guardianship Report. (If so) The problems are as follows: _____
w6d

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration. _____

(date of report)

(Signature of Guardian or Limited Guardian)

D. Whenever there are changes or proposed changes to the guardianship plan, an individual guardianship plan for the management of financial resources, substantially in the same form as provided in Section 5–322 of this Title, shall be submitted with the guardianship report and shall show any such changes or proposed changes in the guardianship plan since last submitted and approved by the District Court.

E. The report:

1. Shall contain a complete financial statement of the financial resources of the ward under the control or supervision of the guardian or limited guardian of the property;

2. Shall contain an accounting of any receipts and disbursements received, or expenditures made by the guardian or limited guardian on behalf of the ward;

3. May include any request for compensation for the guardian; and

4. May include any compensation request for the attorney for the ward.

F. As directed by the District Court, following submission of a report or in conjunction with an initial or annual review or any subsequent proceeding, a guardian or limited guardian shall submit to an actual review of the financial resources placed under his/her control.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Cross References

Definitions, general provisions, see Title 6, § 5–111.

Library References

Guardian and Ward ☞143.

Indians ☞126.

Mental Health ☞299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

§ 5-416. Mailing of copies of annual report; objections to report; hearing; order granting immediate relief; order for compensation; new bond; appointment of counsel to represent ward

A.1. Upon the filing of an annual report the District Court shall immediately cause a copy of the report to be mailed by first-class mail to:

- a. the persons entitled to notice pursuant to Section 5-201 of this Title for minors, or
- b. those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title for adults, and
- c. the attorney of the ward, if any.

2. Attached to the copy of the report shall be a statement notifying the person receiving copies of said reports that any objection to the report must be filed within fifteen (15) days after the date of the filing of the annual report with the District Court.

3. Any person entitled to receive a copy of the annual report may file an objection to said report within fifteen (15) days after the filing of the annual report with the District Court.

B. 1. After notice, the District Court may on its own motion hold a hearing on an annual report and shall hold a hearing:

- a. upon the filing of an objection to the annual report; or
- b. when the District Court is considering issuing an order other than an order accepting the report and granting the relief requested.

2. Notice for a hearing on an annual report shall be given, by mail, to the persons entitled to notice pursuant to Section 5-201 of this Title for minors or paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title for adults at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the District Court may direct and shall be sent by regular first-class mail.

C. The District Court may enter an order granting the relief requested in the report without notice if the District Court determines that such relief should be granted immediately. In that event, the District Court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the fifteen (15) days within which an objection to the report may be filed.

D. When no objection to an annual report is filed and no hearing on the annual report is held as otherwise provided by this section, the District Court shall issue an order accepting the annual report and granting the relief requested.

E. The compensation for the guardian, the guardian's attorney, and any other person entitled to compensation from the property of the ward shall be determined by the District Court in the manner required by the provisions of the Muscogee (Creek) Nation Guardianship Code. Such order, whether issued at the expiration of the fifteen (15) days within which an objection to the annual report may be filed or after a hearing on the report, shall be final with respect to all persons given copies of the annual report or notice of such hearing,

except with regard to any such person who may be determined to have been subject to a legal disability at the time such notice was given. Such order also shall be final with respect to the guardian except with respect to challenge by the ward upon the removal of the ward's legal disability.

F. With regard to an annual report of a guardian of the property of a ward, the District Court shall examine the changes, if any, to the property of the ward as set forth in the report. If the guardian was required to submit a bond, and if the total value of the ward's property which is subject to the proceeding differs significantly from the total value of the ward's property as last disclosed to the District Court;

1. The District Court shall direct such guardian to obtain a new bond of such lesser or greater penal amount as will adequately protect the ward's property which is subject to the proceeding;

2. Such new bond shall be filed with the District Court clerk within thirty (30) days following the date of the order; and

3. If the District Court requires a new bond of a greater penal amount than the bond previously submitted, failure of the guardian to submit such new bond within the thirty-day period set forth in this subsection shall constitute grounds for removal of such guardian or limited guardian.

G. At any hearing held upon an annual report:

1. If required by the District Court, the guardian or limited guardian shall be present;

2. The District Court shall review the annual report and consider any objection made thereto, and thereupon enter such order as the District Court deems appropriate; and

3. The District Court may make any order which the District Court deems to be in the best interest of the ward or the estate of the ward. The District Court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the District Court deems should be considered in the best interest of the ward or the estate of the ward. Subject to appeal or vacation within the time permitted, an order entered after the hearing of an annual report after notice adjudicates as to liabilities concerning the matters considered in connection with said hearing.

H. At a hearing upon an annual report the District Court may appoint an attorney to represent the ward who is an incapacitated or partially incapacitated person, in the same manner and with the same compensation as provided in this act for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:

1. Upon the entry by the District Court of an order pertaining to the matters considered at such hearing, unless the District Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;

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2. Unless an appeal is taken from the order of the District Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition of the appeal or as otherwise ordered by the District Court; or

3. Upon application of said attorney, the District Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Cross References

Definitions, general provisions, see Title 6, § 5-111.

Library References

Guardian and Ward ⌘143.

Indians ⌘126.

Mental Health ⌘299.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 226.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health § 214.

§ 5-417. Application for relief; notice; hearing; order; appointment of counsel to represent ward; joinder of separate applications or objections; evaluation of ward; hearing without notice

A. After the appointment of a guardian, the ward, any person interested in the welfare of the ward, or a guardian may make application to the District Court for:

1. Termination of the guardianship;
2. Removal of the guardian;
3. Resolution of a dispute pertaining to the guardianship plan;
4. If the ward is an incapacitated or partially incapacitated person, the imposition of additional restrictions upon the legal capacity of the ward to act on his/her own behalf or the removal of one or more existing restrictions; or
5. A review hearing.

B. Such application shall set forth:

1. The names and addresses of the individuals and entities entitled to notice;
2. The relief requested; and
3. The alleged facts and reasons supporting the request.

C. Any person entitled to notice of the hearing on an application filed pursuant to this section may object to the relief requested in the application. If the ward is a minor, notice shall be as provided by Section 5-201 of this Title. If the ward is an incapacitated or partially incapacitated person, notice shall be given to those persons entitled to notice pursuant to paragraphs 1, 2, 3 and 7 of subsection A of Section 5-310 of this Title and shall be given as provided by Section 5-310 of this Title and to the attorney of the subject of the proceeding, if any, and if known to the petitioner.

D. The District Court shall set an application filed pursuant to this section for hearing on a date certain and shall cause notice to be given to the persons entitled thereto by regular first-class mail at least ten (10) days prior to such

date. However, except for an order terminating a guardianship, the District Court may enter an order granting the relief requested in the application without notice if the District Court determines that such relief should be granted immediately. In that event, the District Court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence adduced, the Judge may continue, modify or vacate his/her temporary order.

E. At the hearing held upon an application filed pursuant to this section for which notice is required, the District Court may, based upon the evidence adduced, enter an order granting or denying the relief requested. At such hearing, the District Court also may make any other order which the District Court deems to be in the best interests of the ward or the estate of the ward. The District Court may also set for further hearing, with prior notice to be given as provided in this section, any other matter which the District Court deems should be considered in the best interest of the ward or the estate of the ward.

F. With respect to any matter set for hearing pursuant to this section, the District Court may appoint an attorney to represent at such hearing a ward who is an incapacitated or partially incapacitated person, in the same manner and with the same compensation as provided in the Muscogee (Creek) Nation Guardianship Code for appointment of an attorney for the subject of the proceeding following the filing of a petition for appointment of a guardian or limited guardian of the person or property of an alleged incapacitated or partially incapacitated person. The appointment of such attorney shall cease:

1. Upon the entry by the District Court of an order pertaining to the matters considered at such hearing, unless the District Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
2. Unless an appeal is taken from the order of the District Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the ward until final disposition or as otherwise ordered by the District Court; or
3. Upon application of said attorney, the District Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the subject of the proceeding in any appeal proceeding.

G. After notice, the District Court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the District Court determines joinder would be prejudicial to the interests of the ward.

H. As necessary and appropriate the District Court may order an evaluation of the ward in connection with any guardianship proceeding subsequent to the appointment of a guardian.

I. The District Court may hear an application other than with respect to the matters set forth in subsection A of this section, with or without notice as the District Court determines. If the District Court requires notice to be given, the

District Court shall specify the persons to whom notice shall be given and the manner and time in which such notice shall be given.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨18, 25.	C.J.S. Guardian and Ward §§ 23, 45 to 48, 50.
Indians ⇨126, 519, 533.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ⇨167 to 174.	C.J.S. Mental Health §§ 167 to 173, 180 to 182.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–418. Expenses and compensation of guardians

A. Every guardian must be allowed the amount of his/her reasonable expenses in the execution of his/her trust, and he must also have such compensation for his/her services as the District Court deems just and reasonable.

B. To the extent that the services of a guardian or limited guardian of the property are for the collection of income of the ward, compensation for such services shall not exceed seven and one-half percent (7 1/2%) of the income so collected. For the purposes of this section, “income” means funds received by and accounted for by the guardian or limited guardian on behalf of the ward, other than from the sale of property of the ward, plus the net proceeds from the sale of property of the ward in excess of the value of such property as last determined in the guardianship proceeding.

C. All compensation and reimbursements pursuant to this section shall be approved by the District Court prior to payment.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨49.	Westlaw Topic Nos. 196, 209, 257A.
Indians ⇨126.	C.J.S. Guardian and Ward §§ 82 to 84, 110.
Mental Health ⇨180.	C.J.S. Indians §§ 46 to 50, 53.

§ 5–419. Joint guardians; compensation

Joint guardians shall not receive more compensation than a single guardian.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨49.	Westlaw Topic Nos. 196, 209, 257A.
Indians ⇨126.	C.J.S. Guardian and Ward §§ 82 to 84, 110.
Mental Health ⇨180.	C.J.S. Indians §§ 46 to 50, 53.

§ 5–420. Compensation for attorneys, guardians ad litem and persons conducting evaluations

A. An attorney, other than a public defender, for a ward or a subject of a proceeding pursuant to the Muscogee (Creek) Nation Guardianship Code or whose services are obtained by a guardian on behalf of a ward is entitled to reasonable compensation to be paid from and as a charge against the estate of the ward. Reasonable compensation for attorney services rendered and expenses made on behalf of the guardian of the ward incurred prior to the

appointment of the guardian may be paid from and charged against the estate of the ward, as approved by the District Court prior to payment.

1. Guardians ad litem, other than an employee of a public agency or an employee of a private agency which provides such service pursuant to a contract with a public agency, appointed pursuant to the provisions of this act are entitled to reasonable compensation.

2. A person conducting an evaluation of the subject of the proceeding, whose services resulted in the appointment of a limited guardian or guardian or other order beneficial to the subject of the proceeding, is entitled to reasonable and necessary compensation.

B. Compensation and reimbursements pursuant to this section shall be paid from the financial resources of the subject of the proceeding unless the District Court determines that such payment of compensation and reimbursements would:

a. substantially impede the partially incapacitated or incapacitated person from meeting the essential requirements for his/her physical health or safety, and

b. substantially impair the financial resources of such person, or substantially impede his/her ability to obtain the services necessary for developing or regaining his/her abilities to the maximum extent possible.

1. If not otherwise compensated or reimbursed pursuant to the provisions of paragraph 1 of this subsection:

a. any attorney or guardian ad litem appointed by the District Court who is entitled to compensation shall be compensated from the District Court fund of the District Court,

b. the cost of services provided by a person conducting an evaluation, when such person is the employee of a public agency or the employee of a private agency which provides such services for guardianship proceedings pursuant to an agreement with a public agency, shall be borne by the public agency, or by the private agency in accordance with the terms of such agreement, and

c. if the person conducting an evaluation is a private individual or agency and the cost of the services provided is not otherwise compensable under a Tribal assistance program, compensation for the cost of services shall be from the court fund of the District Court.

2. Compensation or reimbursement from the District Court fund for attorneys and guardian ad litem pursuant to the provisions of this subsection shall be in accordance with the provisions of Title 6 of the Muscogee (Creek) Nation Code Annotated.

C. All compensation and reimbursements pursuant to the provisions of this section shall be approved by the District Court prior to payment.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌49.
Indians ⇌126.

Mental Health ⇌159, 493.
Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 82 to 84, 110.
C.J.S. Indians §§ 46 to 50, 53.
C.J.S. Mental Health § 320.

§ 5-421. Costs; appointment of guardian to authorize entry into armed forces

A. No costs shall be required by the District Court Clerk in any guardianship proceeding where the proceeding is for the purpose of appointing a guardian to approve or authorize the ward to enter the armed forces of the United States.

B. If the District Court waives the report, the District Court may waive the fee for the filing of the annual guardianship report required by the Muscogee (Creek) Nation Code Annotated, for a guardian or limited guardian of the person of an incapacitated or partially incapacitated person or for a guardian of the person of a minor.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-422. Appointment of more than one guardian; bond

The District Court may appoint more than one guardian of any person or property subject to guardianship. Such guardians shall be governed and liable in all respects as a sole guardian. Such guardian shall give bond in like manner and with like conditions as prescribed for sole guardians unless waived.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌15. Westlaw Topic Nos. 196, 209, 257A.
Indians ⇌126. C.J.S. Guardian and Ward § 10.
Mental Health ⇌166. C.J.S. Indians §§ 46 to 50, 53.

§ 5-423. Two or more guardians

A. If there are two guardians who are residents of the Muscogee (Creek) Nation, the act of one alone shall be effectual:

1. If a co-guardian is laboring under any legal disability from serving, said co-guardian in such case shall be relieved from official liability; provided however, proper finding and valid order of the District Court having jurisdiction therein is first obtained; or

2. If a co-guardian has given the other co-guardian authority in writing to act for both.

B. If there are more than two (2) guardians, the act of a majority of them is valid.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-424. Death of joint guardian

On the death of one (1) of two (2) or more joint guardians, the power continues to the survivor until a further appointment is made by the District Court.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌26.	C.J.S. Guardian and Ward § 37.
Indians ⇌126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ⇌167.	C.J.S. Mental Health §§ 167 to 168.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–425. Guardian for nonresident ward; notice of hearing

When a person liable to be put under guardianship, according to the provisions of this chapter, resides outside of Muscogee (Creek) Nation jurisdiction, and has estate therein, any friend of such person, or any one interested in his/her estate, in expectancy or otherwise, may apply to the judge of the District Court for the appointment of a guardian; and if, after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌13.	C.J.S. Guardian and Ward §§ 13, 28 to 35,
Indians ⇌126, 519.	49.
Mental Health ⇌137.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–426. Powers of nonresident’s guardian same as in other cases

Every guardian appointed under the preceding section has the same powers and performs the same duties, with respect to the estate of the ward found within the Muscogee (Creek) Nation, and with respect to the person of the ward, if he shall cease to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇌17, 28.	C.J.S. Guardian and Ward §§ 12, 70 to 76,
Indians ⇌126.	100.
Mental Health ⇌179.	C.J.S. Indians §§ 46 to 50, 53.
Westlaw Topic Nos. 196, 209, 257A.	C.J.S. Mental Health §§ 176 to 179.

§ 5–427. First appointment is exclusive

The guardianship which is first lawfully granted, of any person residing outside of Muscogee (Creek) Nation jurisdiction, extends to all the estate of the ward within the same, and excludes the jurisdiction of the District Court.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–428. Bond of guardian of nonresident

Every such guardian must give bond to the Muscogee (Creek) Nation, in the manner and with like conditions as provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian must be confined to such estate and effects as come to his/her hands in this Nation.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨15.
 Indians ⇨126.
 Mental Health ⇨166.

Westlaw Topic Nos. 196, 209, 257A.
 C.J.S. Guardian and Ward § 10.
 C.J.S. Indians §§ 46 to 50, 53.

§ 5-429. Removal of property

When the guardian and ward are both non residents, and the ward is entitled to property in the Muscogee (Creek) Nation which may be removed to another Tribe, to a state, territory or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the Tribe, state, territory or foreign country of the residence of the ward, upon the application of the guardian to the judge of the District Court, or the principal part thereof.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨69.
 Indians ⇨127, 141(1).
 Mental Health ⇨258.

Westlaw Topic Nos. 196, 209, 257A.
 C.J.S. Guardian and Ward §§ 95 to 96.
 C.J.S. Indians §§ 5, 36, 48 to 50, 53.

§ 5-430. Application for removal; requirements

The application must be made upon ten (10) days notice to the resident personal representative or guardian, if there be such, and upon such application the nonresident guardian must produce and file a certificate, under the hand of the Clerk, Judge, Surrogate or other authorized officer, and the seal of the District Court from which his/her appointment was derived, showing:

1. A transcript of the record of his/her appointment.
2. That he has entered upon the discharge of his/her duties.

3. That he is entitled by the laws of the Tribe, state, territory or country of his/her appointment to the possession of the estate of the ward; or must produce and file a certificate under the hand and seal of the Clerk, Judge, Surrogate or other authorized officer of the District Court having jurisdiction in the place of his/her residence, of the estates of persons under guardianship, or of the highest District Court in such Tribe, state, territory or country, that by the laws of such place the applicant is entitled to the custody of the estate of his/her ward without the appointment of any District Court. Upon such application, unless good cause to the contrary be shown, the Judge of the District Court must make an order granting to such guardian leave to take and remove the property of his/her ward to the Tribe, state, territory or place of his/her residence, which is authority to him to sue for and receive the same in his/her own name, for the use and benefit of his/her ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨69.
 Indians ⇨126.
 Mental Health ⇨258.

Westlaw Topic Nos. 196, 209, 257A.
 C.J.S. Guardian and Ward §§ 95 to 96.
 C.J.S. Indians §§ 46 to 50, 53.

§ 5–431. Order for removal discharges local guardian

Such order is a discharge of the personal representative, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the District Court the receipt therefore of the foreign guardian of such absent ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞69.	Westlaw Topic Nos. 196, 209, 257A.
Indians ☞126.	C.J.S. Guardian and Ward §§ 95 to 96.
Mental Health ☞258.	C.J.S. Indians §§ 46 to 50, 53.

§ 5–432. Payment of debts

Every guardian appointed under the provisions of this act shall pay all just debts due from the ward out of the personal estate and income from the real estate of the ward, if sufficient. If said estate and income is not sufficient, then payment shall be made out of the real estate of the ward, up on obtaining an order for the sale thereof, the proceeds of such sale shall be disposed of in the manner provided by law for the sale of real estate of decedents.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞36.	C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞217.	C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–433. Collection and settlement of accounts and appearance for ward in suits; compromise and settlement of claim

A guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to the ward, or may, with the approval of the District Court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A guardian shall appear for and represent the ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend. A guardian, with the approval of the District Court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the ward in such suit or proceeding.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞28.	C.J.S. Guardian and Ward §§ 70 to 76, 100.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞217.	C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–434. Discharge and release

The person making payment, delivery, transfer or issuance of property or evidence thereof to the person designated by the District Court under this

section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a guardian of the minor or incapacitated or partially incapacitated person, and he is not required to see to the application thereof. A person making payment, delivery, transfer or issuance of property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for in the Muscogee (Creek) Nation Guardianship Code.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-435. Service upon guardian; duty of guardian

Whenever a minor or an incapacitated or partially incapacitated person has a guardian of his/her estate residing within the Muscogee (Creek) Nation, personal service upon the guardian of any process, notice, or order of the District Court concerning the estate of the deceased person, in which the ward is interested, is equivalent to service upon the ward. It is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his/her ward, and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞129.	C.J.S. Guardian and Ward § 263.
Indians ☞126, 510.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ☞498.	C.J.S. Mental Health §§ 326 to 328.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-436. Management of estate; income applied for support of ward; sale of realty

Every guardian must manage the estate of his/her ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward, and his/her family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the District Court therefore, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his/her family, if there be any.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞36, 94.	C.J.S. Guardian and Ward §§ 73 to 75, 77 to 78, 122, 161 to 176, 182 to 198.
Mental Health ☞217, 258.	C.J.S. Mental Health §§ 203, 206 to 207.
Westlaw Topic Nos. 196, 257A.	

§ 5-437. Maintenance and support of ward; credit on settlement; payment of third person furnishing necessaries on guardian's refusal

When a guardian has advanced for the necessary maintenance, support and education of his/her ward, an amount not disproportionate to the value of the estate or condition of life of the ward and the same is made to appear to the satisfaction of the District Court, by proper supporting documents and proofs,

the guardian must be allowed credit therefore in his/her settlement. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support or education for his/her ward, the District Court may order the guardian to do so and enforce such order by proper process. Whenever any third person, at the request of the ward, supplies a ward with such suitable and necessary maintenance, support or education which is shown to have been done after refusal or neglect of the guardian to supply the same, the District Court may direct the guardian to pay therefore out of the estate of the ward, and may enforce such payment by due process.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞30.	C.J.S. Guardian and Ward §§ 58 to 69.
Indians ☞126, 140.	C.J.S. Indians §§ 46 to 50, 53, 56.
Mental Health ☞232.	C.J.S. Mental Health § 190.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–438. Execution of waivers or consents for wards

The duly appointed and acting guardian, limited guardian, conservator, attorney in fact, or any other person legally authorized to act on behalf of any minor or incapacitated or partially incapacitated heir, devisee or legatee may execute waivers or consents for his/her ward as authorized by the District Court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him to perform such act.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–439. Investment of money and proceeds of sales

The District Court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his/her ward’s money in his/her hands, in real estate, or in any other manner most to the interest of all concerned therein; and the District Court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞53.	C.J.S. Guardian and Ward §§ 115 to 121.
Indians ☞126, 141(1).	C.J.S. Indians §§ 36, 46 to 50, 53.
Mental Health ☞224.	C.J.S. Mental Health §§ 199 to 202.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–440. Investment of monies belonging to estates; purchase of homesteads for incapacitated or partially incapacitated persons

A. Except as may be otherwise provided by law, the money belonging to estates of minors and incapacitated or partially incapacitated persons, subject to the jurisdiction of the District Court, can only be invested in one or more of the following:

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1. Real estate and first mortgages upon real property which do not exceed fifty percent (50%) of the actual value of the property;

2. United States bonds or any other type of security certificate, or evidence of indebtedness which is guaranteed by the United States government or any authorized agency thereof;

3. State or Tribal bonds;

4. Bonds of municipal corporations;

5. Accounts in savings and loan associations and credit unions located within the jurisdictional boundaries of the Muscogee (Creek) Nation, and all types of interest-bearing time deposits and certificates of banks, savings and loan associations, and credit unions located within the Muscogee (Creek) Nation, not to exceed the amount insured by the United States government.

B. Upon application to the District Court by the guardian of the estate of the incapacitated or partially incapacitated person, showing to the satisfaction of the District Court:

1. That the incapacitated or partially incapacitated person is vitally in need of a home;

2. That the incapacitated or partially incapacitated person owns no suitable homestead;

3. That the incapacitated or partially incapacitated person has sufficient monthly, semiannual, or annual fixed income to retire an incurred indebtedness for the remaining unpaid cost of a homestead; and

4. That it would be in the best interest of the incapacitated or partially incapacitated person that a suitable homestead be purchased on that basis

The District Court may enter an order authorizing the guardian to execute and deliver a note and mortgage, under such tenor and terms as the District Court will approve, for the purpose of securing payment of any remaining cost of such a homestead. Any note and mortgage given by a guardian under the provisions of this section shall, if authorized by the District Court as provided for in this section, be endorsed "approved" by the Judge. When so authorized and endorsed, the note and mortgage shall be a binding obligation against the ward and the estate of the ward until fully paid. The ward, if subsequently restored to competency to transact business, shall be held firmly bound by the note and mortgage in the same manner and to the same extent as though the ward had given the homestead purchase-money note and mortgage.

C. When an individual guardian enters into an agreement with a bank or trust company, or when the guardian is a bank or trust company qualified and acting under the supervision of the Banking Board, or of the Comptroller of the Currency of the United States of America, the guardian may, upon application to the District Court, invest funds coming into its hands as guardian in any property, real, personal or mixed, pursuant to the Court's order, unless otherwise provided by law.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨53.	C.J.S. Guardian and Ward §§ 115 to 121.
Indians ⇨126, 141(1).	C.J.S. Indians §§ 36, 46 to 50, 53.
Mental Health ⇨224.	C.J.S. Mental Health §§ 199 to 202.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–441. Income insufficient for maintenance; sale of property necessary

When the income of an estate under guardianship is not sufficient to maintain the ward and his/her family, or to maintain and educate the ward when a minor, his/her guardian may sell the real or personal estate of the ward for that purpose, upon obtaining an order therefore.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨40.	C.J.S. Guardian and Ward §§ 128 to 132.
Indians ⇨141(1), 173.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Mental Health ⇨258.	
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–442. Sale of property for investment

When it appears to the satisfaction of the District Court, upon the petition of the guardian, that for the benefit of the ward or the real or personal estate of the ward, or some part of said estate, should be sold, and the proceeds thereof invested, the guardian may sell the same for such purpose upon obtaining an order therefore.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨40.	C.J.S. Guardian and Ward §§ 128 to 132.
Indians ⇨141(1), 173.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Mental Health ⇨258.	
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–443. Proceeds of sale; investment; maintenance of ward and family

If the property is sold for the purposes mentioned in Sections 5–441 and 5–442 of this Title, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his/her power as provided in the Muscogee (Creek) Nation Guardianship Code, until the capital is needed for the maintenance of the ward and his/her family, or the education of his/her children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ⇨40.	C.J.S. Guardian and Ward §§ 128 to 132.
Indians ⇨141(1), 173.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Mental Health ⇨258.	
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-444. Petition for sale; verification

To obtain an order for such sale, the guardian must present to the District Court a verified petition therefore, setting forth the condition of the estate of the ward and the facts and circumstances on which the petition is founded.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞141(1), 173.	
Mental Health ☞265.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-445. Hearing, notice and order

If it appears to the District Court, from the petition, that it is necessary or would be beneficial to the ward or the estate of the ward that the real or personal estate, or some part of such estate, should be sold, the District Court shall thereupon make an order directing all persons entitled to notice pursuant to Section 5-201 of this Title for minors or Section 5-310 of this Title for adults to appear before the District Court, at a time and place therein specified in the order and notice, not less than ten (10) nor more than thirty (30) days from the time of making such order, unless notice is waived, as provided in Section 5-446 of this Title, to show cause why an order should not be granted for the sale of such estate. If it appears that it is necessary or would be beneficial to the ward to sell the personal estate or some part of it, the District Court shall order the sale to be made.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞141(1), 173, 519, 533.	
Mental Health ☞266, 267.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128, 151 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-446. Mailing or publication of order; waiver of notice

The District Court shall cause copies of said order to be mailed to the persons entitled to notice of the proceeding at least ten (10) days before the hearing on the petition. If the mailing address of any such person is unknown, a copy of the order must be published one time the Muscogee (Creek) Nation newspaper and in some newspaper in the county of the last known address, and the hearing of said petition shall not be less than ten (10) days from the date of the first publication of such notice. If written consent to making the order of sale is given by all persons entitled to notice, except the ward if the ward has been adjudicated to be fully incapacitated, said order of sale may be made at once without giving the notice.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞94.	Westlaw Topic Nos. 196, 257A.
Mental Health ☞267.	

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C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.

§ 5-447. Hearing upon order; protests

The District Court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear the petition and examine the proofs and allegations of the petitioner and any objections made by persons entitled to notice of the proceeding.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞94.
Indians ☞519.
Mental Health ☞267.
Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
C.J.S. Indians §§ 151 to 179.

§ 5-448. Partition of real estate; assent to; approval of District Court

The guardian may join in and assent to a partition of the real estate of the ward with the written approval of the Judge of the District Court, whenever such assent may be given by any person.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-449. Sale of oil, gas, mining leases

Personal representatives, including but not limited to guardians of the property, guardians of minors or of incapacitated or partially incapacitated persons are hereby authorized and empowered to sell and execute oil and gas or other mining leases upon the lands belonging to the estates of such deceased persons or of such minors or incapacitated or partially incapacitated persons in consideration of a royalty or part or portion of the production thereof.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞94.
Indians ☞193, 194.
Mental Health ☞258.
Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
C.J.S. Indians §§ 118 to 121.

§ 5-450. Testimony; witnesses; attendance and examination of

At the hearing on the petition the guardian may be examined on oath, witnesses may be produced and examined, and process to compel the attendance and testimony of witnesses may be issued by the District Court.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞131.
Indians ☞520.
Mental Health ☞505.

Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Guardian and Ward § 266.
C.J.S. Indians §§ 151 to 179.

§ 5-451. Costs awarded prevailing party on hearing of objections to order

If any person entitled to notice of the proceeding enters an objection to the requests made in the petition, the District Court may, in granting or refusing the order requested by the petition, award costs to the prevailing party, and enforce the payment thereof.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞136.

Indians ☞660.

Mental Health ☞518.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 270.

C.J.S. Indians §§ 151 to 179.

§ 5-452. Order for sale; public or private sale

If, after a full examination, it appears necessary or for the benefit of the ward that the real or personal estate of the ward, or some part thereof, should be sold, the District Court may grant an order therefore, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale, provided nothing herein shall alleviate legal requirements regarding the sale of restricted property.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-453. Sale bond by guardian

Every guardian authorized to sell real estate shall, before the sale, give bond to the Muscogee (Creek) Nation, with sufficient surety to be approved by the District Court, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for by the Muscogee (Creek) Nation Guardianship Code. The District Court may order that such bond is not required if the District Court specifically finds the general bond, if any, of the guardian is of a sufficient penal amount to provide for the proceeds of the sale in addition to the property secured by said bond or upon a finding by the District Court that:

1. The anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward, after sale, is less than forty thousand dollars (\$40,000.00); and

2. The guardian of the ward is either a parent, spouse, brother, sister, grandparent, child or grandchild of the ward.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞15.

Indians ☞126.

Mental Health ☞166.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 10.

C.J.S. Indians §§ 46 to 50, 53.

§ 5-454. Sales governed by same law as in estates of decedents

Except as otherwise specifically provided by the Muscogee (Creek) Nation Guardianship Code, all the proceedings pursuant to petitions of guardians for

sales of property of their wards, giving notice and the hearing of such petitions, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales and reports of sales and ordering and making conveyances of property sold shall be had and made as provided and required by the provisions of law concerning the estates of decedents.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞126, 196.	
Mental Health ☞258.	C.J.S. Indians §§ 37 to 38, 46 to 50, 53, 101 to 108, 110 to 111, 126 to 132.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–455. Order in force for one year only

No order of sale granted pursuant to Sections 5–441 through 5–454 of this Title continues in force more than one (1) year after granting the same, without a sale being had.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞94.	C.J.S. Guardian and Ward §§ 161 to 176, 182 to 198.
Indians ☞141(1), 173, 533.	
Mental Health ☞258.	C.J.S. Indians §§ 36 to 38, 101 to 108, 110 to 111, 128, 151 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5–456. Terms of sale; security

All sales of real estate of wards must be for cash, or for part cash and part deferred payments not to exceed ten (10) years, bearing interest from date of sale as, in the discretion of the District Court, is most beneficial to the ward. A guardian making a sale of real property shall demand and receive from the purchasers a note and mortgage on the real estate sold, with such additional security, if any, as the District Court deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

§ 5–457. Limitation of action for recovery of estate sold; disability and removal thereof

No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within three (3) years immediately following the termination of the guardianship or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three (3) years immediately following the removal of such disability.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ↻125.

Indians ↻508.

Mental Health ↻478.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward § 260.

C.J.S. Indians §§ 151 to 179.

§ 5-458. Exchange of property held by ward or wards in common; notice

When it shall appear to the District Court to be to the advantage or best interests of the ward, or wards, to exchange an interest in real estate held by such ward or wards in common with another, or others, for other real estate also held in common by such ward or wards with another or others, to be owned solely by said ward or wards, after such exchange, a guardian of the ward's estate may be authorized by the District Court, after hearing and appraisal, to effectuate such exchange and to give or accept cash in part consideration. The provisions of Section 5-446 of this Title governing the giving of notice of hearing of a petition for an order to sell, and appraisal, shall apply and govern an order authorizing an exchange of real estate of a ward or wards by his/her guardian.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-459. Sale of perishable property; report; good faith determination of perish ability

A. Notwithstanding any other provision contained in the Muscogee (Creek) Nation Guardianship Code, a guardian or limited guardian of the property of a ward may sell, at public auction or private sale, without obtaining prior District Court authorization for sale, without filing a return of sale, and without obtaining District Court confirmation of sale, any personal property of the ward which is perishable, is otherwise likely to depreciate in value, or would cause the estate of the ward to incur loss or expense if kept. Title to such property shall pass to the purchaser thereof without approval of or confirmation by the District Court of such sale.

B. With respect to a limited guardian of the property, this section shall apply only to property of the ward which is subject to such limited guardian's control pursuant to a dispositional order.

C. Any sale of property made by a guardian or limited guardian of the property of a ward pursuant to this section shall be reported in the accounting next filed by such guardian or limited guardian after the making of the sale. If the District Court determines the property sold was not perishable or was not otherwise likely to depreciate in value and would not have caused the estate of the ward to incur loss or expense if kept, the guardian or limited guardian who made such sale shall not be surcharged or otherwise held liable with respect to such sale if he made a reasonable determination in good faith that the property sold was perishable, was otherwise likely to depreciate in value, or would have caused the estate of the ward to incur loss or expense if kept.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

§ 5-460. Former leases legalized

All such leases and grants of mineral oil and gas heretofore made and confirmed by the District Court, in consideration of a royalty, part or portion of the production thereof, are hereby legalized.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Indians ☞194.
Westlaw Topic No. 209.
C.J.S. Indians §§ 118 to 121.

§ 5-461. Removal of guardians

A guardian may be removed by the District Court for any of the following causes:

1. For abuse of his/her fiduciary responsibility.
2. For continued failure to perform his/her duties.
3. For incapacity to perform his/her duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his/her duties.
6. If the instrument in which the person was nominated as guardian is judicially determined to be invalid.
7. In the case of guardian of the property, for insolvency.
8. When it is no longer proper that the ward should be under guardianship.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞25.	C.J.S. Guardian and Ward §§ 45 to 48, 50.
Indians ☞126.	C.J.S. Indians §§ 46 to 50, 53.
Mental Health ☞174.	C.J.S. Mental Health §§ 169 to 173.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-462. Suspension of power of guardian; marriage of incapacitated or partially incapacitated person

- A. The power of a guardian is suspended only:
1. By order of the District Court;
 2. If the appointment was made solely because of the ward's minority, by his/her obtaining majority; or
 3. The guardianship over the person only of a minor ward, by the marriage of the ward;
 4. The person in question is emancipated.
- B. Whenever a person who has been found by the District Court to be an incapacitated or partially incapacitated person marries, the District Court may, upon application of an interested person, hold a review hearing to determine whether:

1. The guardianship should be terminated;
2. A successor guardian should be appointed;
3. The limitations on the ward, or the powers and duties of the guardian; or
4. The guardian should be continued unchanged.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞21.	C.J.S. Guardian and Ward § 40.
Indians ☞126, 533.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.
Mental Health ☞167, 179.	C.J.S. Mental Health §§ 167 to 168, 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-463. Termination of authority and responsibility of guardian; removal; resignation; final account; notice and hearing

A. The authority and responsibility of guardian terminates upon the death of the guardian, or the ward, the determination of incapacity of the guardian, or upon removal or resignation of the guardian. Termination does not affect the liability of a guardian for prior acts or the obligation to account for any funds and assets of the ward under the control of the guardian. The authority and responsibility of a guardian of a minor also terminates upon the marriage, emancipation, or majority of the ward.

B. The District Court, after notice and hearing, may remove a guardian for cause if the guardian fails for thirty (30) days, after he/she is required to do so, to render an account or make a report, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto.

C. Every guardian may resign when it appears proper to allow the same and upon the resignation or removal of a guardian the District Court may appoint a successor guardian in the place of the guardian who has resigned or has been removed or make other appropriate orders pursuant to the provisions of the Muskogee (Creek) Nation Guardianship Code.

D. Upon termination of the disability of the ward or upon his/her death, or upon the resignation or removal of the guardian, a guardian or the guardian's personal representative, or if the guardian is incapacitated or deceased and there is no personal representative, then some suitable person appointed by the District Court shall file the guardian's final account and request for final compensation with the District Court within thirty (30) days after such event.

1. The District Court shall set the final account for hearing on a date not less than fifteen (15) days after the filing thereof. Notice of such hearing shall be given at least ten (10) days prior to the date set for hearing, by mailing a copy of the notice of hearing by first class mail:

a. if the guardianship was established for a minor or a minor's estate, to the persons entitled to notice pursuant to Section 5-201 of this Title if the ward is still a minor, or to the ward only if the ward has attained majority, is emancipated, or has married, or if the ward is deceased, to the persons entitled to notice pursuant to Section 5-201 of this Title and to the personal representative of the ward's estate if such representative has been appointed and the

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representative's appointment is known to or ascertainable by reasonably diligent efforts of the person rendering the final account; or

b. if the guardianship was established for an adult or an adult's estate, unless the ward is deceased, and paragraphs 2, 3 and 7 of subsection A of Section 5–310 of this Title and, if the ward is deceased, to the personal representative of the ward's estate if such representative has been appointed and the representative's appointment is known to or ascertainable by reasonably diligent efforts of the person rendering the final account.

2. Any person to whom notice is given in accordance with this subsection may appear at the hearing on the final account and file his/her exceptions in writing to the final account and contest the same.

3. The settlement of the account and the allowance thereof by the District Court shall be conclusive against all persons interested in the estate of the ward, except as to persons subject to a legal disability at the time the notice of hearing is given.

4. Upon approval of the final account, the guardian and his/her sureties, if any, shall be discharged.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞21 to 26.

Indians ☞126.

Mental Health ☞167 to 174.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 36 to 38, 40 to 42, 45 to 48, 50.

C.J.S. Indians §§ 46 to 50, 53.

C.J.S. Mental Health §§ 167 to 173, 180 to 182.

§ 5–464. Termination of guardianship when unnecessary

The guardian of an incapacitated or partially incapacitated person or minor may be discharged by the District Court when it appears to the District Court, on the application of the ward or otherwise, that the guardianship is no longer necessary.

[Added by NCA 05–215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞18.

Indians ☞126, 133.

Mental Health ☞167.

Westlaw Topic Nos. 196, 209, 257A.

C.J.S. Guardian and Ward §§ 23, 50.

C.J.S. Indians §§ 46 to 50, 53, 150.

C.J.S. Mental Health §§ 167 to 168.

§ 5–465. Civil liability of guardians or petitioners; damages

A. Any guardian who willfully violates the duties or willfully misuses the powers assigned by the District Court and thereby causes injury to the ward or damages to the financial resources of the ward shall, in addition to any criminal penalties, be liable in a civil action for any actual damages suffered by the ward. Nothing in this subsection shall limit the authority of the District Court to surcharge a guardian as otherwise provided by law.

B. Any person who willfully or maliciously files a false petition or application pursuant to the provisions of this act or a petition or application without a

reasonable basis in fact for such a petition pursuant to the provisions of the Muscogee (Creek) Nation Guardianship Code shall be liable in a civil suit for any actual damages suffered by the subject of the petition or application.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞64.	C.J.S. Guardian and Ward § 97.
Indians ☞126, 133, 535.	C.J.S. Indians §§ 46 to 50, 53, 150 to 179.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-466. Citation for concealment or embezzlement

Upon complaint made to the District Court by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against anyone suspected of having concealed, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the ward or to his/her estate, the District Court may require such suspected person to appear before the District Court, and may examine and proceed with such person on such charge in the manner provided by law with respect to persons suspected of, and charged with, concealing or embezzling the effects of a decedent.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

Library References

Guardian and Ward ☞64.	C.J.S. Guardian and Ward § 97.
Indians ☞126, 133, 519.	C.J.S. Indians §§ 46 to 50, 53, 150 to 179.
Mental Health ☞179.	C.J.S. Mental Health §§ 176 to 179.
Westlaw Topic Nos. 196, 209, 257A.	

§ 5-467. Reporting of abuse, neglect, or exploitation; violation and penalty; civil liability

A. Any person having reasonable cause to believe that an incapacitated person, a partially incapacitated person, or a minor is suffering from abuse, neglect, or exploitation shall make a report to Children and Family Services, the office of the Attorney General, or the Lighthorse Police Department as soon as such person is aware of the situation.

1. With regard to minors, the use of ordinary force as a means of discipline shall not constitute abuse.

2. Reports regarding the abuse, neglect, or exploitation of an incapacitated person or a partially incapacitated person shall be made and shall be governed by the provisions of the Protective Services for Vulnerable Adults Act¹. Reports regarding the abuse, neglect, or exploitation of a minor shall be made and shall be governed by the Muscogee (Creek) Nation Child Abuse Reporting and Prevention Act¹.

B. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

C. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have

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immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

D. Any person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section shall be civilly liable for any actual damages suffered by the person or persons being reported and for any punitive damages set by the District Court or jury which may be allowed in the discretion of the District Court or jury.

E. No employer shall terminate the employment, prevent or impair the practice or occupation of, or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the provisions of this section.

[Added by NCA 05-215, § 2, approved Nov. 22, 2005.]

¹ So in original.

Historical and Statutory Notes

NCA 07-327, § 4 provides:

“Sovereign Immunity. Nothing in the Act shall abrogate or otherwise waive the sovereign immunity of the Muscogee (Creek) Nation.”

Library References

Guardian and Ward ⇌29.
Indians ⇌126, 133.
Infants ⇌13.5.
Mental Health ⇌179.
Westlaw Topic Nos. 196, 209, 211, 257A.

C.J.S. Guardian and Ward §§ 51 to 55.
C.J.S. Indians §§ 46 to 50, 53, 150.
C.J.S. Infants §§ 116 to 117.
C.J.S. Mental Health §§ 176 to 179.

CHAPTER 6. MUSCOGEE (CREEK) NATION CHILD SUPPORT ENFORCEMENT CODE

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§ 6-101. Title and codification

This Act shall be entitled the Muscogee (Creek) Nation Child Support Enforcement Code and shall be codified as Chapter 6 in Title 6, Children and Family Relations, of the Code of Laws of the Muscogee (Creek) Nation.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-102. Findings

The Muscogee (Creek) National Council finds that:

- A. Child support is a basic legal right of the Indian parents and children.
- B. Child support payments have a substantial impact on Indian child poverty and welfare expenditures.
- C. The Muscogee (Creek) Nation has a duty to ensure that children are cared for by their parents and that parents provide the support needed to their children.
- D. Parents have a legal obligation to provide financial support for their children.
- E. The Muscogee (Creek) Nation needs to establish child support standards which shall provide guidance to parties seeking child support, and encourage the payment of child support to decrease overall costs to the Indian citizens while increasing the amount of financial support collected for Indian children.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-103. Purpose

The purpose of this Act is to establish within the Department of Justice a Tribal IV-D agency, the Muscogee (Creek) Nation Office of Child Support Enforcement, and to establish procedures for the location of parents (custodial or non-custodial), and the establishment, modification and enforcement of child support obligations.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ↻137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-104. Definitions

All terms used in this chapter shall be defined as listed in Chapter 1, § 1-102¹ of this Title, unless defined below:

A. “Absent parent or obligor” means the parent of a child(ren) either during the marriage or outside of marriage who is not providing the custodial parent with child support for the benefit of the child(ren) or who is bound by court order to pay a child support obligation.

B. “Alleged father” means a man whose relation to a child has not been legally established, but who has been named as the father by the child’s mother, or is subject to a presumption of paternity.

C. “Arrearage” means the total unpaid child support obligation owed by a parent or obligor who is required by court order to pay support.

D. “Assignment of rights” means a document signed by a recipient of Temporary Aid for Needy Families (TANF) benefits assigning child, spousal and medical support to the Tribal or state IV-D office.

E. “Assignment of support obligation” means, unless otherwise specified, any support obligation which has been assigned to the Tribe or state under 45 CFR 232.11 or 42 U.S.C. § 471(a)(17) of the federal Social Security Act, or any medical support obligation or payment for medical care from any third party which has been assigned to the Tribe or state under 45 U.S.C. § 433.146.³

F. “Child” means any unmarried person under the age of twenty (20) years and a full-time student entitled to child support.

G. “Child support” means the financial obligation a parent has towards his/her child(ren), whether such obligation is established through judicial or administrative process, by stipulation of the parent or by parentage of any child(ren); the financial obligation of a parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the court.

H. “Child support guidelines” means a standard method of setting child support obligations based on the income of the parent(s) and other factors as determined by law.

I. “Child support rights” means the rights of a custodial parent to receive child support from an absent parent or obligor as determined under the laws of the Muscogee (Creek) Nation or comparable laws of any other jurisdiction or territory.

J. “Children of the parties” shall mean the natural and/or adopted children of the parties to an action for child support, but shall not include the natural and/or adopted child(ren) of only one of the parents.

K. “Court” means the District Court of the Muscogee (Creek) Nation or a court of another state or territory having jurisdiction to determine a parent’s liability for child support.

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L. “CSE” means the Muscogee (Creek) Nation Office of Child Support Enforcement.

M. “Custodial parent or obligee” means the parent with legal custody of the child(ren) pursuant to a court order, or who exercises physical custody of the child(ren) on the basis of an agreement between the parents; in the absence of a parent the term shall also include a guardian or custodian appointed by a court of competent jurisdiction.

N. “District Court” means the District Court of the Muscogee (Creek) Nation.

O. “Garnishment” means the process whereby an order is directed to an employer, bank or agent, holding monies or property of an absent parent or obligor, to make payments or deliver property to satisfy a child support obligation in accordance with the order.

P. “Gross income” means income from any source, including but not limited to salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, interest, trust income, annuities, capital gains, unemployment compensation, worker’s compensation, disability insurance benefits, tips, gifts, prizes, royalties and alimony; it includes in-kind and non-cash income, calculated at reasonable market value.

Q. “Immediate income assignment” means a provision in a child support order which directs the obligor to assign a portion of the monies, income or periodic earnings due and owing by the obligor to the person entitled to support or to another person designated by the child support order or assignment for payment of support, arrearage or both; the income withholding order shall be in an amount which is sufficient to meet the periodic child support arrearage or other maintenance payments or both imposed by the court or administrative order.

R. “Income tax refund interception” means the remedy whereby any income tax refund of an absent parent or obligor shall be intercepted directly by the United States, a state, the Muscogee (Creek) Nation or other Indian Tribe or nation, for the payment of public and/or child support debt.

S. “Joint custody” shall mean a custody arrangement whereby each parent provides a suitable home for the child(ren) of the parties, when the child(ren) spend fifty percent (50%) of the year in each home and the parent significantly share the duties, responsibilities and expenses of parenting.

T. “Public assignment of support rights” means the assignment of child support rights by the custodial parent to the Muscogee (Creek) Nation or any state or Tribal IV-D agency; such assignment may be in connection with the payment of benefits under a Temporary Aid to Needy Families (TANF) state or Tribal program as a consequence of the failure of an absent parent to provide child support.

U. “State” means a state of the United States, the District Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country as defined in 18 U.S.C. § 1151.

V. “State lottery and Indian gaming winnings” means any and all monies and/or goods or Tribal services which are awarded to an individual as a consequence of a state, Indian Nation and/or Tribal gaming operation.

W. “TANF” means Temporary Aid to Needy Families² which is a federal program that provides temporary assistance to families in need. Services may be provided by a Tribal or state IV-D program.

X. “Voluntary income assignment” means a voluntary written assignment of earned wages which is submitted by an employee to an employer, authorizing the employer to pay the earned wages of the employee to or for the benefit of a child.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

¹ See Title 6, § 1-102 et seq.

² 42 U.S.C.A. §§ 601 et seq.

³ So in original; the sections cited do not exist.

§ 6-105. Establishment of the Muscogee (Creek) Nation Office of Child Support Enforcement

The Muscogee (Creek) Nation Office of Child Support Enforcement is hereby established as a division within the Department of Justice and under the direction of the Office of the Attorney General.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞ 137, 210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 152.

§ 6-106. CSE staff

A. Director/Managing Attorney. CSE shall be under the direction and control of the Director/Managing Attorney, who shall answer to the Attorney General of the Nation and who shall have the minimum qualifications and duties set forth in subsections B and C of this section.

B. Director/Managing Attorney-Qualifications. The qualifications for the Director/Managing Attorney shall be:

1. Possess a juris doctorate from an accredited law school and be a member in good standing of the Oklahoma Bar Association and the Muscogee (Creek) Nation Bar Association with preference given to those full citizens of the Muscogee (Creek) Nation.

2. Have a familiarity with Tribal, state and federal child support laws, regulations and policies and possess a minimum of five (5) years experience in the practice of law, preferably in the area of divorce, child support and child custody.

C. Director/Managing Attorney Duties. The duties of the Director/Managing Attorney shall be:

1. Supervise and assist in all areas of program design and implementation for the Office of Child Support Enforcement.

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2. Create, hire, supervise, oversee and direct personnel and support staff within CSE including the positions of attorney, investigator, case manager, law clerk, financial specialist, child support specialist, accountant, and administrative assistant and those other positions necessary for the operation of the child support enforcement program.

3. Ensure that all office and staff activities are in compliance with Tribal and federal child support enforcement laws, rules, regulations and agencies policies. Develop and maintain a liaison with client agencies, local district attorney offices, and other Tribal and state child support agencies.

4. Coordinate, plan and maintain the CSE budget.

5. Represent Tribes, state agencies and custodial parents as a legal advocate.

6. Represent CSE at meetings, conferences, and various public events.

7. Serve on appropriate policy and decision making bodies, boards, committees and planning teams on the local, Tribal and state level to influence the establishment of programs to help improve the quality of life for Native American children and families.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72, 152.

§ 6–107. Venue

The venue for actions establishing, modifying and/or enforcing child support orders shall be the Muscogee (Creek) Nation District Court located in Okmulgee County, Oklahoma.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6–108. Jurisdiction

A. Jurisdiction shall be according to the provisions established in Chapter 1 of Title 27 of the Muscogee (Creek) Nation Code Annotated.

B. To further the best interests of Indian children, the District Court shall have jurisdiction over all parties involved in an action to establish paternity, establish, modify and enforce child support orders, if the child is a citizen of a federally recognized Indian Tribe or is eligible for citizenship in said Indian Tribe and is residing within the territorial boundaries of the Nation.

C. The District Court may exercise personal jurisdiction over a person, whether or not a resident of the Muscogee (Creek) Nation, who is a party to a paternity action.

D. When a person who is subject to the jurisdiction of the Court has departed from the Muscogee (Creek) Nation territorial boundaries, he or she may be served outside of the Muscogee (Creek) Nation by any method that is authorized by the statutes of the Muscogee (Creek) Nation and/or the state of residence.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 501.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-109. Recognition of child support orders

A. If one or more child support orders have been issued with regard to an obligor and a child(ren), a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

1. If only one court has issued a child support order, the order of that court must be recognized;

2. If two or more courts have issued child support orders for the same obligor and child(ren), and only one of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized;

3. If two or more courts have issued child support orders for the same obligor and child(ren), and more than one of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the State of residence of the child(ren) must be recognized, but if an order has not been issued in the state of residence of the child(ren), the order most recently issued must be recognized;

4. If two or more courts have issued child support orders for the same obligor and child(ren), and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized;

5. The court shall apply the law of the state of the court that issued the recognized order.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 531, 539.
Judgment ☞832.5.
Westlaw Topic Nos. 209, 228.

C.J.S. Indians §§ 151 to 179.
C.J.S. Judgments § 1314.

§ 6-110. Muscogee (Creek) Nation Office of Child Support Enforcement

A. The Muscogee (Creek) Nation Office of Child Support Enforcement (CSE) is authorized to perform the services and functions included in this and other sections. CSE is authorized to function in accordance with § 455(f) of the Social Security Act¹, implemented by 45 CFR Part 309, 310. CSE shall

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assist Indian children in the establishment, modification and enforcement of child support orders, establishment of paternity and location of parents. Such authority shall:

1. Provide child support collection services, parent location services and paternity determination services;

2. Initiate legal actions to implement the provisions of this act;

3. Request Tribal agencies and political subdivisions of state, county or municipal governments to assist in the location of absent parent(s) or obligor(s) and/or their assets by searching their records for names and addresses;

4. Request information from any state agency, political subdivision of a state, person, sole proprietorship, company, corporation, utility, partnership, association or any other organization to be used by CSE for child support enforcement purposes when CSE has reason to believe that an individual is not providing for his/her child(ren).

B. CSE shall act as a referee to determine child support pursuant to guidelines established in Sections 6-118 and 6-122 of this title.

C. CSE may institute child support collection cases in the name of the Muscogee (Creek) Nation on behalf of any custodial parent or obligee for whom CSE is collecting child support obligations.

D. CSE shall be exempt from the filing fees of the Court in matters pertaining to the official functions and duties of CSE.

E. CSE shall have the authority to report the names and social security numbers of absent parents or obligors and the amounts of unpaid public and/or support debt to credit reporting bureaus, driver license and recreational licensing agencies and professional licensing agencies and boards.

F. CSE shall have the power to establish or modify the fee schedule required on the establishment and enforcement of public debt and child support, including application fees, filing fees and any other fees associated with the process.

G. CSE shall have the power to utilize funds which it collects pursuant to this Act, provided, that state and federal funds shall not be supplanted by fees collected by CSE.

H. CSE shall have subpoena power to obtain the names, addresses, employment information and any other necessary data to be used for child support enforcement purposes.

I. CSE shall have the power to negotiate and enter into cooperative agreements and other contracts necessary to implement the provisions of this Act.

J. Attorneys and advocates employed by CSE for the establishment of paternity and to establish, enforce, and collect a child support obligation or attorneys acting for CSE through an agreement, may not represent the Nation or state in administrative or civil actions involving the same parties. CSE attorneys and advocates represent the Nation and not the interests of any other party.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

¹ 42 U.S.C.A. § 655(f).

Library References

Indians ☞ 137, 210.
Westlaw Topic No. 209.
C.J.S. Indians §§ 57 to 59, 66 to 72, 152.

§ 6-111. CSE services

A. Locate individuals. CSE shall assist custodial parent(s) or guardian(s) as well as state or other Tribal IV-D agencies requesting assistance by using local, state and federal resources in locating parents (custodial or non-custodial) and/or obligors, and their sources of income and assets, who have a financial obligation to support their child(ren) and are absent from the home.

B. Establish paternity. CSE shall establish paternity upon request of a parent, in accordance with Chapter 7 of this Title, when paternity has not been legally established.

C. Establish child support. CSE shall establish child support in accordance with those provisions as set forth in this chapter through court actions during proceedings for dissolution of marriage, paternity or guardianship.

D. Enforcement of child support orders. CSE shall enforce child support orders of the Nation, or other Indian tribes and states in accordance with this chapter.

E. Modification of Child Support Orders. CSE in accordance with this act is authorized to review and modify child support orders to comply with the provisions of this chapter.

1. Modification may be requested if there is an increase or decrease of 15% in the combined gross income used to determined child support;

2. Not less than once every three (3) years, CSE shall notify each parent subject to a child support order of their right to a review of the order;

3. At the request of the custodial, non-custodial parent or guardian who is not receiving public or Tribal assistance, whose order has not been modified within three (3) years;

4. Whether a request for review is made by a parent, guardian or CSE, all parties should receive written notice of CSE's intent to review for possible modification prior to the commencement of the review. Said notice should advise the parent of the procedures and standards for review and inform them of their right to object via a hearing to any proposed changes.

F. Collection and Distribution of Child Support. CSE shall provide for the collection and distribution of child support in accordance with the provisions in this chapter.

G. Notice of Support Collected. CSE shall provide an Annual notice of Support Collected to families receiving services during the prior year. Said Notice shall state the amount of child support collected itemized by month of collection. In addition, a Notice of Child Support Collected must be provided at any time upon request by either the custodial or non-custodial parent.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇌137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-112. Public assignment of child support rights

A. A public assignment of child support rights constitutes an obligation owed by the absent parent or obligor to the Nation or any state or Tribal IV-D agency. If requested by CSE, the custodial parent shall:

1. Assign all rights for child support to the Nation or state or other Tribal agency if the family is currently receiving or formerly received assistance from a TANF program and CSE has received a request for assistance in collecting support on behalf of the family from a state or other Tribal IV-D agency;

2. A custodial parent who fails to cooperate with CSE shall be sanctioned according to the provisions of the Tribal or state agency that issued the benefits. CSE shall notify the agency of the recipient's failure to cooperate. CSE reserves the right to close the case.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇌137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-113. Assignment of rights and collection of support payments by the IV-D agency

A. In any case in which support payments are collected for a recipient of aid under the Tribe's or state's IV-A plan in which an assignment is effective, such payments shall be made to the IV-D agency and shall not be paid directly to the family.

B. The assignment must include at a minimum:

1. the name, address, date of birth and Social Security Number of the recipient of the TANF benefits;

2. the name, date of birth, Social Security Number(s) of the child(ren) for whom benefits are paid;

3. the name, address, date of birth, Social Security Number and employment of the obligor or absent parent;

4. the date and amount of the last support payment received;

5. the relationship of the child(ren) to the recipient of the TANF benefit;

6. the relationship of the child(ren) to the obligor; and

7. the signature of the recipient and the date the assignment of rights was signed.

C. A copy of the assignment may be filed with the Court and served upon an absent parent or obligor at any time a petition or complaint has been filed with the Court.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-114. Notice of assignment of child support rights

A. When the Nation, any state or Tribal IV-D agency has received an assignment of child support rights, CSE may issue a Notice of Public Assignment of Child Support Rights. The notice and a copy of the assignment shall be sent to the parents and any applicable employer. The notice shall include:

1. A statement providing the name(s) of the child(ren) for whom an obligation is alleged and for whom child support is being sought, and the name of the custodial parent;
2. A statement of the child support obligation accrued, and a demand for immediate payment, for those cases wherein a court or administrative order has established the child support obligation;
3. A statement of the child support obligation which CSE has determined to be appropriate and in accordance with the provisions of this act.
4. A statement from the alleged father that he disagrees with the claim of his paternity of the child(ren), or that the absent parent or obligor disagrees with the amount of the child support obligation or the periodic payment required thereon, each must file with CSE a written answer, and request for hearing, within thirty (30) days of service, and CSE shall immediately transmit the written answer and request for hearing to the Court;
5. A statement that if no timely written answer is received, the Court shall enter an order in accordance with the Notice of Administrative Assignment of Child Support Rights;
6. A statement that upon issuance of a court order the absent parent's or obligor's property without further notice or hearing, will be subject to collection action, including but not limited to wage execution, garnishment, income tax refund interception, attachment and execution on real property held in fee simple, whether located within or outside the boundaries of the Nation and personal property wheresoever located;
7. A statement that the absent parent or obligor is responsible for notifying CSE of any change of address or employment;
8. A statement of all fees associated with the child support enforcement process which may be charged against the absent parent or obligor;
9. A statement indicating that the entry of default against the absent parent or obligor will result in an order being entered, and the absent parent or obligor without further notice or hearing, will be subject to collection action;
10. Any other information as CSE deems appropriate.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137. Westlaw Topic No. 209.

C.J.S. Indians § 152.

§ 6-115. Income shared model

The Muscogee (Creek) Nation Office of Child Support Enforcement Guidelines are based on the income shared model. The income shared model is predicated on the concept that the child(ren) should receive the same proportion of parental income that he/she would have received if the parents lived together. A basic child support obligation is computed based on the combined income of the parents (replicating total income in an intact household).

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇌137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-116. Use of child support guidelines

In any action to establish or modify child support, the child support guidelines as set forth in this act shall be applied to determine the amount of child support due and there shall be a rebuttable presumption for the award, that the amount of the award which would result from the application of the child support guidelines is the correct amount of child support to be awarded. The Court may deviate from the amount of child support if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved. If the Court deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact support such action. The child support guidelines shall be used for temporary and permanent orders, separations, dissolutions and support decrees arising despite non-marriage of the parties. The child support guidelines shall be used by the Court as the basis for reviewing the adequacy of child support levels in uncontested cases as well as contested hearings.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇌137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-117. Obligation

A. Any child(ren) shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of twenty (20) years or until the child graduates or leaves high school, whichever occurs first. No hearing shall be required to extend such support through the age of twenty (20) if the child is regularly and continuously attending high school.

B. The absent parent's child support obligation shall be established as provided in this chapter, or by a voluntary agreement which meets the requirements of Section 6-118 and Section 6-122 of this act:

1. The obligation shall commence, unless otherwise stated, on the first day of the month following the court order which established the amount of the child support payment;

2. The amount of the child support obligation shall be the amount set in the order;

3. Until an court order is entered, the amount of the child support obligation shall be presumed to be the amount determined in writing by CSE and shall be in accordance with the child support guidelines.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇄137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-118. Determination of child support amount

To establish or modify child support, the child support guidelines as set forth herein shall be the basis for determining the amount of child support due.

A. For purposes of this section and in determining child support, the non-custodial parent shall be designated the obligor and the custodial parent shall be designated the obligee.

B. The child support guidelines are as follows:

1. All child support shall be computed as a percentage of the combined gross income of both parents. The child support guideline schedule as provided in Section 6-122 of this Title shall be used for such computation. The child support obligations of each parent shall be computed. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date;

2. a. (1) "Gross income", subject to paragraph 3 of this subsection, includes earned and passive income from any source, except as excluded in this section.

(2) "Earned income" is defined as income received from labor, or the sale of goods or services and includes, but is not limited to, income from salaries, wages, commissions, bonuses, and severance pay.

(3) "Passive income" is defined as all other income and includes, but is not limited to, income from dividends, pensions, rent, interest income, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, gifts, prizes and royalties.

b. Specifically excluded from gross income are (1) actual child support received for children not before the Court, and (2) benefits received from means-tested public assistance programs including, but not limited to:

- (1) Temporary Assistance for Needy Families (TANF)
- (2) Supplemental Security Income (SSI)
- (3) Food stamps and
- (4) General Assistance and State Supplemental Payments for Aged, Blind and the Disabled

3. a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations.

b. Specifically excluded from ordinary and necessary expenses for purposes of this paragraph are amounts determined by the Court to be inappropriate for determining gross income for calculating child support.

c. The Court shall carefully review income available to the parent to satisfy a child support obligation.

d. The court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.

e. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may be but are not limited to a company car, free housing, or reimbursed meals.

4. a. For purposes of computing gross income of the parents, the Court shall include for each parent, whichever is most equitable, either:

(1) all earned and passive monthly income,

(2) all passive income, and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable,

(3) the average of the gross monthly income for the time actually employed during the previous three (3) years, or

(4) the minimum wage paid for a forty-hour work week.

b. If equitable, the Court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn.

c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

5. The amount of any preexisting court order for current child support for child(ren) not before the Court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under the order;

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income to the extent payment of the debt is actually made. In any case where deduction for debt service is made, the Court may provide for prospective upward adjustments of support made possible by the reasonably anticipated reduction or elimination of any debt service;

7. The results of paragraphs 2, 3, 4, 5, and 6 of this subsection shall be denominated adjusted gross income.

8. In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the child support guideline schedule consulted for the total combined base monthly obligation for child support.

9. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

10. a. The actual medical and dental insurance premium for the child(ren) shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child(ren) before the Court, only that portion of the premium attributed to the child(ren) before the Court shall be allocated and added to the base child support obligation.

b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.

c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation.

11. a. The court shall determine the actual child care expenses reasonably necessary to enable either or both parents to:

- (1) be employed
- (2) seek employment or
- (3) attend school or training to enhance employment income.

b. The actual child care costs incurred for the purposes authorized by this paragraph shall be allocated and paid monthly in the same proportion as base child support.

c. The Court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the Court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this paragraph.

d. If the Court determines that it will not cause detriment to the child(ren) or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time.

12. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child(ren) incurred by either parent and not reimbursed by insurance may be allocated in

the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense.

13. Under special circumstances custodial and non-custodial parents may mutually agree to in-kind support; and when the Court deems appropriate, the court may allow part of the child support obligation to be paid with in-kind contributions and/or services. The in-kind support may include monetary or appropriate goods contribution for the child's cultural and traditional practices. If the Court so orders, all or a portion of the current child support obligation to be met with in-kind contributions, the Court shall first assign a fair market value to the in-kind contributions and/or services and apply that amount to the current obligation owed. In-kind contributions and/or services shall not be permitted to satisfy assigned support obligations or child support in arrears. [Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6–119. Rebuttable presumption for award of child support

Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded. The Court may deviate from the level of child support suggested by these guidelines where the amount of support so indicated is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of any child involved.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6–120. Review of child support orders; compliance with child support guidelines; disclosure of financial status

A. Review of child support orders. In all cases in which child support services are being provided under the Nation's child support guidelines as provided for in this chapter, CSE shall conduct a review upon the request of any party of its own decision. All procedures for reviews will be conducted pursuant to rules promulgated by CSE. Prior to such review, all parties shall receive notice of the review as provided by law.

B. Compliance with child support guidelines. If CSE determines that individual awards are not in accordance with the child support guidelines provided for in Section 6–118 and Section 6–122 of this Title, the case shall be

presented to the Court for action. The Court shall review the award to determine its compliance with child support guidelines and order modifications if appropriate.

C. Disclosure of financial status. In a proceeding to establish or modify a child support order, each party shall completely disclose his or her financial status. The parties should be ordered to provide proof of income to CSE within five (5) days of the court order. If a party does not comply with such order, then all income alleged by the custodial parent shall be accepted as true.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-121. Health insurance and day care expenses

A. In all cases where child support is ordered, such order may provide for health insurance and other out-of-pocket medical costs of the child(ren), and for employment-related day care expenses.

B. The child support obligation shall be determined pursuant to the guidelines established in Section 6-118 and Section 6-122 of this Title and medical costs or day care expenses shall be determined pursuant to Section 6-118, paragraphs 10 and 11 of this Title.

C. If the Court orders the payment of retroactive medical support the Court must use the guidelines established in Section 6-118 and Section 6-122 but may take into consideration the obligor's ability to pay, or justify the deviation from the application of the guidelines pursuant to Section 6-116 and Section 6-119.

D. CSE shall notify the parent's employer to enroll the child(ren) in the health care coverage available under the employer's plan. The employer shall comply with the court order or be fined up to two hundred dollars (\$200.00) for each month of noncompliance.

E. An employer may not be fined under this section if an employee fails to contribute his or her portion of a health insurance premium.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-122. Computation of child support obligations

Child support shall be computed in accordance with the Oklahoma child support guidelines.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Title 6, § 6–122

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Library References

Child Support ☞146.
Indians ☞137.
Westlaw Topic Nos. 76E, 209.

C.J.S. Indians § 152.
C.J.S. Parent and Child § 224.

§ 6–123. National Council review of child support guidelines

The guidelines shall be reviewed at least once every four (4) years by the National Council to ensure that the amounts provided for in the guidelines are adequate for the care and support of children within the Muscogee (Creek) Nation.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6–124. Child support computation form and other standard forms

A. A child support computation form shall be signed by the Judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. When services are not being provided through an order obtained by CSE, a child support order summary form shall be prepared and filed with all orders which establish paternity or establish or modify support orders. For orders established or modified in Court a standard modification form shall be used and the Court Clerk shall forward a copy of the support order summary form to CSE and the order shall be included in the Muscogee (Creek) Nation, MCN Case Registry.

C. A standard agreed order form shall be used by all parents for any agreement submitted to the Court for approval as a part of the enforceable voluntary agreement process provided in Section 6–146 of this chapter.

D. The forms shall be prepared by the Office of Child Support Enforcement of the Muscogee (Creek) Nation and shall be published by the Court Clerk of the District Court of the Muscogee (Creek) Nation.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6–125. Lien for arrearage in child support payments

A. An arrearage in payment of child support reduced to a court order of any past due payment or installment of child support that is a judgment and lien by operation of law may be a lien against the real and personal property of the person ordered to make the support payments.

B. Past due amounts of child support shall become a lien upon the real and personal property of the person ordered to make the payments at the time they

become past due. Past due child support which became due prior to the implementation of the MCN Case Registry shall also be a lien upon real and personal property if the obligor has been given notice and opportunity to contest the amount past due.

C. A certified copy of the judgment or order providing for the payment of an arrearage of child support or, subject to the provisions of subsection B of this section, a certified copy of a judgment or order providing for payment of child support pursuant to which a past due amount has accrued may be filed with the county clerk of the county where real property owned by the person obligated to pay support is situated and shall, from the time it is filed of record, become a lien upon the real property, or upon any real property which may be acquired by the person prior to the release of the lien, for the amount of the arrearage. The amount reflected in the official records of that agency shall constitute the amount of the lien on the obligor's property. The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable. A child support judgment shall become dormant as a lien upon real property five (5) years from the date the judgment is filed of record with the Court Clerk unless execution is issued and filed with the court clerk within five (5) years from the date the judgment is determined or last execution on the judgment is issued as required by law.

D. A judgment providing for the payment of an arrearage of child support or pursuant to which a past due amount has accrued shall become a lien upon benefits payable as a lump sum received from a workers' compensation claim of the person ordered to pay the support upon the filing of an affidavit and a certified copy of the judgment or order with the Administrator of the Workers' Compensation Court if a proceeding for compensation under the Workers' Compensation Act has been initiated by or on behalf of the obligor. If a proceeding for compensation has not been initiated, an affidavit and certified copy of the judgment or order shall be served by certified mail upon the entity responsible for paying workers compensation benefits to the absent parent or obligor ordered to pay child support.

E. The provisions of this section shall be available to a state or Tribal agency seeking to enforce a judgment for child support.

F. The provisions of this section shall not authorize a sale of any property to enforce a lien which is otherwise exempted by Nation or state law.

G. A lien shall be released upon full payment of the amount of the arrearage.

H. The person entitled to support or CSE on behalf of its clients and recipients is authorized to enforce the liens created pursuant to this section and to execute releases or partial releases of the liens.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇄137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-126. Payment of child support; MCN Case Registry

A. The Court may order child support payments to be made directly to the custodial parent, organization or institution having care and custody of the child(ren) or to CSE /the MCN Case Registry.

B. CSE shall have the authority to negotiate a lump sum payment of child support arrearages and interest due thereon. Consent of the payee and approval of the Court shall be required.

C. CSE shall maintain a case registry on all Title IV-D cases and all child support orders established or modified by CSE. Title IV-D cases are cases in which child support services are being provided by the Muscogee (Creek) Nation's Office of Child Support Enforcement.

D. All orders entered which establish paternity or establish, modify or enforce a child support obligation shall state:

1. An address of record for service of process in support, visitation and custody actions for all parties and custodians subject to the order;

2. The address of record may be different from the party's or custodian's

3. The address of record is subject to disclosure to a party or custodian upon request to CSE. CSE may refuse to disclose the address and location information if CSE has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child(ren).

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇄137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-127. Mailing of support payments; evidence of support payments; income assignment fee

A. Mailing of support payments. If an order, judgment or decree directs that the payment of child support, temporary support or any similar type of payment be made through CSE, then it shall be the duty of CSE to transmit such payments to the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee, it shall be the duty of the payee to furnish CSE the new address in writing.

B. Evidence of support payments. A report of child support payments with a certificate of authenticity executed by the Court Clerk is admissible into evidence in Court or in an administrative proceeding as self-authenticated.

C. Income assignment fee. A fee of twenty-five dollars (\$25.00) may be charged and collected for any post-decree application to initiate an income assignment in addition to any other fees authorized by law. The person entitled to support is entitled to collect said fees paid pursuant to this subsection from the person obligated to pay support through civil proceedings.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-128. Past due payment or installment of child support to operate as judgment

A. Any payment or installment of child support ordered by the Court by judgment, decree or administrative order is on or after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. Have the full force and effect of any other judgment of the Nation, including the ability to be enforced by any method available under the laws of the Nation to enforce and collect money judgments; and
2. Be entitled to full faith and credit as a judgment in the Nation and any other state.

B. A child support judgment shall not become dormant for any purpose, except that it shall cease to be a lien upon real property five (5) years from the date it is filed of record with the county clerk in the county where the property is located, unless execution is issued and filed within five (5) years from the date the judgment is determined or last execution on the judgment is issued as required by law:

1. Except as otherwise provided by court order, a judgment for past due child support shall be enforceable until paid in full;
2. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. After the implementation of the MCN Case Registry, any amounts determined to be past due by CSE may subsequently be enforced by indirect civil contempt proceedings.

C. An arrearage payment schedule set by a Court or administrative order shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-129. Recording of costs in child support enforcement cases; assessment against nonprevailing party

Costs incurred in a child support enforcement case in which a party is represented by an office operated by or for the benefit of CSE shall be recorded

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by the Court Clerk. The reasonable costs may be assessed by the Court against the non-prevailing party at the conclusion of the proceedings. Court-ordered child support payments and Court-ordered payments of suit moneys shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payment upon which the interest accrues.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-130. Pleadings

Pleadings, motions, answers and other similar actions shall be in compliance with the Court Rules and Procedures as prescribed in Titles 14 and 27 of the Muscogee (Creek) Nation Code of Laws. All pleadings shall be signed by the party or attorney and shall contain the printed name, mailing address and phone number of said person.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 511.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-131. Establishment of temporary orders

A. The Court shall establish temporary support orders in accordance with the child support guidelines. Temporary orders shall terminate when a final judgment is entered which establishes support or when the action is dismissed. A temporary order shall not be retroactively modified, but it may be modified prospectively before final judgment upon motion of an interested party and a showing of facts supporting a modification. Past due child support under the temporary order may be incorporated into a judgment when the final order is established. The Court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order which is filed any time prior to the time the temporary order terminates.

B. In a civil action filed to determine paternity of a minor child, an interested party shall request the Court to enter a temporary order for support of the child pending a final determination of paternity. As in all cases the application for temporary support shall set forth facts to support the application and shall be verified by the party or entity seeking the order. The application and notice shall be served as in other civil cases. The Court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the alleged father, absent parent or obligor.

C. After service of the application and opportunity for hearing, the Court shall enter a temporary order for support if the court finds there is clear and convincing evidence of paternity, including but not limited to:

1. A genetic test which establishes a rebuttable or conclusive presumption of paternity pursuant to this Title;
 2. A notarized written statement acknowledging paternity of the child executed by the putative father;
 3. A presumption of paternity pursuant to the Paternity Determination Code within this Title; or
 4. Other evidence which establishes a high probability of paternity.
- D. CSE may request reimbursement of the legal fees, court cost and other fees as deemed appropriate by the Court.
- E. Any action of the Court arising from the provisions of Title 6 affecting the dissolution of marriage, protection of children from domestic violence or in any other action provided for under the Nation's law, wherein the Court has made a temporary order concerning the care, custody and suitable support or maintenance of the child(ren), CSE shall have the authority to enforce such order as set forth by the Court.
- F. CSE or the Court may establish a temporary child support obligation for minor child(ren) against both parents when:
1. The minor child(ren) is/are made ward(s) of the court as outlined under the Indian Child Welfare Act¹;
 2. When the minor child(ren) are placed in foster care or in the home of a guardian or boarding school.
- G. The Court or CSE may deviate from the child support guidelines in Section 6-122 if it is found to be in the best interest of the children to be reestablished in the home of one or both parents.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

¹ 25 U.S.C.A. § 1901 et seq.

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-132. Enforcement proceedings

- A. Attorneys for CSE may appear or initiate an action brought under this section on behalf of:
1. A recipient of Temporary Assistance for Needy Families; or
 2. A custodial parent not receiving Temporary Assistance for Needy Families, including but not limited to the putative father, upon the request of such person and proper application pursuant to rules and regulations adopted by CSE.
- B. In any proceedings brought under this Act by CSE, the Court may, and unless it is not in the best interest of the child, shall, limit the issues in that proceeding to issues of child support and arrearage, unless issues of custody and visitation are specifically and affirmatively pled by the absent parent.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

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Library References

Indians ⇨137, 507.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6–133. Modification

A. An order issued under authority of the Court may be modified in the following manner:

1. The child support obligation of an absent parent or obligor may, after entry of an order, be modified prospectively upon entry of an order by the Court. No support order may be modified retroactively;

2. Either parent may petition the Court for an order based on a showing of a material change in circumstances requiring the other parent to appear and show cause why the decision previously entered should not be prospectively modified;

3. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning parent on the other parent in the same manner as service in other civil cases;

4. A hearing shall be set not more than thirty (30) days from the date of service;

5. If the Court approves the modification, the order shall become effective from the date signed by the judge or at such later date as deemed appropriate by the Court.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇨137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6–134. Paternity proceedings

Paternity proceedings shall be conducted in conformance with the requirements established in the Paternity Determination Code, Chapter 7 in this Title of the Muscogee (Creek) Nation Code of Laws.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Cross References

Paternity determination, court proceedings, see § 7–302.

Library References

Indians ⇨133, 137.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150, 152.

§ 6–135. Termination of parental rights

Termination of parental rights shall not terminate the duty of a parent to support his/her child, unless so ordered by the Court, or agreed to by the parties and a written agreement is approved by the Court.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞134, 137.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 150, 152.

§ 6-136. Adoption of a child

A. Child support orders entered by the Court shall remain in effect until the Court receives notice that the final decree of adoption has been entered and at such time the adoptive parents are liable for child support. Child support arrearage shall be due and owing until paid in full, unless waived by the Court or waived by a notarized written agreement between the parties and signed by the Court.

B. Parties who adopt a child shall be responsible for the support of a child the same as a biological child.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 138.
 Westlaw Topic No. 209.
 C.J.S. Indians § 152.

§ 6-137. Support of stepchildren

A husband is not legally responsible to maintain his wife's children by a former husband unless he adopted the child(ren); if he receives them into his family and supports them as a parent, the stepfather is not liable to them for child support.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
 Westlaw Topic No. 209.
 C.J.S. Indians § 152.

§ 6-138. Public action for support of deceased parent's child

If a parent chargeable with the support of a child dies, leaving it chargeable upon the Tribe, township or county, and leaving an estate sufficient for its support, CSE may petition the Court for an award of child support pursuant to the provisions of this Title from the parent's estate, and for this purpose may have the same remedies as any creditors against the estate, and against the heirs. Child support owed to a child(ren) shall be paid before any creditors or heirs.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
 Westlaw Topic No. 209.
 C.J.S. Indians § 152.

Title 6, § 6–139

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§ 6–139. Bankruptcy

Current and past due child support owed on behalf of a child is not dischargeable by bankruptcy. Notice of Bankruptcy is to be filed with CSE.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Bankruptcy ⇨3365(13).
Indians ⇨137.
Westlaw Topic Nos. 51, 209.

C.J.S. Bankruptcy § 1075.
C.J.S. Indians § 152.

§ 6–140. Filing pleadings and filing fee with court clerk

The Court Clerk of the District Court may charge any Tribal or state agency or attorneys, except child support enforcement offices operated by the Nation, the usual and customary fee for filing any document with the Court Clerk and may charge the customary fee for making copies of any document.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇨137, 511.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6–141. Judicial review

A. The Supreme Court shall hear appeals.

B. Any party may secure judicial review of a Court order made pursuant to this act by filing an appeal with the Supreme Court within ten (10) days after the decision is filed in the District Court.

C. The appeal to the Supreme Court shall be an appeal to the record established before the District Court and shall be strictly limited to the issues of the paternity of the child(ren), the amount of public debt and child support liability of the absent parent or obligor.

D. The Supreme Court shall not consider questions of facts, which have been determined by the District Court. The Supreme Court may reverse or modify the decision of the District Court if the findings are, as a matter of law:

1. Clearly erroneous in view of the reliable, probative and substantial evidence in the record, when viewed in its entirety; or
2. Arbitrary and capricious or characterized by abuse of discretion.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇨137, 540.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6–142. Docketing orders

A true copy of any order made pursuant to the provisions of this Title may be filed with the Court Clerk. The Court Clerk shall docket the order in the

judgment docket. Upon docketing, the order shall have all the force and effect of a docketed order of the Court, including but not limited to the ability to enforce such an order pursuant to any applicable provisions included in the Code of Laws of the Muscogee (Creek) Nation.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 526, 539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-143. Immediate income assignment and garnishment

A. Every order providing for child support shall include an immediate income assignment pursuant to this Act. Wage execution shall be utilized in all cases wherein an employer of a non-custodial parent, an absent parent or an obligor can be identified.

B. The Court may require the garnishment of earnings to enforce a child support order pursuant to the law of the Muscogee (Creek) Nation in cases wherein an immediate income withholding may not be an available remedy. Any income assignment for child support shall have priority over any prior or subsequent garnishment of the same wages.

C. The Court may make application to the Bureau of Indian Affairs, who administers the Individual Indian Money Account of a defendant who has failed to satisfy a money judgment from the Court, to obtain payment of the judgment from funds in the defendant's account.

D. When an immediate income assignment is issued a copy of the income assignment shall be served on the non-custodial parent, absent parent or obligor in the same manner prescribed in other civil cases. The non-custodial parent, absent parent or obligor may contest the issuance of the income assignment on the basis of a mistake of fact being an error in the amount of current or overdue support or in the identity of the alleged non-custodial parent. The Court shall set a hearing date within 30 days from the date of filing a petition to contest the income assignment.

E. If an employer fails to withhold wages in accordance with the provisions of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the non-custodial parent, absent parent, or obligor.

F. An employer who discharges a non-custodial parent, absent parent or obligor from employment, refuses to employ, or takes disciplinary action against any non-custodial parent, absent parent or obligor because of the withholding shall be subject to a fine to be determined by the Court.

G. Income shall not be subject to withholding if either the custodial parent or the non-custodial parent demonstrates, and the Court enters a finding that there is good cause not to require income withholding; or a signed written agreement is reached between the non-custodial parent and custodial parent,

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which provides for an alternative arrangement, and is reviewed and entered into the record of the Court.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-144. Voluntary income assignments

A. An absent parent or obligor may execute a voluntary income assignment that meets the child support obligation calculated by the Court or CSE, or a voluntary agreement entered into pursuant to Section 6-146.

B. No employer shall refuse to honor a voluntary income assignment executed pursuant to this Title.

C. An assignment made pursuant to this section shall be binding upon the employer ten (10) days after service upon the employer of a true copy of the assignment.

D. Payments of monies pursuant to a voluntary income assignment shall serve as payment of all such wages assigned under any contract of employment.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-145. Modification, suspension or termination of income assignment orders

A. The obligor or obligee may petition the court to:

1. Modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or

2. Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or

3. Suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-146. Enforceable voluntary agreement

A. A custodial parent may enter into an agreement with the absent parent or obligor. This agreement shall include the following:

1. If paternity is at issue the agreement shall establish the paternity of the child(ren) and include the Social Security numbers of the parents;

2. The amount of child support which shall be paid by the absent parent or obligor to the custodial parent. In no circumstance will an agreement be approved or enforced which provides for a level of child support which is less than that provided for by the Muscogee (Creek) Nation child support guidelines established pursuant to Sections 6-118 and 6-122, unless the court makes specific findings that to enter such an order is in the best interest of the child(ren);

3. By the terms of the agreement, the absent parent or obligor must submit personally to the jurisdiction of the Court for enforcement and modification of the agreement, and consent to entry of an order in accordance with the terms of the agreement;

4. The amount, if any, of past due support owed by the absent parent or obligor and a schedule for repayment of that arrearage;

5. The agreement may be obtained by the parties through the services of the Nation.

B. In the event that no request for a hearing has been filed with the Court and no action has been filed before a Court, the voluntary agreement shall be submitted to CSE for approval and filed with CSE, which shall maintain the voluntary agreement in its records for possible modification and/or enforcement under the provisions of this Title.

C. In the event that a hearing has been requested from the Court, the voluntary agreement shall be submitted to the Court for its approval and enforcement under the provisions of this Title.

D. Such agreement may be entered into at any time prior to the issuance of a final order establishing paternity or establishing or modifying a child support obligation, either before or after service of process, or at any time while said order is still in effect. No agreement shall be entered into before the birth of the child unless the Court finds that there are special circumstances making it advisable to do so.

E. The voluntary agreement shall be submitted to CSE or to Court for approval and enforcement. After said agreement is approved by CSE or the Court, it shall be filed but judgment shall not be rendered unless there is a default of the child support payments agreed upon when, upon motion of CSE, a judgment shall be rendered and entered forthwith.

F. A paternity order established pursuant to a voluntary agreement of the parents has the same force and effect as a court order.

G. A parent who wishes to rescind a voluntary acknowledgment must do so, in writing to CSE, within sixty (60) days of signing the agreement.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Title 6, § 6–146

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Library References

Indians ⇨137, 539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6–147. Exemption from limitation

A. The statute of limitations is not applicable to the provisions of this Title, except as specifically noted herein.

B. No support lien, wage assignment or garnishment shall be deemed invalid or non-actionable due to the expiration of the statute of limitations on any action for failure to provide child support or maintenance for any child(ren).

C. No statute of limitations shall be effective to prevent the establishment, modification and/or enforcement of paternity and/or child support for any child from birth until the child reaches the age of eighteen (18) years or is otherwise emancipated.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇨137, 508.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6–148. Government records

A. CSE may request and shall receive information from the records of all departments, boards, divisions, independent entities or agencies of the Nation, and the same are authorized to provide such information as is necessary for child support enforcement unless expressly prohibited by federal law.

B. Except as otherwise authorized by law, all files and records concerning the assistance and services provided by CSE or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, or parent location. Information may be released to public officials under rules adopted by CSE consistent with federal rules or regulations.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ⇨137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6–149. Writs of assistance, specific performance and bonds

A. **Writ of Assistance.** Upon application by CSE, the Court may issue a writ of assistance to enforce any court order issued pursuant to this Title. Administrative and court orders recognized through comity have res judicata authority.

B. **Specific Performance.** The Court may specifically enforce any agreement made pursuant to this Act and approved by CSE and by the Court.

C. Bonds. The Court may require a party to submit a commercial, personal surety or other bond to satisfy the terms of an order issued pursuant to this Title, and enforce such bond in proceedings against the principal and sureties.

D. Orders. The Court, upon a showing that an absent parent or obligor has failed to obey a court order to pay child support or a public debt, will issue an order to show cause against the absent parent or obligor.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 538, 539.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-150. Persistent non-support

A. A person who persistently fails to provide child support without good cause when there is a present ability to pay and actual knowledge of legal obligation to provide support and he knows he is legally obligated to provide may be held in contempt of court and punished by a fine up to five hundred dollars (\$500.00) or by imprisonment of not less than thirty (30) days and not more than six (6) months; or by both such a fine and such term of imprisonment.

B. Willful failure to provide support for a child for a period of one year or in an aggregate amount exceeding five thousand dollars (\$5,000.00) is punishable by a fine of not less than one thousand dollars (\$1,000.00) and not more than five thousand dollars (\$5,000.00); or by imprisonment of not less than thirty (30) days and not more than one (1) year; or by both such a fine and such term of imprisonment.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137, 639.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 6-151. Authority to revoke or suspend licenses for noncompliance with child support order

A. The Court shall have the authority to order the revocation, suspension, non-issuance or non-renewal of an occupational, professional, business, or any recreational license or permit including, but not limited to, a hunting and fishing license; certificates of title for motor vehicles or the driving privilege; or any other authorization issued pursuant to the laws of the Muscogee (Creek) Nation for anyone who is in noncompliance with an order for support for at least ninety (90) days or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support.

B. When the Court is satisfied that all child support is paid in full or that the obligor has entered a payment plan and in all other ways is in compliance with other provisions of the child support order the court shall reinstate obligor's licenses.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ↻137, 226.
Westlaw Topic No. 209.
C.J.S. Indians §§ 140 to 149, 152.

§ 6–152. Full faith and credit

A. In accordance with 28 U.S.C. § 1738B, the District Court of the Muscogee (Creek) Nation shall grant full faith and credit and cause to be enforced any judgment for child support from other Tribal courts, state courts and administrative bodies.

B. Court and administrative orders, judgments or decrees of other Indian nations and Tribes, states or federal agencies, which relate to child support enforcement are enforced in the Nation under the doctrine of full faith and credit. Certified foreign orders will be enforced as an order of the Nation where the foreign tribunal had personal jurisdiction over the person claimed to be bound by the foreign order, personal service of process was made on such person and the administrative or court proceedings offered substantial justice to such person. For purposes of this act, the Court shall have the authority to consider court and administrative orders, judgments or decrees of a foreign jurisdiction for comity recognition.

C. A foreign order is certified by reasonable proof that the document tendered to the Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. A certified stamp issued by a clerk of the court or custodian of record, or a court seal, is sufficient evidence of authenticity.

D. Unless defects in jurisdiction are apparent on the face of the foreign order the burden is upon the person against whom it is to be enforced to contest the validity of the order. Upon a failure to respond to notice and the opportunity to contest the order, the Court may enforce it as a Muscogee (Creek) Nation order.

E. Where a foreign order is invalid by reason of lack of personal jurisdiction in the court of the issuing jurisdiction, the Court may adopt all of its provisions as an original order of the Court.

F. A foreign order may be modified by the Court if the Court has jurisdiction to make such a child support order pursuant to subsection G; and the court of original jurisdiction no longer has continuing, exclusive jurisdiction over the child; or each individual contestant has filed written consent with the court of continuing, exclusive jurisdiction for the Court to modify the order and assume continuing, exclusive jurisdiction over the matter.

G. If neither the non-custodial parent, the custodial parent nor the child reside within the issuing foreign court jurisdiction, the party seeking to modify, or to modify and enforce a child support order issued by another state or Tribe shall register that order in the MCN Case Registry and petition the Court to modify and enforce an order for child support.

[Added by NCA 07–327, § 2, eff. Dec. 26, 2007.]

Library References

Courts ☞98.5.
Indians ☞137.

Westlaw Topic Nos. 106, 209.
C.J.S. Indians § 152.

§ 6-153. Responsibility of minor parents

Minor parents of a minor child shall be responsible for the financial support of their child. The Court may deviate from the child support guidelines if the minor parents are attending high school or the Court makes a finding that the parents of the minor parents are responsible for the financial support of the minor child. If the Court deviates from the guidelines established herein, once the minor parent emancipates, the Court may modify the order in accordance with Section 6-133 of this Title.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 6-154. Life insurance

The Court may require the absent parent or obligor to provide life insurance on himself/herself through their employer or private agency at a reasonable cost designating the minor child(ren) the beneficiary of the policy.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Insurance ☞2423.

Westlaw Topic Nos. 209, 217.
C.J.S. Indians § 152.

§ 6-155. Severability

In the event that any provision or provisions of this act are determined by a court of competent jurisdiction to be invalid for any reason, the remaining provisions of the act shall be deemed severable from the provision or provisions determined to be invalid and shall remain in full force and effect as though the invalid provisions had never been a part of the Act.

[Added by NCA 07-327, § 2, eff. Dec. 26, 2007.]

CHAPTER 7. PATERNITY DETERMINATION CODE

Subchapter

1. General Provisions
2. Natural Mother and Paternity Establishment
3. Paternity Proceedings
4. Paternity Support

SUBCHAPTER 1. GENERAL PROVISIONS

Section

- 7-101. Title.
7-102. Purpose.
7-103. Definitions.

§ 7-101. Title

This act shall be entitled the Paternity Determination Code.

[Added by NCA 07-328, § 1, added eff. Dec. 26, 2007.]

§ 7-102. Purpose

The purpose of this act is to:

- A. Establish guidelines for paternity proceedings held in the Muscogee (Creek) Nation courts.
- B. Preserve and strengthen the ties between a father and child.
- C. Provide Indian children with known paternal family lines.
- D. Assure that Indian children are aware of their paternal family lineage, heritage and background.
- E. Ensure that a father is held accountable for his actions and properly provides for his child.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Children Out-of-Wedlock $\S\S$ 30 to 32.	C.J.S. Children Out-of-Wedlock $\S\S$ 47, 71 to 72, 94, 96 to 97.
Indians \S 133.	C.J.S. Indians \S 150.
Westlaw Topic Nos. 76H, 209.	

§ 7-103. Definitions

All terms used in this chapter shall be defined as listed in Chapter 1, § 1-102 of this Title, unless defined below:

- A. “Attorney” means the Attorney from the Muscogee (Creek) Nation Office of Child Support Enforcement.
- B. “CSE” means the Muscogee (Creek) Nation Office of Child Support Enforcement.
- C. “Custodian” means a person or institution that has charge or custody of a child.

- D. "Court" means the Muscogee (Creek) Nation District Court.
 - E. "Court Clerk" means the Muscogee (Creek) Nation District Court Clerk.
 - F. "Guardian" means one who has the legal authority and duty to care for a child.
 - G. "Husband" means a married man; a man who has a lawful living wife.
 - H. "Legal father" means the man recognized by law as the male parent of a child. A man is the legal father of a child if:
 - 1. he was married to the child's natural mother when then child was born,
 - 2. he recognized or acknowledged the child as his own, or
 - 3. he has been declared the child's natural father in a paternity action.
 - I. "Mother" means a woman who has given birth to or legally adopted a child. The terms includes a pregnant woman who has not yet given birth.
 - J. "Natural father" means the man who impregnated the child's natural mother. Also, referred to as biological father.
 - K. "Paternity proceeding" means a court proceeding to determine whether a person is the father of a child (especially a child born out of wedlock), usually initiated by the mother in an effort to obtain child support.
 - L. "Presumed father" means the man presumed to be the father of a child for any of the following reasons:
 - 1. he was married to the child's natural mother at the time the child was conceived or born,
 - 2. the child was born during a valid marriage,
 - 3. the man married the mother after the child's birth and agreed either to have his name on the birth certificate or to support the child, or
 - 4. the man welcomed the child into his home and held out the child as his own.
 - M. "Putative father" means the alleged biological father of a child born out of wedlock.
 - N. "Scientifically reliable genetic test" means a test, usually involving DNA identification or tissue-typing, for determining whether a given person is the biological parent of the child.
 - O. "Supreme Court" means the Muscogee (Creek) Nation Supreme Court.
- [Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

**SUBCHAPTER 2. NATURAL MOTHER AND
PATERNITY ESTABLISHMENT**

Section

- 7-201. Presumption of maternity.
- 7-202. Presumption of paternity.
- 7-203. Additional presumption of paternity.
- 7-204. Person entitled to dispute presumption and time limit.

Title 6, § 7–103

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Section

7–205. Establishing paternity.

7–206. Rescinding paternity.

§ 7–201. Presumption of maternity

Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇨133.

Westlaw Topic No. 209.

C.J.S. Indians § 150.

§ 7–202. Presumption of paternity

Except as otherwise provided by law, a man is presumed to be the natural father of a child for all intents and purposes if:

A. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within ten (10) months after the termination of the marriage by death, annulment, declaration of invalidity, divorce or dissolution, or after a decree of separation is entered by a court. A child born before wedlock becomes legitimate by the subsequent marriage of his parents even if the marriage is, was or could be declared invalid. Any child born within the ten-month period specified in this subsection which is born during a subsequent marriage to another person shall be presumed to be the legitimate child of that subsequent marriage,

B. Before the child's birth, he and the child's natural mother have cohabitated and the child is born within ten (10) months after the termination of cohabitation. As used in this paragraph, cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law,

C. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child for a period of at least two (2) years,

D. The United States Immigration and Naturalization Service made or accepted a determination that he was the father of the child at the time of the child's entry into the United States and he had the opportunity at the time of the child's entry into the United States to admit or deny the paternal relationship,

E. Statistical probability of paternity is established at ninety-eight percent (98%) or more by scientifically reliable genetic tests,

F. The presumption of paternity created pursuant to this section may be disputed pursuant to Section 7–204 of this Title.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Children Out-of-Wedlock ⇨43.

Indians ⇨133, 520(2).

Westlaw Topic Nos. 76H, 209.
 C.J.S. Children Out-of-Wedlock § 109.
 C.J.S. Indians §§ 150 to 179.

§ 7–203. Additional presumption of paternity

A child shall be presumed to be the offspring of the putative father if:

- A. The father, in writing, signed in the presence of a competent witness acknowledges himself to be the father of the child,
- B. The father and mother marry subsequent to the child’s birth, and the father, after such marriage, acknowledged the child as his own or adopted him into his family,
- C. The father publicly acknowledged such child as his own, receiving it as such, with the consent of his wife, if he is married, into his family and otherwise treating it as if it were a child born in wedlock, or
- D. The father was judicially determined to be such in a paternity proceeding before a court of competent jurisdiction.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Children Out-of-Wedlock ⇔43.	C.J.S. Children Out-of-Wedlock § 109.
Indians ⇔133, 520(2).	C.J.S. Indians §§ 150 to 179.
Westlaw Topic Nos. 76H, 209.	

§ 7–204. Person entitled to dispute presumption and time limit

- A. The presumption of paternity created pursuant to Section 7–202 of this Title may be disputed only by the husband or wife, the putative father or their descendants.
- B. If a child is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child’s legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone.

[Added by NCA 07–328, § 1, added eff. Dec. 26, 2007.]

Library References

Children Out-of-Wedlock ⇔43.	C.J.S. Children Out-of-Wedlock § 109.
Indians ⇔133, 520(2).	C.J.S. Indians §§ 150 to 179.
Westlaw Topic Nos. 76H, 209.	

§ 7–205. Establishing paternity

Paternity may be established as follows:

- A. Completion of the Affidavit Acknowledging Paternity by the father and mother and filed with the District Court and CSE. A statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court or administrative proceeding. The affidavit shall be prescribed by CSE and made available to the Court. The affidavit shall include the following information to be valid:

- 1. A written statement by the mother consenting to the assertion of paternity and stating the name of the father and the name of the child;

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2. A written statement by the father stating that he is the natural father of the child; and,

3. The social security numbers of both parents.

B. Scientifically reliable genetic test that indicates a probability of paternity greater than ninety-eight percent (98%) for a specific man,

C. District Court order or administrative court order, or

D. As otherwise provided by law.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇄133.
Westlaw Topic No. 209.
C.J.S. Indians § 150.

§ 7–206. Rescinding paternity

A. The affidavit acknowledging paternity may be rescinded by the mother or the acknowledging father within the earlier of:

1. sixty (60) days after the affidavit acknowledging paternity is signed, and a signed rescission of Affidavit Acknowledging Paternity form is filed with the Court and CSE, or

2. the date of a judicial proceeding relating to the child, including but not limited to, a proceeding to order child support, in which the signatory is a party.

B. An affidavit acknowledging paternity may be challenged in Court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger. Legal responsibilities, including but not limited to child support obligations of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown. If the person signing the Affidavit Acknowledging Paternity is determined in Court not to be the father of the child, then the Court shall dismiss any pending Court collection proceedings against the challenger and he shall be released from any Court-ordered payments for the support and maintenance of the child.

C. If the mother was married at the time of conception or birth and her husband is not the natural father of the child, the husband may sign a Husband’s Denial of Paternity form which must be filed along with the Affidavit Acknowledging Paternity. The form shall be prescribed by CSE and made available to the Court.

D. A person signing an affidavit of paternity prior to attaining the age of eighteen (18) years shall be allowed to challenge said affidavit in District Court. A petition challenging the paternity affidavit must be filed by the person who acknowledged paternity prior to his nineteenth (19th) birthday. A challenge must be supported by a scientifically reliable genetic test and the standard for proving paternity shall be the same as that found in Section 7–205 of this Title.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Children Out-of-Wedlock ☞33.	C.J.S. Children Out-of-Wedlock §§ 47, 80 to 83.
Indians ☞133.	C.J.S. Indians § 150.
Westlaw Topic Nos. 76H, 209.	

SUBCHAPTER 3. PATERNITY PROCEEDINGS

Section

- 7-301. Jurisdiction and venue.
- 7-302. Court paternity proceedings.
- 7-303. Burden of proof.
- 7-304. Paternity complaint.
- 7-305. Scientifically reliable genetic testing.
- 7-306. Joinder of defendants.
- 7-307. Order of defendant to appear.
- 7-308. Court order and maintenance of the child.
- 7-309. Change of name of the child.
- 7-310. Costs and fees.
- 7-311. Statute of limitations.
- 7-312. Appeal.

§ 7-301. Jurisdiction and venue

A. Jurisdiction shall be according to the provisions established in Chapter 1 of Title 27¹ of the Muscogee (Creek) Nation Code Annotated.

B. The Court shall have jurisdiction over all parties involved in an action to establish paternity if the child is a citizen of a federally recognized Indian Tribe or eligible for citizenship in said Indian Tribe and one of the parties is residing within the territorial boundaries of the Nation.

C. The venue for a paternity proceeding shall be the Court located in Okmulgee, Oklahoma.

D. The Court may exercise personal jurisdiction over a person, whether or not a resident within the Muscogee (Creek) Nation jurisdiction, who is the subject of a paternity proceeding.

E. When a person who is subject to the jurisdiction of the Court is outside the jurisdictional boundaries of the Muscogee (Creek) Nation, the person may be served outside of the jurisdictional boundaries of the Muscogee (Creek) Nation by any method that is authorized by the laws of the Muscogee (Creek) Nation and/or the laws of the state of residency.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

¹ Title 27, § 1-101 et seq.

Library References

Indians ☞133, 501.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 150 to 179.

§ 7-302. Court paternity proceedings

A. A paternity proceeding shall be brought in the District Court.

B. A mother, putative father, guardian, or custodian of a child, CSE, the Prosecutor, a public or private agency or authority chargeable with the support

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of the child, or the child himself/herself may bring a civil proceeding in the District Court to determine the paternity of the child and the amount of child support due and owed for the maintenance of the child.

C. A paternity proceeding shall be available to a child if commenced within one (1) year after the child reaches the age of eighteen (18).

D. If the scientifically reliable genetic testing indicates a probability of paternity greater than ninety-eight percent (98%) for a man, then the Court shall enter an order establishing the man as the father.

E. After the paternity proceeding, the Court shall enter an order providing for the support and maintenance of the child. The social security numbers of both parents and the child shall be included on the child support order summary form provided for in Section 6-124 of this Title, which shall be filed with all orders establishing paternity. The child support order summary form shall be submitted to the MCN Case Registry as established in Section 6-126 of this Title. The Court may further make provisions for custody and visitation based upon the best interests of the child.

F. In a proceeding brought under this section by CSE, the Court may, and unless it is not in the best interests of the child, limit the issues in that proceeding to issues of paternity and support, unless issues of custody and visitation are specifically and affirmatively pled by the father. All contested issues of custody and visitation shall be addressed by the Court.

G. In all actions to determine the paternity of a child or of a person younger than age nineteen (19) that would affect the citizenship rolls of the Muscogee (Creek) Nation, notice must be served on the Muscogee (Creek) Nation Citizenship Board at least thirty (30) days prior to the date of the hearing on the petition for determination of paternity. However, this section shall not apply to paternity actions brought by the Muscogee (Creek) Nation.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇄500.
Westlaw Topic No. 209.
C.J.S. Indians §§ 151 to 179.

§ 7-303. Burden of proof

The issues of paternity shall be tried before the Court and the petitioning party shall bear the burden of proof. The Court shall not make a determination of paternity unless the evidence is clear and convincing and supports a determination of paternity.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇄133, 520(2).
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 7-304. Paternity complaint

A. If the woman has delivered a child or is pregnant with a child and the paternity of that child is unknown, then a paternity complaint may be made and shall include the following:

1. The paternity complaint shall be in writing and duly verified by any person, to the Court stating the facts and charging the proper individual as being the father of the child in question.

2. The petition shall be verified as true by the affidavit of the plaintiff. A summons may be issued thereon and shall be served or publication made as in other cases.

B. The death of the mother or the putative or alleged father shall not hamper an action which is brought under this section, and it shall not prevent the bringing of an action for the support of the child.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞133, 511.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 7-305. Scientifically reliable genetic testing

A. The Court may order the mother, child, or any other individual necessary to submit to scientifically reliable genetic testing to make a determination of paternity.

B. The Court shall order scientifically reliable genetic tests on all defendants who are duly served, including defendants who fail to answer or appear.

C. The Court has the authority to enforce a subpoena or order to appear to submit to scientifically reliable genetic testing, or any other order entered pursuant to this chapter.

D. If any party refuses to submit to genetic testing the Court may resolve the question of paternity against such party or enforce its order if the rights of others and the interest of justice so require unless such individual is found to have good cause for refusing to cooperate.

E. The scientifically reliable genetic test shall be made by experts qualified as examiners of genetic markers in the human body. Except as otherwise provided in this act, the experts may be called by the Court or by a party as a witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party may request that additional experts qualified as examiners of genetic markers in the human body perform independent tests subject to order of the Court, the results of which may be offered in evidence. The number and qualifications of the experts shall be determined by the Court. A party requesting additional testing shall be responsible for the costs of the additional testing.

F. The compensation of each expert witness appointed by the Court or called by a party and costs of tests required shall be fixed at reasonable amounts by the Court. Said compensation and costs shall be paid as the Court

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shall order. The Court may order that said compensation and costs be paid by the parties in such proportions and at such times as it shall prescribe. All additional testing must be paid for in advance by the party requesting the additional tests. The Court may order that, after payment by the parties, said compensation and costs may be taxed as costs in the action. The Court shall not assess costs against CSE.

G. All parties to the action shall be mailed a copy of the genetic test results by certified mail to the last known address of the parties.

H. Any objection to genetic testing results must be made in writing with fifteen (15) days from the date of mailing the genetic test results, and any hearing on the issue of paternity may not be held any sooner than fifteen (15) days after filing of objection to the genetic test result. If no objection is filed within the specified time, the genetic testing results will be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Children Out-of-Wedlock ⚡42.
Indians ⚡133.
Westlaw Topic Nos. 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 76 to 79,
102 to 111.
C.J.S. Indians § 150.

§ 7-306. Joinder of defendants

A. All men who have had sexual intercourse with a woman during the possible time of conception of the child for whom paternity is unknown may be joined as defendants in an action to determine the paternity of said child.

B. When more than one defendant is named or joined in the paternity proceeding, the Court shall order all defendants to appear.

C. If a defendant fails to answer, or to appear for hearing or submit to scientifically reliable genetic testing after being ordered by the Court, and all other duly served defendants have been excluded as possible fathers by scientifically reliable genetic testing, the Court shall enter an order establishing the defendant who failed to answer or appear as the father.

D. If one or more of the defendants fail to appear for scientifically reliable genetic testing after being ordered to appear for testing by the Court, the Court may proceed to determine paternity and related issues based upon competent testimony and scientifically reliable genetic test results, if any.

E. After the paternity proceeding has concluded, the Court shall dismiss the paternity proceeding against the other defendants.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⚡133, 509.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 7-307. Order of defendant to appear

When the paternity complaint is filed, the Court shall order the defendant to appear and show case why the Court should not determine him to be the father.

A. If the defendant fails to appear, then the Court shall upon the findings of the Judge enter an order determining paternity, support, custody and visitation.

B. If the defendant appears and does not admit paternity, then the Court shall enter at that time an order directing scientifically reliable genetic testing to determine paternity.

C. Any administrative or court order of any jurisdiction determining paternity of a child which is entered due to the failure of the putative or alleged father to appear or answer and a default judgment is granted in said action and the determination is not supported by genetic testing meeting the standard as set forth in Section 7-205 of this Title, shall not be used as the sole basis for eligibility for citizenship in the Muscogee (Creek) Nation.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞133, 510.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 7-308. Court order and maintenance of the child

A. If the defendant is determined by the Court to be the father of the child, then he shall be charged with the maintenance of the child in such sum, and in such manner as directed by the Court and in accordance with the Child Support Enforcement Code located in Chapter 6 of Title 6 of this Code, and with the costs of the suit and execution may issue, immediately, and afterwards from time to time for the collection of any sum ordered to be paid.

B. The Court shall require the defendant to secure the performance of the order of the Court, in such manner as directed by the Court, and the Court shall have the power to punish, as for contempt, any disobedience by the defendant of an order issued by the Court under this section.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞133, 137.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150, 152.

§ 7-309. Change of name of the child

A. At any time after paternity has been determined, the mother, father, custodian or guardian of the child may file a motion requesting the Court to order that the surname of the child be changed to the surname of the father. The Court shall thereafter set a hearing on said motion. Notice of the filing of the motion and date of the hearing shall be served by process on all parties.

B. If the Court determines after the hearing that it is in the best interest of the child to bear the paternal surname, then the Court shall enter an order to

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that effect which shall include findings of fact as to each issue raised by the parties.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞133.
Westlaw Topic No. 209.
C.J.S. Indians § 150.

§ 7–310. Costs and fees

In a paternity proceeding, the Court may award and tax costs and fees, and apportion them between the parties. In an action brought by the Nation, costs and fees shall be awarded in accordance with the Court guidelines.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞133, 660, 661.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 7–311. Statute of limitations

A paternity action may be brought pursuant to Section 7–302 of this Title before the child reaches the age of eighteen (18), or if the action is brought by the child himself/herself, until the child reaches the age of nineteen (19).

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞133, 508.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

§ 7–312. Appeal

Either party may appeal the Court decision to the Supreme Court. The appeal shall be made in the same manner and with like effect as in other actions in the Court in accordance with Section 2–120 of Title 27 of this Code.

[Added by NCA 07–328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞133, 540.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 179.

SUBCHAPTER 4. PATERNITY SUPPORT

Section

- 7–401. Liability of father to support the child.
- 7–402. Temporary support of child during pendency of paternity proceeding.
- 7–403. Liability of father to support mother.

§ 7-401. Liability of father to support the child

A. An individual legally determined to be the father of a child is liable for the support and education of that child to the same extent as the father of a child born in wedlock.

B. An individual legally determined to be the father of a child shall be ordered to pay all or a portion of the costs of the birth according to his ability to pay as well as reasonable expenses of providing for the child pursuant to those guidelines established in Title 6, Chapter 6 of this Code. No birthing costs shall be assessed to the father if birthing services were provided by Indian Health Services unless federal law or regulations provide otherwise.

C. Copies of bills for pregnancy, childbirth and scientifically reliable genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for genetic testing on behalf of the child.

D. The amount of child support and other support shall be ordered and reviewed in accordance with the child support guidelines provided in Title 6, Chapter 6 of this Code.

E. Liability for child support provided before a determination of paternity may be imposed only for the five (5) years preceding the filing of the action.

F. The father's obligation to provide child support is terminated if the child is adopted.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ☞137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 7-402. Temporary support of child during pendency of paternity proceeding

A. When a paternity proceeding is filed in Court, any interested party may request the Court to enter a temporary order for support of the child pending a final determination of paternity.

B. The application for temporary support shall state the facts supporting the application and shall be verified by the party or entity seeking the temporary support order.

C. The application for temporary support and notice of temporary support hearing shall be served as in other cases.

D. Temporary child support during the pendency of a paternity proceeding is available if the Court finds clear and convincing evidence of paternity at the temporary order hearing, including, but not limited to:

1. A scientifically reliable genetic test which establishes a rebuttable or conclusive presumption of paternity,
2. A notarized written statement acknowledging paternity of the child executed by the putative father,

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3. A presumption of paternity pursuant to Sections 5-203, 5-204 and 5-205 of this chapter, or

4. Other evidence which establishes a high probability of paternity.

E. A temporary support order shall be established in accordance with the child support guidelines pursuant to Title 6, Chapter 6 of this Code.

F. A temporary support order terminates when a final judgment is entered which establishes support or when the action is dismissed.

G. A temporary support order shall not be retroactively modified, but it may be modified prospectively before final judgment upon motion of an interested party and a showing of facts supporting a modification.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇐137.
Westlaw Topic No. 209.
C.J.S. Indians § 152.

§ 7-403. Liability of father to support mother

A. A man legally determined to be the father of a child is liable for the pregnancy-related expenses of the mother.

B. The father of a child born out of wedlock shall be liable for the reasonable expenses of the mother during the period of her pregnancy, confinement and recovery, whether or not the child is born alive.

C. Liability for the pregnancy-related expenses of the mother shall be enforced only within three (3) years after the birth of the child.

[Added by NCA 07-328, § 1, eff. Dec. 26, 2007.]

Library References

Indians ⇐131, 133.
Westlaw Topic No. 209.
C.J.S. Indians §§ 150 to 176.

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