

# TITLE 15: CORPORATIONS AND TRIBAL ENTITIES

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# TITLE 15: CORPORATIONS AND TRIBAL ENTITIES

## CHAPTER ONE

### GENERAL PROVISIONS

#### §15-1-101. Short Title

This Title shall be known and may be cited as the Rosebud Law and Order Code - Corporations and Tribal Entities.

#### §15-1-102. Scope

The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Rosebud Sioux Tribe, whether before or after the enactment hereof.

#### §15-1-103. Purpose and Construction

- (a) The purposes of this Title are:
- (1) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;
  - (2) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
  - (3) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
  - (4) to simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Rosebud Sioux Tribe.
- (b) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

#### §15-1-104. Definitions

In the Chapters of this Title:

- (1) "*Articles*" means the articles of incorporation, charter or other documents evidencing the creation of a corporate entity pursuant to sovereign powers.

- (2) "*Close Corporation*" means a corporation, the shares of which are not publicly traded and are subject to restrictions on transfer.
- (3) "*Controlled*," as used in reference to corporations controlled by the Rosebud Sioux Tribal Council, includes any corporation where the majority of its Board of Directors are chosen by the Tribal Council or are required to be Tribal Council members.
- (4) "*Deliver*" includes delivery by mail.
- (5) "*Distribution*" means a direct or indirect transfer of money or other property (except its own shares) or the incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; or otherwise.
- (6) "*For-Profit Corporation*" means a corporation of which the income is distributable for the benefit of its shareholders, and whose assets, upon dissolution, are distributable to its shareholders.
- (7) "*Individual*" includes the estate of an incompetent or deceased individual.
- (8) "*Interrogatories*" means formal written questions seeking information in the form of a written response.
- (9) "*Non-Profit Corporation*" means one in which no part of the income of the corporation is distributable to any person by reason of that person's status as a member, director, officer or employee, except for reasonable wages for work performed.
- (10) "*Notice*" means written notice unless oral notice is reasonable under the circumstances.
- (11) "*Quorum*" means the number of members of a board or other body which must be present in order to make the board or other body competent to transact business in the absence of the other members.
- (12) "*Shares*:" means the units into which the proprietary interests in a for-profit corporation are divided.
- (13) "*Shareholder*" means the person in whose name shares are registered in the records of the corporation.
- (14) "*Subscriber*" means a person who subscribes for shares in a corporation, whether before or after incorporation.



### **§15-1-105. Office of Corporations**

- (a) The Tribal Revenue Department shall serve as the Office of Corporations, and the Tribal Revenue Director shall also serve as the Director of Corporations under this Title. All actions of the Director of Corporations shall be subject to review by the Tribal Council.
- (b) The Director of Corporations shall have authority to do all things necessary and proper in order to administer and enforce the provisions of this Title, including but not limited to the power:
  - (1) To review applications for incorporation and grant certificates of incorporation under Chapters 2 and 3 of this Title;
  - (2) To review amended articles of incorporation and issue certificates of amendment;
  - (3) To review proposed articles of dissolution and to dissolve corporations administratively;
  - (4) To accept for filing such other notices, reports and other documents from corporations for the purpose of making such documents available to the public upon request;
  - (5) To furnish, on request, copies of articles of incorporation, notices, reports and other documents to the public upon the payment of reasonable fees;
  - (6) To issue interrogatories and demands for inspection or production of documents to corporations in accordance with the provisions of this Title;
  - (7) To supervise the orderly dissolution of corporations formed under tribal law;
  - (8) To bring actions or participate in actions in Tribal Court or any other court of competent jurisdiction for the enforcement of any of the provisions of this Title;
  - (9) To promulgate regulations pursuant to this Title, formulate recommendations to submit to the Council for revisions of or amendments to this Chapter, and take other actions necessary for the administration of the provisions of this Title.

Provided, however, that the Director of Corporations shall not have authority to regulate with respect to for-profit corporations which are owned, in whole or in part, directly by

the Rosebud Sioux Tribe, nor shall it have the authority to regulate with respect to non-profit corporations which are controlled by the Rosebud Sioux Tribal Council.

#### **§15-1-106. Status of Corporations**

- (a) For the sole purposes of taxation, regulatory jurisdiction and civil jurisdiction, the following corporate entities shall be entitled to all of the privileges and immunities of members of federally-recognized Indian tribes:
  - (1) All for-profit corporations formed pursuant to the sovereign powers of the Rosebud Sioux Tribe which are managed by members of federally-recognized Indian tribes and which are at least 51% owned by Indians who are members of federally-recognized tribes.
  - (2) All non-profit corporations formed pursuant to the sovereign powers of the Rosebud Sioux Tribe which are managed by members of federally-recognized Indian tribes and which have as their primary purpose benefitting the people of the Rosebud Sioux Reservation or any group of people which comprises primarily members of federally-recognized Indian tribes.
- (b) In the case of any corporation having its principal place of business on the Rosebud Sioux Reservation which has been incorporated under the laws of any state and also pursuant to the sovereign powers of the Rosebud Sioux Tribe, the ordinances and resolutions of the Tribal Council, the Constitution of the Rosebud Sioux Tribe and the tribal charter documents shall take precedence over any conflicting state laws or charter documents in any dispute concerning the status of the corporation or the rights and obligations of any persons with respect to the corporation.
- (c) The Rosebud Sioux Tribal Court shall have jurisdiction to decide all questions with respect to the status of corporations formed pursuant to the sovereign powers of the Rosebud Sioux Tribe.

#### **§15-1-107. Reporting Requirements**

The Director of Corporations may propound to any corporation subject to the provisions of this Chapter, such interrogatories or demands to inspect documents as may be reasonably necessary or proper to enable the Director to ascertain whether such corporation is complying with all of the provisions of this Title chapter. Such interrogatories or demands for inspection shall be answered within 30 days after the mailing thereof, and the answers thereto shall be full and complete and shall be under oath.

#### **§15-1-108. Jurisdiction of Tribal Court**

- (a) To the maximum extent consistent with due process of law, all corporations formed pursuant to the sovereign power of the Rosebud Sioux Tribe and all

directors, officers and shareholders of such corporations shall be subject to the jurisdiction of the Rosebud Sioux Tribal Court in all actions which arise out of the acts, omissions or participation of such persons in connection with the affairs of such corporations; provided, however that this section shall not apply to corporations which are owned in whole or in part by the Rosebud Sioux Tribe or which are controlled by the Rosebud Sioux Tribal Council, or to the directors or officers of such corporations.

- (b) This section shall not be construed as a waiver of sovereign immunity.

#### **§15-1-109. Registered Agent.**

All corporations formed pursuant to the sovereign power of the Rosebud Sioux Tribe shall appoint a person to accept the service of judicial process on the corporation. All corporations shall notify the Director of Corporations of any change in the name or address of the corporation's registered agent. All corporations formed pursuant to the sovereign powers of the Rosebud Sioux Tribe are hereby deemed to consent to the appointment of the Director of Corporations as their agent for the acceptance of service of process in the event the corporation shall have failed to notify the Director of Corporations of any change in the name or the address of its registered agent. In such cases, service upon the Director of Corporations shall be deemed to be service on such corporation within 10 days thereof, provided, the Director of Corporations shall mail notice of such service to any incorporator, director, officer or shareholder of the corporation at the most recent address noted in the files of the Director of Corporations.

#### **§15-1-110. Liability of Shareholders or Members**

No shareholder or member of any corporation formed pursuant to the sovereign powers of the Rosebud Sioux Tribe, including those formed pursuant to Chapters Two or Three of this Title, shall be liable to any creditor of the corporation by reason of his or her status as a shareholder or member, except insofar as said shareholder or member may be indebted to the corporation for unpaid loans or indebtedness for the purchase of shares.

#### **§15-1-111. Corporate Name**

- (a) The name of any for-profit corporation shall contain the words, "*Corporation*," "*Incorporated*" or "*Limited*," or shall contain an abbreviation of one of such words.
- (b) The name of any non-profit corporation may contain the words "*Incorporated*," "*Corporation*," "*Limited*," "*Association*," "*Fund*," "*Society*," "*Club*," "*Foundation*," or "*A Non-profit Corporation*."
- (c) No corporation formed under Chapters Two or Three of this Title shall use any corporate name which is the same as, or deceptively similar to, any other corporation formed pursuant to the sovereign powers of the Rosebud Sioux Tribe.

- (d) No corporation which is privately owned or controlled shall use any name or make any representation which implies that it is a subdivision or enterprise of the Rosebud Sioux Tribe.

**§15-1-112. Fees**

The Director of Corporations shall charge

- (1) for filing an application for incorporation and proposed articles of incorporation, \$50.00;
- (2) filing an application for an amendment to the articles of incorporation \$25.00;
- (3) filing a statement of change of name or address of registered agent \$10.00;
- (4) filing any other statement or report of a corporation \$10.00;
- (5) for furnishing a certified copy of any document, instrument report or other paper relating to a corporation \$5.00; and
- (6) for furnishing a certificate as to the status of a corporation or as to the existence or non-existence of facts relating to corporations \$25.00.

## CHAPTER TWO

### BUSINESS CORPORATIONS

#### PART A: FORMATION OF CORPORATIONS

##### §15-2-101. Scope of Chapter

- (a) Unless otherwise provided, the provisions of this Chapter apply to all for-profit corporations formed under the sovereign powers of the Rosebud Sioux Tribe, except those corporations owned in whole or in part by the Rosebud Sioux Tribe. Only close corporations may be formed under the provisions set forth in this Chapter, and provisions which are stated to be applicable only to "*corporations formed under this Chapter*" refer only to close corporations which comply with subsection (b) below.
- (b) Any person or persons over the age of 18 years wishing to incorporate a for-profit business or for-profit cooperative may apply to the Director of Corporations for the issuance of a certificate of incorporation under this Chapter, provided that the articles of incorporation shall provide that all of the issued shares of the corporation are to be subject to one or both of the following restrictions on transfer:
  - (1) Obligating a shareholder to offer to the corporation or to one or more shareholders of the corporation or to any designated person or to any combination of the foregoing, a prior opportunity to acquire such shares; or
  - (2) Requiring the corporation, or the holders of shares of a particular class of the corporation, to consent to any proposed transferee of the shares.
- (c) The Rosebud Sioux Tribal Council retains the authority to issue corporate charters for business corporations not eligible to be formed under this Chapter.

##### §15-2-102. General Powers of Business Corporations

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) to sue and be sued, complain and defend in its corporate name;

- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Rosebud Sioux Tribe, for managing the business and regulating the affairs of the corporation;
- (4) to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
- (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust or other entity;
- (10) to conduct its business, locate offices, and exercise the powers granted by this Chapter within or without the Rosebud Sioux Reservation and the State of South Dakota;
- (11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

- (14) to transact any lawful business that will aid governmental policy;
- (15) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation;
- (16) to cease its corporate activities and surrender its corporate franchise.

#### **§15-2-103. Defense of Ultra Vires**

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

- (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 may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
- (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 the incumbent or former officers or directors of the corporation.
- (3) In a proceeding by the Director of Corporations, as provided in this chapter, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

#### **§15-2-104. Articles of Incorporation**

The articles of incorporation for any corporation formed under this Chapter shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated term of years.
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this title.

- (4) The aggregate number of shares which the corporation shall have authority to issue and if such shares are to be divided into classes, the number of shares of each class.
- (5) If the shares to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.
- (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.
- (7) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.
- (8) The name and address of its initial registered agent and the address of its principal office.
- (9) A description of any election to operate without a board of directors under Section 122 of this Chapter.
- (10) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify; provided however, that if all the persons who have agreed to purchase shares shall enter into a written agreement under Section 122 of this chapter to operate the corporation without a board of directors, that fact shall be recited in the Articles of Incorporation and the names and addresses of the persons who are to be voting shareholders shall be listed instead.
- (11) The name and address of each incorporator.
- (12) One or more of the restrictions on the transfer of shares described in Section 101 of this Chapter and all other restrictions on the transfer of shares.
- (13) The following notice, conspicuously displayed:

THIS IS A CLOSE CORPORATION FORMED PURSUANT TO CHAPTER II OF THE COPORATIONS TITLE OF THE ROSEBUD LAW AND ORDER CODE (Section 15-2). THE RIGHTS OF SHAREHOLDERS IN THIS CORPORATION MAY DIFFER MATERIALLY FROM THE RIGHTS OF SHAREHOLDERS IN OTHER CORPORATIONS. COPIES OF DOCUMENTS WHICH RESTRICT TRANSFERS AND AFFECT VOTING AND OTHER RIGHT MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.



In addition to the provisions required under this section, the articles of incorporation may also contain provisions not inconsistent with law regarding:

- (a) The direction of the management of the business and the regulation of the affairs of the corporation;
- (b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders, or any class of the shareholders;
- (c) The par value of any authorized shares or class of shares; and
- (d) Any provision which under this title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter.

#### **§15-2-105. Filing of Articles of Incorporation**

Duplicate originals of the articles of incorporation shall be delivered to the Director of Corporations. If the Director of Corporations finds that the articles of incorporation conform to this Chapter, he shall, when all the fees have been paid as in this title described:

- (1) Endorse on each of such originals the word "*Filed*," and the effective date of the filing thereof.
- (2) File one of such originals.
- (3) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto shall be returned to the incorporators or their representative.

#### **§15-2-106. Effect of Filing the Articles of Incorporation -- Certificate of Incorporation**

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

#### **§15-2-107. Organization Meeting of Directors**

After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting

bylaws not inconsistent with this Title, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting if each director signs an instrument which states the action so taken.

## **PART B: SHARES, SHAREHOLDERS AND DISTRIBUTIONS**

### **§15-2-108. Authorized Shares**

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, and relative rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this title. Unless otherwise provided in the Articles of Incorporation, such shares shall carry preemptive rights.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

- (1) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.
- (2) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.
- (3) Having preference over any other class or classes of shares as to the payment of dividends.
- (4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.
- (5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

### **§15-2-109. Certificates Representing Shares**

- (a) Shares of a corporation may but need not be represented by certificates. Unless this Chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.
- (b) At a minimum each share certificate must state on its face:
  - (1) the name of the issuing corporation and that it is organized under the laws of the Rosebud Sioux Tribe;

- (2) the name of the person to whom issued; and
  - (3) the number and class of shares and the designation of the series, if any, the certificate represents.
- (c) All restrictions on the transfer of shares must be summarized on the back or front of each certificate; provided, however, that the notice described in Section 119 of this Chapter may be used instead if authorized under the provisions of that Section.
- (d) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.
- (e) Each share certificate (1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.
- (f) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.
- (g) No certificate shall be issued for any share until the consideration established for its issuance shall have been received by the Corporation.
- (h) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by this section.

#### **§15-2-110. Subscription for Shares**

A subscription for shares of a corporation to be organized shall be in writing and shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

### **§15-2-111. Determination of Price -- Payment for Shares**

- (1) The powers granted in this section are subject to restriction by the articles of incorporation.
- (2) Shares may be issued at price determined by the board of directors, or the board may set a minimum price or establish a formula or method by which the price may be determined.
- (3) Consideration for shares may consist of cash, promissory notes, services performed, contracts for services to be performed, or any other tangible or intangible property. If shares are issued for other than cash, the board of directors shall determine the value of the consideration.
- (4) Shares issued when the corporation receives the consideration determined by the board are validly issued, fully paid, and nonassessable.
- (5) A good faith judgment of the board of directors as to the value of the consideration received for shares is conclusive.
- (6) The corporation may place shares issued for a contract for future services or a promissory note in escrow, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed or the note is paid. If the services are not performed or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

### **§15-2-112. Expenses of Organization, Reorganization and Financing**

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares assessable.

### **§15-2-113. Stockholder's Liability -- Consideration for Shares**

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or were to be issued, except that he or she may become personally liable by reason of his or her own acts or conduct.

### **§15-2-114. Stated Capital; Determination of Amount**

- (a) The consideration received by a corporation for its shares shall constitute stated capital. If the shares have been assigned a par value, the consideration received

shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

- (b) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.
- (c) Dividends shall not be paid out of stated capital.

#### **§15-2-115. Payment of Deficits Out of Capital Surplus or Earned Surplus**

A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

#### **§15-2-116. Insolvent Corporation Prohibited From Purchasing Own Shares**

No purchase of or payment for its own shares shall be made by a corporation at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

#### **§15-2-117. Share Transfer Restrictions**

- (a) Except as otherwise provided in the articles of incorporation, no interest in shares of a corporation formed under this Chapter may be transferred, by operation of law or otherwise, whether voluntary or involuntary.
- (b) Subsection (a) above shall not apply to a transfer:
  - (1) to the corporation or to any other holder of the same class of shares;
  - (2) to members of the holder's immediate family, or to a trust, all of whose beneficiaries are members of the holder's immediate family. A holder's immediate family shall include only his spouse, parents, lineal descendants (including any adopted children and stepchildren) and spouse of any lineal descendants, and brothers and sisters;
  - (3) which has been consented to in writing by all of the holders of the corporation's common shares having voting rights;
  - (4) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

- (5) by merger, consolidation or a share exchange of existing shares for other shares of a different class or series in the corporation;
- (6) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor.

#### **§15-2-118. Offer to Sell Shares**

- (a) Any person desiring to transfer shares in a transaction which is prohibited by Section 117 (a) and is not exempt under Section 117 (b) shall obtain a written offer from a third party who meets the requirements in paragraphs (1) and (2) of this subsection to purchase such shares for cash and shall deliver written notice of the third party offer to the corporation's registered office stating the number and kind of shares, the offering price, the other terms of the offer, and the name and address of the third party offeror. No transfer shall be made to a third party unless:
  - (1) the third party is eligible to become a qualified shareholder under the provisions of any federal, state or Tribal tax statute that the corporation has elected to be subject to and the third party shall agree in writing not to take any action to terminate the election without the approval of the remaining shareholders;
  - (2) the transfer to the third party will not result in the imposition of the personal holding company tax or any similar Tribal, state or federal penalty tax on the corporation.
- (b) The notice specified in subsection (a) shall constitute an offer to sell the shares to the corporation on the terms of the third party offer. Within 20 days after the corporation receives the notice, the corporation shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to purchase all (but not less than all) of the offered shares. Approval of action to purchase shall be by affirmative vote of the holders of a majority of the shares entitled to vote excluding the offered shares. With the consent of all the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation, in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.
- (c) Written notice of the acceptance of the shareholder's offer shall be delivered or sent to the offering shareholder at the address specified in his notice to the corporation, or in the absence of any specification, at his last known address as reflected in the records of the corporation, within 75 days after receipt of the shareholder's offer. Notice sent by U.S. mail shall be timely if it is deposited in the mail prior to midnight of the 75th day following the date the offer from the

shareholder was received by the corporation. If the notice contains terms of purchase different from those contained in the shareholder's notice, the different terms shall be deemed a counter offer and unless the shareholder wishing to transfer his stock accepts in writing the counter offer, or the shareholder and the purchaser(s) otherwise resolve by written agreement the differences between the offer and counter offer within 15 days of receipt by the shareholder of the notice of acceptance, the notice containing the counter offer shall be ineffective as an acceptance.

- (d) If a contract to sell is created under subsection (c), the shareholder shall make delivery of all the certificates for the stock so sold, duly endorsed, within 20 days of receipt of the notice of acceptance, or in the case of uncertificated securities, shall within the 20 day period or deliver to the corporation the required instruction requesting that the transfer be made. Breach of any of the terms of the contract shall entitle the non-breaching party to any remedy at law or equity allowed for breach of a contract, including, without limitation, specific performance.
- (e) If the offer to sell is not accepted pursuant to subsections (c) and (d), the shareholder shall be entitled to transfer to the third party offeror all (but not less than all) of the offered shares within 120 days after delivery of the shareholder's notice specified in subsection (c) in accordance with the terms specified in the shareholder's notice.

#### **§15-2-119. Notice of Transfer Restrictions on Issued Shares**

- (a) If the summary of share transfer restrictions required by Section 109 (c) of this Chapter to be printed on share certificates is too long to fit practicably on the certificates, the following notice may be used instead.

**CAUTION: SHARES IN THIS CORPORATION CANNOT BE TRANSFERRED (BY SALE, GIFT OR OTHERWISE) EXCEPT AS ALLOWED BY THE ARTICLES OF INCORPORATION, BYLAWS, AND SHAREHOLDERS' AGREEMENTS. COPIES OF DOCUMENTS WHICH DESCRIBE HOW SHARES CAN BE TRANSFERRED MAY BE OBTAINED BY A SHAREHOLDER ON WRITTEN REQUEST TO THE CORPORATION.**

- (b) All persons claiming an interest in shares of a statutory close corporation complying with the notice requirements of Section 109 (c) or the notice requirement of subsection (a) above shall be bound by the documents referred to in the notice. All persons claiming an interest in shares of a statutory close corporation not complying with the requirement of this section shall be bound by any documents of which they, or any person through whom they claim, have knowledge or notice.

### **§15-2-120. Transfer of Shares in Breach of Transfer Restrictions**

Any attempted transfer of shares in a corporation formed under this Chapter in violation of any transfer restriction binding on the transferee shall be ineffective. Any attempted transfer of shares in a corporation formed under this Chapter in violation of any transfer restriction not binding on the transferee because the notice required by Sections 109 or 119 of this Chapter has not been given shall give the corporation the option, exercisable by notice and payment within 30 days after presentation of the shares for registration in the name of the transferee, to purchase the shares from the transferee for the same price and terms.

### **§15-2-121. Sale of Assets**

Unless otherwise provided in the articles of incorporation, a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation formed under this Chapter, if not made in the usual and regular course of its business, shall require the affirmative vote of all of the holders of outstanding shares of each class of shares of the corporation, whether or not otherwise entitled to vote thereon.

### **§15-2-122. Election Not to Have a Board of Directors**

- (a) A corporation formed under this Chapter may operate without a board of directors if the articles of incorporation contain a statement to that effect. While this statement is effective:
- (1) All corporate powers shall be exercised by or under authority of and the business affairs of the corporation shall be managed under the direction of the shareholders of the corporation, and all powers and duties conferred or imposed upon the board of directors by this Chapter shall be exercised or performed by the shareholders.
  - (2) No liability that would otherwise be imposed on the directors shall be imposed on a shareholder by virtue of any act or failure to act unless the shareholder was entitled to vote on the action.
  - (3) Any requirement that an instrument filed with any governmental agency contain a statement that a specified action has been taken by the board of directors shall be satisfied by a statement that the corporation is formed under this Chapter having no board of directors and that the action was duly approved by the shareholders.
  - (4) The shareholders by resolution may appoint one or more shareholders to sign any documents as "*Designated Directors*."
  - (5) Unless the articles of incorporation otherwise provide, any action requiring director approval or both director and shareholder approval



shall be sufficiently authorized by shareholder approval and any action otherwise requiring a vote of a majority or greater percentage of the board of directors shall require the affirmative vote of the holders of a majority, or such greater percentage, of the shares entitled to vote thereon.

- (b) Any amendment to the articles of incorporation to include the provisions authorized by subsection (a) must be approved by the holders of all the shares of the corporation whether or not they are otherwise entitled to vote thereon, or all the subscribers to such shares, or the incorporators, as the case may be. Any amendment to the articles of incorporation to delete the election must be approved by the affirmative vote of the holders of all of the shares of the corporation whether or not they are otherwise entitled to vote thereon.

### **§15-2-123. Agreements Among Shareholders**

- (a) The shareholders of a corporation formed under this Chapter may by unanimous action enter into one or more written agreements to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relations among the shareholders of the corporation.
- (b) Any agreement authorized by this section shall be valid and enforceable according to its terms notwithstanding the elimination of a board of directors, any restriction on the discretion or powers of the board of directors, or any proxy or weighted voting rights given to directors and notwithstanding that the effect of the agreement is to treat the corporation as if it were a partnership or that the arrangement of the relations among the shareholders or between the shareholders and the corporation would otherwise be appropriate only among partners.
- (c) If the corporation has a board of directors, the effect of an agreement authorized by this section restricting the discretionary powers of the directors shall be to relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, the liability for acts or omissions imposed by law upon directors to the extent that the discretion or powers of the directors are controlled by the agreement.
- (d) An election not to have a board of directors in an agreement authorized by this section shall not be valid unless the articles of incorporation contain a statement to that effect in accordance with Section 122 of this Chapter.
- (e) A shareholder agreement authorized by this section shall not be amended except by the unanimous written consent of the shareholders unless otherwise provided in the agreement.
- (f) Any action permitted by this section to be taken by shareholders may be taken by the subscribers to shares of the corporation if no shares have been issued at the time of the agreement authorized by the section.

- (g) Provisions otherwise required to be stated in corporate bylaws may be contained with equal effect in a shareholder's agreement.
- (h) This section shall not prohibit any other agreement among two or more shareholders not otherwise prohibited by law.

#### **§15-2-124. Shareholders' Right to Inspect Records**

- (a) A corporation shall keep at least the following records:
  - (1) minutes of all shareholders' meetings and board of director's meetings;
  - (2) appropriate accounting records;
  - (3) names and addresses of all shareholders and the number and class of shares held;
  - (4) current articles of incorporation, bylaws and shareholders' agreements described in Section 123;
  - (5) resolutions adopted by the board of directors.
- (b) Upon five days written notice, a shareholder of the corporation is entitled to inspect and copy the records referred to in subsection (a) above, subject to the following requirements:
  - (1) the shareholder's demand must be made in good faith and for a proper purpose;
  - (2) the shareholder must describe with reasonable particularity his or her purpose and the records he or she desires to inspect;
  - (3) the records must be directly connected with his or her purpose;
  - (4) the corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents made for the shareholder; provided, however, that the charge may not exceed any estimates of such costs provided to the shareholder.
- (c) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he or she represents.
- (d) A corporation may take reasonable steps to prevent the dissemination of trade secrets, proprietary information or other commercially-sensitive information to persons other than shareholders.

#### **§15-2-125. Annual Meeting**

A corporation formed under this Chapter may establish in its articles of incorporation or by-laws, or in a shareholders' agreement authorized by Section 123, a date at which an

annual meeting of shareholders shall be held, if called, and if not so established, the date shall be the first business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request therefor is delivered to the corporation by any shareholder not less than 30 days before the date specified for the meeting.

#### **§15-2-126. Special Meetings of Shareholders**

- (a) A corporation shall hold a special meeting of shareholders:
  - (1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or
  - (2) if the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting describing the purposes for which it is to be held.
- (b) Special shareholders' meetings may be held on or off of the Rosebud Sioux Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.
- (c) Only business within the purposes described in the notice sent to shareholders may be conducted at a special shareholders' meeting.

#### **§15-2-127. Notice of Shareholders' Meetings**

- (a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting. Notice shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each shareholder.
- (b) If an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

#### **§15-2-128. Shareholder Sale Option at Death**

- (a) If the articles of incorporation of a corporation formed under this Chapter provide that this section shall apply to the corporation, the executor or administrator of the estate of any deceased shareholder shall, subject to any directions in the deceased shareholder's last will and testament, have the right to require the corporation to elect either to purchase or cause the purchase of all,

but not less than all, of the shares of the decedent pursuant to subsections (d) through (f), or to be dissolved.

- (b) A modification of the provisions in this section shall be valid if it is set forth or referred to in the articles of incorporation.
- (c) An amendment to the articles of incorporation to provide that this section shall apply or to delete or modify the provisions of this section shall be approved by the unanimous vote of the holders of each class of shares of the corporation affected by the proposed deletion or modification, whether or not they are otherwise entitled to vote thereon; but if the corporation has no shareholders at the time of the proposed amendment, by the unanimous vote of all of the subscribers or all of the incorporators, as the case may be.
- (d) A person exercising rights under this section shall, within six months after the death of the beneficial owner of shares, deliver a written notice to the corporation's registered office specifying the number and class of all shares beneficially owned by the deceased shareholder and stating that an offer by the corporation to purchase such shares is being solicited pursuant to this section. Within 20 days after receipt of the notice, the president of the corporation shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to offer to purchase the shares. Approval of action to offer to purchase the shares shall be by affirmative vote of the holders of a majority of the shares entitled to vote, excluding the shares covered by the notice. With the consent of all the shareholders entitled to vote for approval, the corporation may allocate some or all of the shares to one or more shareholders, or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or such proportion as shall be agreeable to those desiring to purchase. Written notice of any offer to purchase approved by the shareholders, or that no offer to purchase was approved, shall be delivered or sent to the person exercising his rights under this section within 75 days after delivery of the notice soliciting the offer to purchase. Any offer to purchase shall be accompanied by copies of the corporation's balance sheets as of the end of, and profit and loss statements for, its preceding two accounting years and any available interim balance sheet and profit and loss statement.
- (e) To the extent the price and other terms for purchasing shares of a transferring shareholder by the corporation or remaining shareholders are fixed or are to be determined pursuant to provisions in the articles of incorporation, the by-laws of the corporation, or by written agreement, those provisions shall be binding, except that in the event of a default in any payment due, subsection (h) shall apply and the person exercising his rights under this section shall have the right to petition for dissolution of the corporation. Any offer to purchase shall be accepted or rejected in writing within 15 days.

- (f) If an offer to purchase is rejected, or if no offer to purchase is made, the person exercising rights under this section may commence an action in the Tribal Court. The jurisdiction of the court shall be plenary and exclusive. The corporation shall be made a party defendant in such action and shall, at its expense, give notice of the commencement of the action to all of its shareholders and such other persons as the court may direct. The court shall proceed to determine the fair value of the shares of the person exercising the rights under this section in accordance with Section 129 (e) of this Chapter and enter an order requiring the corporation to cause the purchase of the shares at fair value and on the other terms so determined or to give such person the right to have the corporation dissolved.
- (g) Upon the petition of the corporation, the court may modify its decree to change the terms of payment if it finds that the changed financial or legal ability of the corporation or other purchasers of the shares to complete the purchase justifies a modification. Any person making a payment in order to prevent or cure any default by any purchaser shall be entitled to recover the excess payment from the defaulting person.
- (h) If the corporation or other purchaser fails for any reason to make any payment specified in the court decree within 30 days after the due date for such payment, the court shall, upon the petition of the person to whom the payment is due and in the absence of good cause shown by the corporation, enter a decree dissolving the corporation.
- (i) (1) If the fair value of the shares as determined by the court does not materially exceed the last offer made by the corporation prior to the commencement of an action brought pursuant to subsection (f) and the court finds that the failure of the person exercising rights under this section to accept the corporation's last offer was arbitrary, vexatious, or not otherwise in good faith, the court may assess all or a portion of the costs and expenses of the action against such person.
- (2) If the fair value of the shares as determined by the court materially exceeds the amount of the last offer made by the corporation prior to the time a petition was filed pursuant to subsection (f) and the court finds that the corporation's last offer was arbitrary, vexatious, or was otherwise not made in good faith, the court may assess all or a portion of the costs and expenses of the action against the corporation.
- (3) Expenses assessable under subsections (1) and (2) shall include reasonable compensation for and reasonable expenses of any appraisers appointed by the court, and the reasonable fees and expenses of counsel for and experts employed by any party.
- (4) Except as provided in subsections (1) and (2), the legal costs of an action filed pursuant to subsection (f) shall be assessed on an equal basis between the corporation and any party exercising rights under this section,

and all other fees and expenses shall be borne by the party incurring the fees and expenses.

- (j) Any shareholder may waive his and his estate's and heirs' rights under this section by a signed writing.
- (k) This section shall not be construed to prohibit any other agreement not prohibited by law that provides for the purchase of shares of the corporation, nor shall it prevent a shareholder from enforcing any other remedy he may have.

### **§15-2-129. Actions by Shareholders of Close Corporations**

- (a) Any shareholder of record, the beneficial owner of shares held by a nominee, or the holder of voting trust certificates of a corporation formed under this Chapter may file a petition in the Tribal Court for relief on the grounds that:
  - (1) The directors or those in control of the corporation have or will have conducted the business and affairs of the corporation in a manner which is not in good faith and which is unfair or oppressive as to the petitioner. Such conduct shall include, but shall not be limited to unfairly depriving the shareholder of the benefit of his or her investment in preference to other shareholders by failing to pay dividends which in good faith ought to be paid, or using the payment of wages as an unfair device to divert income from the petitioner.
  - (2) Conditions exist that would be grounds for judicial dissolution of the corporation under Section 163.
- (b) In determining whether one or more of the conditions specified in subsection (a) above exist, the court shall give due consideration to the strict fiduciary duty which shareholders of corporations formed under this Chapter owe to one another, which is the duty of good faith, fairness and loyalty.
- (c) The jurisdiction of the court shall be plenary and exclusive. If the court finds that one or more of the conditions specified in subsection (a) exist, it shall grant such relief as in its discretion it deems appropriate, including, without limitation, orders granting one or more of the following types of relief:
  - (1) Cancelling, altering or enjoining any resolution or other act of the corporation;
  - (2) Directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action;
  - (3) Cancelling or altering any provision contained in the articles of incorporation or by-laws of the corporation;

- (4) Removing from office any director or officer, or ordering that a person be appointed a director or officer;
- (5) Requiring an accounting with respect to any matters in dispute;
- (6) Appointing a custodian to manage the business and affairs of the corporation;
- (7) Appointing a provisional director who shall have all the rights, powers, and duties of a duly elected director and shall serve for the term and under the conditions established by the court;
- (8) Ordering the payment of dividends;
- (9) If the court finds the relief specified in paragraphs (1) through (8) is or would be inadequate or inappropriate, ordering that the corporation is liquidated and dissolved unless either the corporation or one or more of the remaining shareholders has purchased all of the shares of another shareholder at their fair value by a designated date, with the fair value and terms of the purchase to be determined as provided by subsection (e). In the event the share purchase is not consummated and the corporation is dissolved and liquidated, any shareholder whose shares were to be purchased shall have the same rights and priorities in the assets of the corporation as would have been the case had no purchase been ordered by the court.
- (10) Awarding damages to any aggrieved party in addition to or in lieu of any other relief granted.

In determining whether to enter a judgment under paragraph (9), the court shall take into consideration the financial condition of the corporation but shall not refuse to order liquidation solely on the grounds that the corporation has earned surplus or current operating profits.

- (d) If the court determines that any party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable expenses, including attorneys' fees and the costs of any appraisers or other experts, to one or more of the other parties.
- (e) If the court orders relief pursuant to subsection (c)(9), the court shall:
  - (1) Proceed to determine the fair value of the shares to be purchased, considering the going concern value of the corporation, any agreement among the same or all of the shareholders fixing a price or specifying a formula for determining the value of the corporation's shares for any purpose, the recommendations of any appraisers appointed by the court, any legal constraints on the ability of the corporation to acquire the shares to be purchased, and other relevant evidence.

- (2) Enter a decree specifying the identity of the purchaser and the terms of the purchase found to be proper under the circumstances, including such provisions as are deemed proper concerning payment of the purchase price in two or more installments, payment of interest on the installments, subordination of the obligation to the rights of other creditors of the corporation, security for the deferred purchase price, and a covenant not to compete or other restriction on the selling shareholder.
- (3) Order that the selling shareholder shall, concurrently with the payment of the purchase price, or in the event of an installment purchase concurrently with the payment of the initial payment called for in the order make delivery of all his or her shares and from that date have no rights or claims against the corporation or its directors, officers, or shareholders by reason of his or her having been a director, officer, or shareholder of the corporation, except the right to receive the unpaid balance of the amount awarded under this section and any amounts due under any agreement with the corporation or the remaining shareholders that are not terminated by the court's orders.
- (4) Order that if the purchase is not completed in accordance with the court's decree, the corporation shall be liquidated.
- (f) Except as otherwise provided in subsection (g), the rights of a shareholder to file a proceeding under this section are in addition to and not in lieu of any other rights or remedies the shareholder may have.
- (g) No shareholder shall be eligible to file an action under this section until he shall have exhausted any non-judicial remedy for resolution of the issues in dispute to which the shareholder has agreed in writing.

### **§15-2-130. Limited Liability**

The failure of a corporation to observe usual corporate formalities or requirements relating to the exercise of its corporate powers or the management of its business and affairs shall not be grounds for imposing personal liability on the shareholders for obligations of the corporation.

## **PART C: DIRECTORS AND OFFICERS**

### **§15-2-131. Duties of Board of Directors**

Unless the election under Section 122 of this Chapter to operate without a board of directors has been made, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.



### **§15-2-132. Qualifications of Directors**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe. A director shall be at least 18 years of age.

### **§15-2-133. Terms of Directors**

- (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.
- (b) The terms of all other directors expire at the next annual shareholder's meeting following their election unless the articles of incorporation provide that their terms are staggered.
- (c) A decrease in the number of directors does not shorten an incumbent director's term.
- (d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.
- (e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

### **§15-2-134. Removal of Directors by Shareholders**

- (a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
- (b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him or her.
- (c) A director may be removed by the shareholders only at a meeting called for that purpose and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

### **§15-2-135. Removal of Directors by Judicial Proceeding**

- (a) The Rosebud Sioux Tribal Court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and (2) removal is in the best interest of the corporation.

- (b) If the court removes the director it may bar the director from reelection for a period prescribed by the court.
- (c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

#### **§15-2-136. Meetings**

- (a) The board of directors may hold regular or special meetings on or off the Rosebud Sioux Reservation.
- (b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

#### **§15-2-137. Action Without Meeting**

- (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.
- (b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.
- (c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

#### **§15-2-138. Notice of Meeting**

- (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice to directors of the date, time, place, or purpose of the meeting.
- (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws or the provisions of this Chapter.

### **§15-2-139. Waiver of Notice**

- (a) A director may waive any notice required by this Chapter, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless that director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

### **§15-2-140. Quorum and Voting**

- (a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of a majority of the number of directors.
- (b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the number of directors.
- (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
- (d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

### **§15-2-141. General Standards for Directors**

- (a) A director shall discharge his or her duties as a director, including duties as a member of a committee:
  - (1) in good faith;
  - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) in a manner he or she reasonably believes to be in the best interests of the corporation.

- (b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
  - (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
  - (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
  - (3) a committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.
- (c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
- (d) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

#### **§15-2-142. Director Conflict of Interest**

- (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is voidable by the corporation because of the director's interest in the transaction unless any one of the following is true:
  - (1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;
  - (2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or
  - (3) the transaction was fair to the corporation.
- (b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction or (2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

- (c) For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.
- (d) For purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this Chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

#### **§15-2-143. Liability for Unlawful Distributions**

- (a) Unless he or she complies with the applicable standards of conduct described in Section 141, a director who votes for or assents to a distribution made in violation of this Chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this Chapter or the articles of incorporation.
- (b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution:
  - (1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in Section 141; and
  - (2) from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this act or the articles of incorporation.

#### **§15-2-144. Officers**

- (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
- (b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.
- (d) The same individual may simultaneously hold more than one office in a corporation.
- (e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

#### **§15-2-145. Standards of Conduct for Officers**

- (a) An officer with discretionary authority shall discharge his or her duties under that authority:
  - (1) in good faith;
  - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) in a manner he or she reasonably believes to be in the best interests of the corporation.
- (b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
  - (1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
  - (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
- (c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

- (d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

#### **§15-2-146. Resignation and Removal of Officers**

- (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.
- (b) A board of directors may remove any officer at any time with or without cause.

#### **§15-2-147. Indemnification of Corporate Agents**

- (a) A corporation may 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 by reason of the fact that he or she 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, partner, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 his or her conduct was unlawful.
- (b) No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.
- (c) No person shall be indemnified under this section in respect of any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

#### **§15-2-148. Mandatory Indemnification**

Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

## **§15-2-149. Insurance**

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Chapter.

## **PART D: AMENDMENT OF ARTICLES OF INCORPORATION**

### **§15-2-150. Resolution of Proposed Amendment**

The board of directors shall adopt a resolution setting forth a proposed amendment to the articles of incorporation and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

### **§15-2-151. Notice of Proposed Amendment**

Written notice setting forth a proposed amendment to the articles of incorporation or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

### **§15-2-152. Vote of Shareholders at Meeting**

At the meeting described in Section 151 a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. Except as otherwise provided in this Chapter, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon. If any class of shares is entitled to vote thereon as a class pursuant to Section 153, the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon, unless a greater majority is required by the provisions of this Chapter.

### **§15-2-153. Classes of Shares Entitled to Vote**

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 articles of incorporation, if the amendment would:

- (1) Increase or decrease the aggregate number of authorized shares of such class;



- (2) Increase or decrease the par value of the shares of such class;
- (3) Effect an exchange, reclassification or cancellation of all or parts of the shares of such class;
- (4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;
- (5) Change the designations, preferences, limitations or relative rights of the shares of such class;
- (6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes;
- (7) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class;
- (8) In the case of a preferred or special class of shares, divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;
- (9) Limit or deny the existing preemptive rights of the shares of such class;
- (10) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

#### **§15-2-154. Articles of Amendment**

- (a) Articles of amendment shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 144 of this Chapter for authenticating corporate records, and shall set forth:
  - (1) The name of the corporation;
  - (2) The amendment so adopted;
  - (3) The date of the adoption of the amendment by the shareholders;
  - (4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;
  - (5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a

class, the number of shares of each such class voted for and against such amendment, respectively;

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement expressed in dollars, of the amount of stated capital as changed by such amendment.

(b) The articles of amendment shall be sent to the Director of Corporations with the fees as provided in this Chapter. If the Director of Corporations approves the amendments, he shall issue a certificate of amendment.

## PART E: DISSOLUTION

### §15-2-155. Dissolution By Board Of Directors and Shareholders

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with Section 127. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, in order for the proposal to dissolve to be adopted it must be approved by a majority of all the votes entitled to be cast on that proposal.

### **§15-2-156. Shareholder Option To Dissolve The Corporation**

- (a) Unless a shareholder's agreement or the articles of incorporation provide otherwise, any shareholder of a corporation formed under this Chapter has an option to have the corporation dissolved at will. Whenever any such option to dissolve is exercised, the shareholder exercising the option shall give written notice thereof to all other shareholders. The corporation or one or more shareholders of the corporation may offer to purchase the shares at their fair market value from the person exercising the option to dissolve. If the parties cannot agree on the price for the shares or other terms for the sale, any party may bring an action in tribal court to oversee the terms of the sale, utilizing the procedures set forth in Section 129(e) of this Chapter. If no such written offer to purchase is received within 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if the required number of shareholders having voting power had consented pursuant to Section 155.
- (b) Unless the articles of incorporation otherwise provide, an amendment to the articles of incorporation to include, modify, or delete a provision authorized by subsection (a) shall be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote thereon, or all of the subscribers or all of the incorporators, as the case may be.

### **§15-2-157. Articles of Dissolution**

- (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Director of Corporations for filing articles of dissolution setting forth:
  - (1) the name of the corporation;
  - (2) the date dissolution was authorized;
  - (3) if dissolution was approved by the shareholders:
    - (i) the number of votes entitled to be cast on the proposal to dissolve; and
    - (ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.
  - (4) If voting by voting groups was required, the information required by subparagraph (3) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(5) If the dissolution resulted from the exercise of an option to dissolve authorized by Section 156 a copy of the notice required by that section shall be attached.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

#### **§15-2-158. Effect of Dissolution**

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) collecting its assets;

(2) disposing of its properties that will not be distributed in kind to its shareholders;

(3) discharging or making provision for discharging its liabilities;

(4) distributing its remaining property among its shareholders according to their interests; and

(5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) transfer title to the corporation's property;

(2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(3) subject its directors or officers to standards of conduct different from those prescribed in Sections 141 and 145;

(4) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;

(5) prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) abate or suspend a proceeding pending by or against the corporation in its corporate name; or

(7) terminate the authority of the registered agent of the corporation.

### §15-2-159. Known Claims Against Dissolved Corporation

- (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
- (b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:
  - (1) describe information that must be included in a claim;
  - (2) provide a mailing address where a claim may be sent;
  - (3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
  - (4) state that the claim will be barred if not received by the deadline.
- (c) A claim against the dissolved corporation is barred:
  - (1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;
  - (2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.
- (d) For purposes of this section, "*claim*" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

### §15-2-160. Unknown Claims Against Dissolved Corporation

- (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
- (b) The notice must:
  - (1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located, and in newspaper of general circulation on the Reservation;
  - (2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
  - (3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

- (c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:
- (1) a claimant who did not receive written notice under Section 159;
  - (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;
  - (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim may be enforced under this section:
- (1) against the dissolved corporation, to the extent of its undistributed assets; or
  - (2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his prorata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

#### **§15-2-161. Grounds For Administrative Dissolution**

The Director of Corporations may proceed under Section 162 to administratively dissolve a corporation if:

- (1) the corporation's period of duration stated in its articles of incorporation expires;
- (2) responses to the interrogatories under §15-1-107 of this Title show that the Corporation has been inactive for a period of at least one year, and there are no plans to reactive the corporation in the future; or
- (3) interrogatories under Section 15-1-107 of this Title have not been answered by any of the persons to whom they were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Corporation shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

#### **§15-2-162. Procedure For and Effect of Administrative Dissolution**

- (a) If the Director of Corporations determines that one or more grounds exist under Section 161 for dissolving a corporation, it shall serve the corporation with written notice of its determination.

- (b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Director of Corporations that each ground determined by the Director of Corporations does not exist within 60 days after service of the notice is perfected, the Director of Corporations shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Corporations shall file the original of the certificate and serve a copy on the corporation.
- (c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 158 and notify claimants under Sections 159 and 160.
- (d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

### **§15-2-163. Grounds For Judicial Dissolution**

The Rosebud Sioux Tribal Court may dissolve a corporation:

- (1) in a proceeding brought on behalf of the Director of Corporations or other agency or official of the Tribe if it is established that:
  - (i) the corporation obtained its articles of incorporation through fraud; or
  - (ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;
- (2) in a proceeding by a shareholder if it is established that:
  - (i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
  - (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  - (iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired;
  - (iv) the corporate assets are being misapplied or wasted; or
  - (v) the shareholder has duly exercised an option described in Section 156 of this Chapter to dissolve the corporation, and the corporation has failed

to proceed with filing articles of dissolution or winding up corporate affairs as required by this Chapter;

- (3) in a proceeding by a creditor if it is established that;
  - (i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
  - (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
- (4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

#### **§15-2-164. Procedure for Judicial Dissolution**

- (a) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.
- (b) The Tribal Court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

#### **§15-2-165. Decree of Dissolution**

- (a) If after a hearing the Tribal Court determines that one or more grounds for judicial dissolution described in Section 163 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Director of Corporations, who shall file it.
- (b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 158 and the notification of claimants in accordance with Sections 159 and 160.

#### **§15-2-166. Deposit With Tribal Treasurer**

Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Tribal Treasurer for safekeeping. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Tribal Treasurer shall pay to the individual the amounts due.



**CHAPTER THREE**  
**NON-PROFIT CORPORATIONS**

**PART A: FORMATION**

**§15-3-101. Scope of Chapter**

Unless otherwise provided, the provisions of this Chapter apply to all non-profit corporations formed under the sovereign powers of the Rosebud Sioux Tribe, except those corporations which are controlled by the Rosebud Sioux Tribal Council.

**§15-3-102. Definition of Terms Used in this Chapter**

In this Chapter:

- (1) "*Corporation*" means a non-profit corporation formed under the sovereign powers of the Rosebud Sioux Tribe, except for those corporations controlled by the Rosebud Sioux Tribal Council;
- (2) "*Director*" means a member of a group elected or otherwise authorized to govern the affairs of the corporation, and includes trustees, governors, regents, and other terms of like import;
- (3) "*Member*" means (without regard to what a person is called in the articles or bylaws) any person who on more than one occasion, pursuant to a provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors. A person is not a member solely by virtue of any of the following:
  - (i) any rights such person has as a member of the staff or student body of any school or college to vote for a director;
  - (ii) any rights such person has to designate a director or directors; or
  - (iii) any rights such person has as a director.
- (4) "*Mutual Benefit Corporation*" means any corporation, including any non-profit cooperative, which is not a "*public benefit corporation*."
- (5) "*Public Benefit Corporation*" means:
  - (a) any corporation which is recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, or any successor section;

- (b) any corporation, unless its articles or incorporation provide that it is a mutual benefit corporation, which is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals; or
- (c) any corporation organized primarily for a public purpose and which is designated in its articles of incorporation as a public benefit corporation.

### **§15-3-103. Purposes and Powers of Non-Profit Corporations**

- (a) Every corporation incorporated under the sovereign powers of the Rosebud Sioux Tribe has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.
- (b) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation power:
  - (1) to sue and be sued, complain and defend in its corporate name.
  - (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
  - (3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the Rosebud Sioux Tribe, for managing and regulating the affairs of the corporation;
  - (4) to purchase, receive, lease, or acquire, whether by gift, devise, bequest or otherwise, and to own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
  - (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
  - (6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
  - (7) to make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

- (8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by Section 104 of this Chapter;
- (9) to be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
- (10) to conduct its business, locate offices, and exercise the powers granted by this Chapter within or without the Rosebud Sioux Reservation and the State of South Dakota;
- (11) to elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- (12) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) to make donations for public welfare or for charitable, scientific, or educational purposes and for the purposes not inconsistent with law, that further the corporate interest;
- (14) to impose dues, assessments, admission and transfer fees upon its members;
- (15) to establish conditions for admission to membership, admit members and issue memberships;
- (16) to carry on a business;
- (17) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation;
- (18) to cease its corporate activities and surrender its corporate franchise.

**§15-3-104. Limitations**

- (a) A corporation:
  - (1) shall not have or issue shares of stock;
  - (2) shall not pay dividends or make any disbursement of income to its members, directors or officers;
  - (3) shall not loan money or credit to its officers or directors;
  - (4) may pay compensation only up to a reasonable amount to its members, directors, officers or agents for services rendered; and

- (5) may confer benefits upon its members only in conformity with its purposes.
- (b) A mutual benefit corporation, unless its articles of incorporation or bylaws provide otherwise:
  - (1) upon dissolution or final liquidation may make distributions to its members as permitted by this Chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income; and
  - (2) may periodically pay refunds to members for fees or dues actually paid which are in excess of the losses, expenses and debts of the corporation, and such refunds shall not be deemed to be dividends or distributions of income.
- (c) A public benefit corporation shall, upon dissolution, have its assets distributed for one or more purposes listed in the definition of "*Public Benefit Corporation*" contained in Section 102 of this Chapter, or to the federal government, or to a state, tribe or other local government, for a public purpose, or shall be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

#### **§15-3-105. Limitations on Private Foundations**

A corporation which is a private foundation as defined in Section 509(a) of the Internal Revenue Code of 1954:

- (a) Shall distribute such amounts for each taxable year at such time and in such manner as to avoid subjecting the corporation to tax under Section 4942 of the Code;
- (b) Shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code;
- (c) Shall not retain any excess business holdings as defined in Section 4943(c) of the Code;
- (d) Shall not make any taxable expenditures as defined in Section 4944 of the Code;
- (e) Shall not make any taxable expenditures as defined in Section 4945(d) of the Code;

All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1954 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

### **§15-3-106. Defense of Ultra Vires**

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

- (1) In a proceeding by a member or director 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 may, if all the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
- (2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation.
- (3) In a proceeding by the Director of Corporations, as provided in this Chapter, to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

### **§15-3-107. Articles of Incorporation**

- (a) The articles of incorporation shall set forth:
  - (1) a corporate name for the corporation that satisfies the requirements of Section 15-1-111;
  - (2) one of the following statements:
    - (i) This corporation is a public benefit corporation.
    - (ii) This corporation is a mutual benefit corporation.
  - (3) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
  - (4) the names and addresses of the individuals who are to serve as the initial directors;

- (5) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;
  - (6) the name and address of each incorporator;
  - (7) whether or not the corporation will have members; and
  - (8) provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
- (1) provisions not inconsistent with law regarding:
    - (i) managing and regulating the affairs of the corporation;
    - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and
    - (iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.
  - (2) any provision that under this Chapter is required or permitted to be set forth in the bylaws.
- (c) Each incorporator and director named in the articles must sign the articles.
- (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this Chapter.

### **§15-3-108. Filing of Articles of Incorporation**

Duplicate originals of the articles of incorporation shall be delivered to the Director of Corporations. If the Director of Corporations finds that the articles of incorporation conform to this Chapter, he shall, when all the fees have been paid as in this Chapter described:

- (1) Endorse on each of such originals the word "*Filed*," and the effective date of the filing thereof.
- (2) File one of such originals.
- (3) Issue a certificate of incorporation to which the other original shall be affixed.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto shall be returned to the incorporators or their representative.

**§15-3-109. Effect of Filing the Articles of Incorporation -- Certificate of Incorporation**

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

**§15-3-110. Organization Meeting of Directors**

After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers, and transacting such other business as may come before the meeting. Unless all directors waive notice, the directors calling the meeting shall give at least three days' notice thereof by mail to each director, which notice shall state the time and place of meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting if each director signs an instrument which states the action so taken.

**PART B: MEMBERS**

**§15-3-111. Admission of Members**

- (a) A corporation is not required to have members.
- (b) A corporation may admit any person as a member. The articles or bylaws shall establish criteria or procedures for admission; provided, however, that no person shall be admitted as a member without his or her consent.
- (c) Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

**§15-3-112. Differences in Rights and Obligations of Members**

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

### **§15-3-113. Transfers**

- (a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.
- (b) No member of a public benefit corporation may transfer a membership or any right arising therefrom.
- (c) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

### **§15-3-114. Resignation**

- (a) A member may resign at any time.
- (b) The resignation of a member does not relieve the member from any previously accrued obligations the member may have to the corporation.

### **§15-3-115. Termination**

- (a) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable under the circumstances and is carried out in good faith.
- (b) A procedure is fair and reasonable when it provides for written notice to the member of the reasons for the proposed expulsion, suspension or termination, and provides a reasonable opportunity for the member to be heard by the person or persons authorized to decide the matter prior to the proposed action.
- (c) A procedure which departs from any procedures set forth in the corporate bylaws for the expulsion, termination or suspension of members or membership rights is not fair and reasonable, unless special circumstances warrant such a departure.
- (d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

### **§15-3-116. Purchase of Memberships**

- (a) A public benefit corporation may not purchase any of its memberships or any right arising therefrom.



- (b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws.
- (c) A mutual benefit corporation shall not purchase its memberships unless after the purchase is completed:
  - (1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and
  - (2) the corporation's total assets would at least equal the sum of its total liabilities.

#### **§15-3-117. Annual Meeting of Members**

A corporation with members shall establish in its articles of incorporation or by-laws a date at which an annual meeting of members shall be held, if called, and if not so established, the date shall be the second business day after May 31st. Unless otherwise provided in the articles of incorporation, no annual meeting need be held unless a written request therefor is delivered to the corporation by any voting member not less than 30 days before the date specified for the meeting.

#### **§15-3-118. Special Meetings of Members**

- (a) A corporation shall hold a special meeting of members:
  - (1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or
  - (2) if at least 10 percent of all the members entitled to vote on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one or more written demands for the meeting describing the purposes for which it is to be held.
- (b) Special meetings of members may be held on or off of the Rosebud Sioux Reservation, at the place stated in accordance with the bylaws. If no place is stated in the bylaws, special meetings shall be held at the corporation's principal office.
- (c) Only business within the purposes described in the notice sent to members may be conducted at a special meeting of members.

#### **§15-3-119. Notice of Members' Meetings**

- (a) A corporation shall notify its members of the date, time and place of each annual and special meeting of members no fewer than 15 nor more than 60 days before the meeting. Unless this chapter or the articles of incorporation require

otherwise, the corporation is required to give notice only to members entitled to vote at the meeting.

- (b) Notice of members' meetings shall be given by mail or telephone, using the most recent address or telephone number supplied to the corporation by each member; provided, however, that if it is consistent with the corporation's articles or bylaws, notice may be given by posting and publishing notices instead of mailing or telephoning if the directors determine in good faith that notice so given is reasonably calculated to actually inform all voting members of the meeting.
- (c) If an annual or special members' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if that information is announced before meeting adjournment.

### **§15-3-120. Waiver of Notice**

- (a) A member may waive any notice required by this Chapter, the articles, or bylaws before or after the date and time stated in the notice. Except as provided in subsection (b) below, the waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (b) A member's attendance at a meeting:
  - (1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;
  - (2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

### **§15-3-121. Action by Written Ballot**

Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual or special meeting of members may be taken by a vote without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

### **§15-3-122. Voting Rights of Members in General**

- (a) Each member shall have no more than one vote with respect to any matter he or she is entitled to vote upon according to the corporation's bylaws or articles.
- (b) Cumulative voting for directors shall not be allowed unless provided for in the corporation's bylaws or articles.

- (c) The bylaws or articles of a corporation may provide for any reasonable method to fill individual positions on its board of directors, including but not limited to: voting by all members; voting among members living in a particular community; voting among any other class of members; appointment by the Tribal Council or any other person or entity; and voting among persons who are not considered "members" under Section 102 of this Chapter.

### **§15-3-123. Inspection of Corporate Records**

- (a) A corporation shall keep at least the following records:
  - (1) minutes of all members' meetings and board of director's meetings and actions of members or of the board of directors without a meeting;
  - (2) appropriate accounting records;
  - (3) detailed records of the use of any money donated to a public benefit corporation;
  - (4) names and addresses of all members and the class of voting rights held by each;
  - (5) current articles of incorporation and bylaws;
  - (6) resolutions adopted by the board of directors.
- (b) Upon five days written notice, the Director of Corporations or his duly-authorized representative or a member of the corporation is entitled to inspect and copy the records referred to in subsection (a) above. In the case of inspection by a member, the right is subject to the following requirements:
  - (1) the member's demand must be made in good faith and for a proper purpose;
  - (2) the member must describe with reasonable particularity his or her purpose and the records he or she desires to inspect; and
  - (3) the records must be directly connected with his or her purpose.
- (c) the corporation may impose a reasonable charge covering the costs of labor and materials for copies of documents; provided, however, that in the case of copies made for a member, the charge may not exceed any estimates of such costs provided to the member.
- (d) A member's agent or attorney has the same inspection and copying rights as the member he or she represents.
- (e) A corporation may take reasonable steps to prevent the dissemination of trade secrets, proprietary information or other commercially-sensitive information to

persons other than corporate members or representatives of the Director of Corporations.

#### **§15-3-124. Limitations on use of Membership Lists**

- (a) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:
  - (1) used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
  - (2) used for any commercial purpose; or
  - (3) sold to or purchased by any person.
- (b) This section shall not be construed to limit the use of membership lists by the Director of Corporations or other tribal officials in the course of any official investigation of the operation of a corporation.

### **PART C: DIRECTORS AND OFFICERS**

#### **§15-3-125. Duties of Board of Directors**

- (a) Except as provided in subsection (b) below, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board of directors.
- (b) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of directors, and the directors shall be relieved to that extent from such duties and responsibilities.

#### **§15-3-126. Qualifications of Directors**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of the Reservation or a member of the corporation unless the articles of incorporation or bylaws so prescribe. A director shall be an individual who is at least 18 years of age.

#### **§15-3-127. Terms of Directors**

- (a) If the corporation has members:

- (1) the terms of the initial directors of a corporation expire at the first members' meeting at which directors are elected; and
  - (2) the terms of all other directors expire at the next annual members' meeting following their election, unless the articles of incorporation provide that their terms are staggered or are longer than one year in duration.
- (b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.
- (c) A decrease in the number of directors does not shorten an incumbent director's term.
- (d) Except as provided in the articles or bylaws:
- (1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
  - (2) the term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.
- (e) Despite the expiration of a director's term, he continues to serve until a successor is elected or appointed and qualifies or until there is a decrease in the number of directors.

#### **§15-3-128. Removal of Elected Directors**

- (a) The members may vote to remove one or more directors with or without cause.
- (b) If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.
- (c) A director may be removed by the members only at a meeting called for that purpose and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.
- (d) An entire board of directors may be removed under subsections (a)-(c).
- (e) The board of directors of a corporation may, without cause, remove a director who has been elected by the board by the vote of a two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws.
- (f) If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the

specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

### **§15-3-129. Removal of Designated or Appointed Directors**

- (a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.
- (b) Appointed Directors:
  - (1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;
  - (2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary;
  - (3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

### **§15-3-130. Removal of Directors by Judicial Proceeding**

- (a) The Rosebud Sioux Tribal Court may remove a director of the corporation from office in a proceeding commenced by the corporation, or by at least 33 percent of the members or in an action brought on behalf of the Director of Corporations, if the court finds that
  - (1) the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation or that the director received a loan of the corporation's money or credit, and
  - (2) removal is in the best interest of the corporation.
- (b) If the court removes the director it may bar the director from reelection for a period prescribed by the court.
- (c) If either the corporation's members or the Director of Corporations commences a proceeding under subsection (a), the corporation shall be made a party defendant.

### **§15-3-131. Vacancy on Board**

- (a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (1) the members, if any, may fill the vacancy; if the vacant office was held by a director elected by a specific voting class, only members of the class are entitled to vote to fill the vacancy if it is filled by the members;
  - (2) the board of directors may fill the vacancy; or
  - (3) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.
- (b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.
  - (c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.
  - (d) A vacancy that will occur at a specific later date, by reason of a resignation or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

#### **§15-3-132. Meetings**

- (a) The board of directors may hold regular or special meetings on or off the Rosebud Sioux Reservation.
- (b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

#### **§15-3-133. Action Without Meeting**

- (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.
- (b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.
- (c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

### **§15-3-134. Notice of Meeting**

- (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held as provided in the bylaws without notice.
- (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws or the provisions of this Chapter.

### **§15-3-135. Waiver of Notice**

- (a) A director may waive any notice required by this Chapter, the articles of incorporation or the bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless that director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

### **§15-3-136. Quorum and Voting**

- (a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of a majority of the number of directors.
- (b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the number of directors.
- (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.
- (d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he or she objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.



The right of dissent or abstention is not available to a director who votes in favor of the action taken.

### §15-3-137. General Standards for Directors

- (a) A director shall discharge his or her duties as a director, including duties as a member of a committee:
  - (1) in good faith;
  - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) in a manner he or she reasonably believes to be in the best interests of the corporation.
- (b) In discharging his or her duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
  - (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
  - (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
  - (3) a committee of the board of directors of which he or she is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.
- (c) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
- (d) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property, and notwithstanding that the corporation may be a trustee with respect to the property.
- (e) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

### §15-3-138. Director Conflict of Interest

- (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsections (b) or (c).
- (b) A transaction in which a director of a public benefit corporation has a conflict of interest may be approved:
  - (1) in advance by the vote of the board of directors or a committee of the board if:
    - (i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and
    - (ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or
  - (2) before or after it is consummated, by obtaining approval of the:
    - (i) Director of Corporations; or
    - (ii) Tribal Court in an action of which the Director of Corporations is given notice.
- (c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:
  - (1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or
  - (2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.
- (d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which he or she has a material financial interest or in which he or she is a general partner is a party to the transaction or (2) another entity of which he or she is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.
- (e) For purposes of subsections (b) and (c), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no

direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsections (b) and (c) if the transaction is otherwise authorized, approved, or ratified as provided in subsections (b) or (c).

- (f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (d)(1), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this Chapter. A majority of the voting members, whether or not present, entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.
- (g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

### **§15-3-139. Liability for Unlawful Payments**

- (a) Unless he or she complies with the applicable standards of conduct described in section 137, a director who votes for or assents to any payment of money by the corporation to a member, officer or director made in violation of Section 104 of this Chapter or the articles of incorporation is personally liable to the corporation for the amount of the payment that exceeds what could have been distributed without violating this Chapter or the articles of incorporation.
- (b) A director held liable for an unlawful payment under subsection (a) is entitled to contribution:
  - (1) from every other director who voted for or assented to the payment without complying with the applicable standards of conduct described in section 137; and
  - (2) from each member, officer or director who received an unlawful payment, for the amount of the unlawful payment, whether or not he or she accepted the payment knowing it was made in violation of this Chapter or the articles of incorporation.

### **§15-3-140. Officers**

- (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.
- (b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.
- (c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.
- (d) The same individual may simultaneously hold more than one office in a corporation.
- (e) Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

### **§15-3-141. Standards of Conduct for Officers**

- (a) An officer with discretionary authority shall discharge his or her duties under that authority:
  - (1) in good faith;
  - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) in a manner he or she reasonably believes to be in the best interests of the corporation.
- (b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
  - (1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
  - (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
- (c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

- (d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he or she performed the duties of office in compliance with this section.

#### **§15-3-142. Resignation and Removal of Officers**

- (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.
- (b) A board of directors may remove any officer at any time with or without cause.

#### **§15-3-143. Indemnification of Corporate Agents**

- (a) A corporation may 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 by reason of the fact that he or she 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, partner, joint venture, trust or other enterprise, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 his or her conduct was unlawful.
- (b) No indemnification shall be made pursuant to this section in respect of any proceeding in which such person shall have been adjudged to be liable to the corporation.
- (c) No person shall be indemnified under this section in respect of any proceeding charging improper personal benefit to him or her, whether or not involving action in his or her official capacity, in which he or she shall have been adjudged to be liable on the basis that personal benefit was improperly received by him or her.

#### **§15-3-144. Mandatory Indemnification**

Unless limited by its articles of incorporation, a corporation shall indemnify a director or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a director of the corporation, against reasonable expenses incurred by him or her in connection with the proceedings.

### **§15-3-147. Determination and Authorization of Indemnification**

- (a) A corporation may not indemnify a director or officer under section 143 unless authorized in the specific case after a determination has been made that indemnification is permissible in the circumstances because the director or officer has met the standard of conduct set forth in section 143.
- (b) The determination shall be made:
  - (1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;
  - (2) if a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;
  - (3) by special legal counsel:
    - (i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or
    - (ii) if a quorum of the board cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board (in which selection directors who are parties may participate);
  - (4) by the members of a mutual benefit corporation, but directors who are at the time parties to the proceedings may not vote on the determination.
- (c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.
- (d) A director or officer of a public benefit corporation may not be indemnified until 20 days after written notice is given to the Director of Corporations of the proposed indemnification.

### **§15-3-148. Insurance**

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise,

against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him or her against the same liability under this Chapter.

## **PART D: AMENDMENT OF ARTICLES OF INCORPORATION**

### **§15-3-149. Amendments to Bylaws and Articles of Corporations Without Members**

If a corporation has no members, its board of directors may adopt one or more amendments to the corporation's bylaws and articles, subject to any approvals required by the articles or bylaws. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 134. The notice must also state that a purpose of the meeting is to consider a proposed amendment to the articles or bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. In addition to any requirements in the bylaws or articles concerning voting on proposed amendments, the amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

### **§15-3-150. Amendments to Bylaws and Articles of Corporations with Members**

If the corporation has members, then:

- (1) Unless this act, the articles, bylaws or the board of directors (acting pursuant to subsection (b)(2)) require a greater vote or voting by class, an amendment to a corporation's articles or bylaws to be adopted must be approved:
  - (i) by the board if the corporation is a public benefit corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;
  - (ii) by the members by two-thirds of the votes cast or by a majority of the voting power, whichever is less; and
  - (iii) in writing by any person or persons whose approval is required by a provision of the articles or bylaws.
- (2) If the board initiates an amendment to the articles or bylaws, or board approval is required by subsection (1) to adopt an amendment, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.
- (3) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in ac-

cordance with section 119. The notice must state that a purpose of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

- (4) If the board seeks to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

#### **§15-3-151. Approval by Third Persons**

The articles or bylaws may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article or bylaw provision may only be amended with the approval in writing of such person or persons.

#### **§15-3-152. Articles of Amendment**

- (a) A corporation amending its articles shall prepare articles of amendment, which shall be executed in duplicate by the corporation by its chief executive officer and shall be verified by the officer who has been delegated responsibility under Section 140 of this Chapter for authenticating corporate records, and shall set forth:
  - (1) the name of the corporation;
  - (2) the text of each amendment adopted;
  - (3) the date of each amendment's adoption;
  - (4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors;
  - (5) if approval by members was required, the number of memberships outstanding and the total number of votes cast for and against the amendment.
  - (6) if approval of the amendment by some person or persons other than the members or the board is required pursuant to section 151, a statement that the approval was obtained.
- (b) The articles of amendment shall be sent to the Director of Corporations with the fees as provided in this Chapter. If the Director of Corporations approves the amendments, he shall issue a certificate of amendment.



## PART E: DISSOLUTION

### §15-3-153. Dissolution of Corporations Without Members

- (a) The board of directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Director of Corporations articles of dissolution.
- (b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with Section 134. The notice must also state that a purpose of the meeting is to consider dissolution of the corporation.
- (c) Dissolution shall be approved by a vote of a majority of the directors in office at the time the transaction is approved.
- (d) The directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

### §15-3-154. Voting on Dissolution by Directors and Members

- (a) Unless this Chapter, the articles, bylaws or the board of directors or members (acting pursuant to subsection (b)) require a greater vote, dissolution is authorized if it is approved:
  - (1) by the board;
  - (2) by the members, if any, by two-thirds of the votes cast or a majority of the members, whichever is less; and
  - (3) in writing by any person or persons whose approval is required by a provision of the articles authorized by Section 151 for an amendment to the articles or bylaws.
- (b) The board may condition its submission of the proposed dissolution on receipt of a higher percentage of affirmative votes or on any other basis.
- (c) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 119. The notice must also state that a purpose of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.
- (d) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

- (d) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

#### **§15-3-155. Distributions by Public Benefit Corporations**

- (a) A public benefit corporation shall give the Director of Corporations written notice that it intends to dissolve 10 days before the time it delivers articles of dissolution to the Director of Corporations. The notice shall include a copy or summary of the plan of dissolution.
- (b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until twenty days after it has given written notice as required by subsection (a) to the Director of Corporations or until the Director of Corporations has consented in writing to, or indicated in writing that it will take no action with respect to, the transfer or conveyance, whichever is earlier.
- (c) Prior to the expiration of the 20-day period described in subsection (b), the Director of Corporations may bring an action in Tribal Court to challenge the planned distribution of assets, and the Tribal Court may enjoin any distribution pending the outcome of the action.
- (d) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Director of Corporations a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

#### **§15-3-156. Articles of Dissolution**

- (a) Subject to any waiting period prescribed by Section 155, at any time after dissolution is authorized, the corporation may dissolve by delivering to the Director of Corporations articles of dissolution setting forth:
  - (1) the name of the corporation;
  - (2) the date dissolution was authorized;
  - (3) a statement that dissolution was approved by a sufficient vote of the board;
  - (4) if approval of members was not required, a statement to that effect;
  - (5) if approval by members was required, the number of memberships outstanding and the total number of votes cast for and against dissolution.

- (6) if approval of dissolution by some person or persons other than the members, the board or the incorporators is required pursuant to Section 154(a)(3), a statement that the approval was obtained; and
  - (7) the effective date of the articles of dissolution.
- (b) After its articles of dissolution have been accepted for filing by the Director of Corporations, a corporation is dissolved upon the effective date stated in its articles of dissolution.

### **§15-3-157. Effect of Dissolution**

- (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
- (1) preserving and protecting its assets and minimizing its liabilities;
  - (2) discharging or making provision for discharging its liabilities and obligations;
  - (3) disposing of its properties that will not be distributed in kind;
  - (4) returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
  - (5) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
  - (6) if the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets in accordance with section 104(c);
  - (7) If the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving; and
  - (8) doing every other act necessary to wind up and liquidate its assets and affairs.
- (b) Dissolution of a corporation does not:
- (1) transfer title to the corporation's property;
  - (2) subject its directors or officers to standards of conduct different from those prescribed in sections 137 and 141;

- (3) change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers; or change provisions for amending its bylaws;
- (4) prevent commencement of a proceeding by or against the corporation in its corporate name;
- (5) abate or suspend a proceeding pending by or against the corporation in its corporate name; or
- (6) terminate the authority of the registered agent of the corporation.

#### **§15-3-158. Known Claims Against Dissolved Corporation**

- (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
- (b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:
  - (1) describe information that must be included in a claim;
  - (2) provide a mailing address where a claim may be sent;
  - (3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
  - (4) state that the claim will be barred if not received by the deadline.
- (c) A claim against the dissolved corporation is barred:
  - (1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;
  - (2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.
- (d) For purposes of this section, "*claim*" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

#### **§15-3-159. Unknown Claims Against Dissolved Corporation**

- (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
- (b) The notice must:

- (1) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was last located and in a newspaper of general circulation on the Reservation;
  - (2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
  - (3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.
- (c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of the newspaper notice:
- (1) a claimant who did not receive written notice under section 158;
  - (2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;
  - (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim may be enforced under this section:
- (1) against the dissolved corporation, to the extent of its undistributed assets; or
  - (2) if the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

### **§15-3-160. Grounds for Administrative Dissolution**

The Director of Corporations may proceed under section 161 to dissolve a corporation administratively if:

- (1) the corporation's period of duration stated in its articles of incorporation expires;
- (2) responses to the interrogatories under Section 15-1-107 of this Chapter show that the Corporation has been inactive for a period of at least one year, and there are no plans to reactive the corporation in the future; or

- (3) interrogatories under Section 15-1-107 of this Chapter have not been answered by any of the persons to whom they were directed for a period of 120 days after becoming due; provided, however, that 30 days before commencing a proceeding under this subsection, the Director of Corporation shall notify each person failing to answer such interrogatories of its intent to commence such a proceeding.

#### **§15-3-161. Procedure for and Effect of Administrative Dissolution**

- (a) If the Director of Corporations determines that one or more grounds exist under section 160 for dissolving a corporation, he shall serve the corporation with written notice of his determination.
- (b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Director of Corporations that each ground determined by the Director of Corporations does not exist within 60 days after service of the notice is perfected, the Director of Corporations shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Director of Corporations shall file the original of the certificate and serve a copy on the corporation.
- (c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 157 and notify claimants under sections 158 and 159.
- (d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

#### **§15-3-162. Grounds for Judicial Dissolution**

- (a) The Rosebud Sioux Tribal Court may dissolve a corporation:
  - (1) in a proceeding brought on behalf of the Director of Corporations or other agency or official of the Tribe if it is established that:
    - (i) the corporation obtained its articles of incorporation through fraud;
    - (ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;
    - (iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or
    - (iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes.

- (2) in a proceeding by members holding 25% of the voting power, or by a director, or by any person specified in the articles, if it is established that:
    - (i) the directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;
    - (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
    - (iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;
    - (iv) the corporate assets are being misapplied or wasted; or
    - (v) the corporation is a public benefit corporation and is no longer able to carry out its purposes;
  - (3) in a proceeding by a creditor if it is established that:
    - (i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
    - (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
  - (4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.
- (b) Prior to dissolving a corporation, the court shall consider whether:
- (1) there are reasonable alternatives to dissolution;
  - (2) dissolution is in the public interest, if the corporation is a public benefit corporation;
  - (3) dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

### **§15-3-163. Procedure for Judicial Dissolution**

- (a) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.
- (b) The tribal court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian with all powers and duties the court

directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

- (c) A person who brings an involuntary dissolution proceeding for a public benefit corporation shall forthwith give written notice of the proceeding to the Director of Corporations, which may intervene.

#### **§15-3-164. Receivership or Custodianship**

- (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.
- (b) The court may appoint an individual, or a domestic or foreign business or non-profit corporation as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.
- (c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:
  - (1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation;
  - (2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.
- (d) During a receivership the court may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.
- (e) From time to time during the receivership or custodianship the court may order compensation paid and reimbursements made to the receiver or custodian and to his or her counsel and accountant from the assets of the corporation or proceeds from the sale of the assets.



### **§15-3-165. Decree of Dissolution**

- (a) If after a hearing the tribal court determines that one or more grounds for judicial dissolution described in section 162 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Director of Corporations, who shall file it.
- (b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 157 and the notification of claimants in accordance with sections 158 and 159.

### **§15-3-166. Deposit With Tribal Treasurer**

Assets of a dissolved corporation that should be transferred to an individual who is a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Tribal Treasurer for safekeeping. When the individual furnishes satisfactory proof of entitlement to the amount deposited, the Tribal Treasurer shall pay to the individual the amounts due.

## CHAPTER FOUR

### TRIBAL ENTITIES

#### PART A: GENERAL PROVISIONS

##### §15-4-101. Scope

The provisions of this Chapter shall apply to each tribal entity formed under the laws and sovereign power of the Rosebud Sioux Tribe, whether before or after the passage of this Act.

##### §15-4-102. Purpose and Construction

- (a) The purposes of this Chapter are:
- (1) to establish a uniform system of creation and regulation of tribal entities for both economic and governmental purposes;
  - (2) to preserve the sovereign immunity and protect the credit of the Rosebud Sioux Tribe;
  - (3) to provide for partial waivers of sovereign immunity by tribal entities with adequate safeguards, as required by economic and governmental necessity;
  - (4) to provide for insulation of tribal economic entities from the shifts of policy of tribal politics;
  - (5) to provide stability and increase the stature of tribal entities in the commercial world; and
  - (6) to ensure that tribal entities comply with tribal law.
- (b) The provisions of this Chapter shall be liberally construed and applied to promote its underlying purposes and policies.

##### §15-4-103. Definitions

The following terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless different meanings clearly appear from the context:

- (a) "*Charter*" means the Charter of a tribal entity, and includes approved articles of incorporation.

- (b) "*Constitution*" means the Constitution and Bylaws of the Rosebud Sioux Tribe, approved by the Secretary of the Interior on December 20, 1935, as amended thereafter.
- (c) "*Tribal Council*" and "*Council*" mean the Tribal Council of the Rosebud Sioux Tribe, acting as the governing body of the Tribe pursuant to the Constitution.
- (d) "*Tribal Court*" means the Tribal Court established by the Council pursuant to Article IV, Section 1(k) of the Constitution.
- (e) "*Tribal Entity*" includes any cooperative formed under Article IV of the Constitution, any entity created and owned by the Rosebud Sioux Tribe for economic or governmental purposes and any entity which is controlled by the Tribal Council, but does not include the Tribal Land Enterprise. For the purposes of this Chapter, an entity shall be deemed to be controlled by the Tribal Council if the majority of its Directors are chosen by the Tribal Council or are required to be council members. Entities governed by this Chapter include, but are not limited to, organizations entitled "*authority*," "*enterprise*," "*corporation*," "*agency*," "*commission*," or terms of like import, as deemed necessary by the Tribal Council; provided, however, that committees of the Tribal Council shall not be deemed "*tribal entities*" for the purposes of this Chapter.
- (f) "*Tribe*" means the Rosebud Sioux Tribe, organized pursuant to the Constitution and Bylaws of the Rosebud Sioux Tribe.

#### **§15-4-104. Status of a Tribal Entity**

- (a) For purposes of taxation, regulatory jurisdiction and civil jurisdiction, a tribal entity created pursuant to the sovereign powers of the Rosebud Sioux Tribe shall be deemed to be a subordinate arm of the government of the Rosebud Sioux Tribe and shall be entitled to all of the privileges and immunities of the Rosebud Sioux Tribe.
- (b) The Rosebud Sioux Tribal Court shall have jurisdiction to decide all questions with respect to the status of a tribal entity formed pursuant to the sovereign powers of the Rosebud Sioux Tribe.

#### **§15-4-105. Preexisting Tribal Entities**

A tribal entity preexisting passage of this Chapter shall continue to exist and to perform its several functions, but will be issued a tribal entity charter pursuant to this Chapter within a reasonable time.

#### **§15-4-106. Sovereign Immunity and Waiver**

- (a) Sovereign Immunity of the Tribal Entity.

A tribal entity is clothed by federal law with all the privileges and immunities of the Tribe, except as specifically limited by the tribal entity Charter, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Chapter shall be deemed or construed to be a waiver of sovereign immunity of a tribal entity from suit or to be a consent of the tribal entity or the Tribe, to the jurisdiction of the United States or of any state with regard to the business or affairs of the tribal entity or to any cause of action, case or controversy, except as provided herein.

(b) Waiver of Sovereign Immunity of the Tribal Entity.

Sovereign immunity of the tribal entity may be waived only by express resolution of the governing body of the tribal entity after consultation with its attorneys. All waivers of sovereign immunity must be preserved with the resolutions of the governing body of the tribal entity of continuing force and effect. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the tribal entity. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, transaction, property or funds, if any, of the tribal entity subject thereto, court having jurisdiction pursuant thereto and law applicable thereunder. Neither the power to sue and be sued provided in the charter of the tribal entity, nor any express waiver of sovereign immunity by resolution of the tribal entity shall be deemed a consent to the levy of any judgment, lien or attachment upon property of the tribal entity other than property specifically pledged or assigned, or any property of the Tribe, or a consent to suit in respect of any land within the exterior boundaries of the Rosebud Sioux Indian Reservation or a consent to the alienation, attachment or encumbrance of any such land.

(c) Sovereign Immunity of the Tribe.

All inherent sovereign rights of the Tribe as a federally-recognized Indian tribe with respect to the existence and activities of the tribal entity are hereby expressly reserved, including sovereign immunity from suit in any state, federal or tribal court. Nothing in a tribal entity charter shall be deemed or construed to be a waiver of sovereign immunity from suit of the Tribe or to be a consent of the Tribe to the jurisdiction of the United States or of any state with regard to the business or affairs of the tribal entity or the Tribe or to any cause of action, case or controversy, except as provided herein.

(d) Credit of the Tribe.

Nothing in a tribal entity charter, nor any activity of any tribal entity, shall implicate or in any way involve the credit of the Tribe.

(e) Inclusion in Charter.

The provisions of subsection (a)-(d) of this Section shall be included in the charter of each tribal entity.

**§15-4-107. Assets of a Tribal Entity**

A tribal entity shall have only those assets of the Tribe formally assigned to it by the Tribal Council, together with whatever assets it acquires from other sources. No activity of a tribal entity nor any indebtedness incurred by it shall implicate or in any way involve any assets of Tribal members or the Tribe not assigned in writing to the tribal entity.

**PART B: CREATION AND REGULATION OF A TRIBAL ENTITY**

**§15-4-108. Tribal Entity Charter**

The charter for a tribal entity formed under this Chapter shall set forth:

- (1) The name of the tribal entity.
- (2) The purposes for which the tribal entity is organized.
- (3) Provisions for establishment of a governing body and determining membership thereof.
- (4) The powers of the tribal entity.
- (5) The provisions of Section 106 above, providing for sovereign immunity and waivers thereof.
- (6) Provisions directing management of the tribal entity and regulation of its affairs.
- (7) Provisions designed to insulate the tribal entity from the shifts of policy of tribal politics.
- (8) Provisions allowing the tribal entity to use the tribal attorneys or other attorneys approved by the Tribal Council.

**§15-4-109. Delegation of Essential Governmental Functions to Tribal Entities**

For purposes of allowing a tribal entity to utilize the provisions of the Tribal Governmental Tax Status Act of 1982, as amended, the Tribal Council may delegate one or more essential governmental functions to a tribal entity, provided however, that exercise of any such power shall be subject to review by the Tribal Council.

#### **§15-4-110. Liability of Members of Governing Body of Tribal Entities**

No member of the governing body of any tribal entity formed pursuant to the sovereign powers of the Rosebud Sioux Tribe shall be liable to any creditor of the tribal entity by reason of his status as such a member, or by reason of acts done in the course of his official duties.

#### **§15-4-111. Disposition of Assets**

Upon dissolution of a tribal entity its asset shall be distributed at the direction of the Tribal Council, or its designee, as follows:

- (1) Any property held upon an express condition requiring its return, transfer or other disposition shall be distributed accordingly;
- (2) Any property or assets required to be distributed or transferred in any manner according to federal law shall be distributed or transferred accordingly;
- (3) Claims of creditors of the tribal enterprise approved by the Tribal Council shall be paid accordingly; and
- (4) Remaining assets shall be transferred to another tribal entity, to the Tribe, or distributed or transferred as the Tribal Council otherwise directs.

#### **§15-4-112. Amendment of Tribal Entity Charter**

Any tribal entity charter formed under the laws and sovereign power of the Rosebud Sioux Tribe may be amended only by the Rosebud Sioux Tribal Council, provided however, that the Charter may provide that such amendment require an affirmative vote higher than a majority vote.

### **PART C: COMMUNITY GOVERNMENTS, MUNICIPAL CORPORATIONS AND SCHOOLS**

#### **§15-4-113. Community Government**

The Tribal Council retains authority to issue or approve organic documents for the government of the local communities listed in Article III of the Constitution. Governmental subdivisions so created shall not be deemed to be "*tribal entities*" for the purposes of Sections 108 and 111 of this Chapter except to the extent the Tribal Council so provides.

#### **§15-4-114. Municipal Corporations**

The Tribal Council retains authority to issue charters for municipal corporations for the local communities listed in Article III of the Constitution. No such municipal corporation

shall be deemed to be a business corporation subject to Chapter Two of this Title, or a non-profit corporation subject to Chapter Three of this Title.

**§15-4-115. Status and Immunities of Community Governments and Municipal Corporations**

Local community governments and municipal corporations described in this Part are subdivisions of tribal government, have the same legal status described in Section 104 of this Chapter with respect to tribal entities, and are subject to the same specific provisions of Section 106 of this Chapter with respect to tribal entities.

**§15-4-116. Schools**

Any legally established organization comprising primarily Indians which is sanctioned or chartered by the Tribe, or which is democratically elected by the adult members of the Indian community served by the organization, and which has as its purpose the operation of an accredited school shall have the same immunities from suit as those described in Section 106 of this Chapter.