

## CHAPTER 3-SERVICE OF PROCESS

### 301.STATUTORY DESIGNATION OF NATION CLERK AS AGENT FOR SERVICE OF PROCESS

- (a) The Nation Clerk shall be the agent of every domestic limited liability company that has filed with the Nation Clerk articles of organization making such designation and every foreign limited liability company upon which process may be served pursuant to this Code.
- (b) No domestic or foreign limited liability company may be formed or authorized to do business in the Nation under this Code unless its articles of organization or application for authority designates the Nation Clerk as such agent.
- (c) Any designated post office address to which the Nation Clerk shall mail a copy of process served upon him or her as agent of a domestic limited liability company or a foreign limited liability company shall continue until the filing of a certificate under this Code directing the mailing to a different post office address.
- (d) The change authorized by subdivision (c) of this section may be accomplished by (i) preparing a certificate entitled "Certificate of change of address of ...(name of limited liability company) under subdivision (d) of section three hundred one of the Limited Liability Company Code," (ii) executing such certificate in accordance with section two hundred seven of this Code and (iii) filing such certificate of change of address in accordance with section two hundred nine of this Code.
- (e) Every limited liability company to which this Code applies, shall biennially in the calendar month during which its articles of organization or application for authority were filed, or effective date thereof if stated, file on forms prescribed by the Nation Clerk, a statement setting forth the post office address within or without the Nation to which the Nation Clerk shall mail a copy of any process accepted against it served upon him or her. Such address shall supersede any previous address on file with the Nation Clerk for this purpose.

### 302. REGISTERED AGENT FOR SERVICE OF PROCESS

- (a) In addition to the designation of the Nation Clerk, each domestic limited liability company or authorized foreign limited liability company may designate a registered agent upon whom process against the limited liability company may be served.
- (b) The agent must be either:
  - (1) a natural person who is a resident of within the territorial jurisdiction of the Nation or has a business address within the territorial jurisdiction of the Nation;

- (2) a domestic limited liability company or an authorized foreign limited liability company; or
  - (3) a domestic corporation or a foreign corporation authorized to do business within the territorial jurisdiction of the Nation.
- (c) The registered agent may change such registered agent's address provided the address being changed is the address of the person who had previously been designated as registered agent for the limited liability company or authorized foreign limited liability company. The registered agent shall file with the Nation Clerk, a certificate entitled "Certificate of change of address of registered agent of...(name of limited liability company) under subdivision (c) of section three hundred two of the Limited Liability Company Code" and executed by such registered agent. Such certificate shall set forth:
- (1) the name of the limited liability company and, if it has been changed, the name under which it was formed. A foreign limited liability company must set forth its name and, if applicable the fictitious name the foreign limited liability company has agreed to use within the territorial jurisdiction of the Nation pursuant to section eight hundred two of this Code;
  - (2) the date the articles of organization or application for authority was filed with the Nation Clerk;
  - (3) the new address of the registered agent; and
  - (4) that a notice of the proposed change was mailed to the domestic limited liability company or foreign limited liability company by the party signing the certificate not less than thirty days prior to the date of delivery to the Nation Clerk and that such domestic limited liability company or foreign limited liability company has not objected thereto.
- (d) The registered agent of a limited liability company may resign as such agent. The registered agent shall file a certificate with the Nation Clerk entitled "Certificate of resignation of registered agent of...(name of limited liability company) under subdivision (d) of section three hundred two of the Limited Liability Company Law" and executed by such registered agent. Such certificate shall set forth:
- (1) the name of the limited liability company, and if it has been changed, the name under which it was formed. With respect to a foreign limited liability company, there shall be set forth its name and, if applicable, the fictitious name the foreign limited liability company has agreed to use in this state pursuant to section eight hundred two of this Code;
  - (2) the date the articles of organization or application for authority was filed by the Nation

Clerk;

- (3) that he or she resigns as registered agent of the limited liability company; and
  - (4) that he or she has sent a copy of the certificate of resignation by registered mail to the limited liability company at the post office address on file with the Nation Clerk specified for the mailing of processes or, if such address is the address of the registered agent, to the office of the limited liability company in the jurisdiction of its formation.
- (e) The designation of a registered agent shall terminate thirty days after the filing with the Nation Clerk of the certificate of resignation. A certificate designating a new registered agent may be delivered to the Nation Clerk by the limited liability company within thirty days for thereafter.

### **303. SERVICE OF PROCESS ON LIMITED LIABILITY COMPANIES**

- (a) Service of legal process on any domestic or authorized foreign limited liability company (or foreign limited liability company required to be authorized to do business in the Nation) shall be made by delivering a copy personally to (i) any member of the limited liability company in this Nation, if the management of the limited liability company is vested in its members, (ii) any manager of the limited liability company within the territorial jurisdiction of the Nation, if the management of the limited liability company is vested in one or more managers or (iii) the registered agent of the limited liability company in this Nation, in the manner provided by law for the service of a summons, as if such person was a defendant.
- (b) Service of process on the Nation Clerk as agent of a domestic limited liability company or authorized foreign limited liability company shall be made by personally delivering to and leaving with the Nation Clerk or his or her deputy, or with any person authorized by the Nation Clerk to receive such service, at the office of the Nation Clerk, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such limited liability company shall be complete when the Nation Clerk is so served. The Nation Clerk shall promptly send one of such copies by certified mail, return receipt requested, to such limited liability company at the post office address on file in the Nation Clerk specified for that purpose.
- (c) Nothing in this section shall limit or affect the right to serve any process required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law or applicable rules of procedure.

### **304.SERVICE OF PROCESS ON UNAUTHORIZED FOREIGN LIMITED LIABILITY COMPANIES**

- (a) In any case in which a non-domiciliary would be subject to the personal or other jurisdiction of the Oneida Nation Court, a foreign limited liability company not authorized to do business in the Nation is subject to a like jurisdiction. In any such case, process against such foreign limited liability company may be served upon the Nation Clerk as its agent. Such process may issue in the Oneida Nation Court.
- (b) Service of such process upon the Nation Clerk shall be made by personally delivering to and leaving with the Nation Clerk or his or her deputy, or with any person authorized by the Nation Clerk to receive such service, at the office of the Nation Clerk, a copy of such process together with the statutory fee.
- (c) Such service shall be sufficient if notice thereof and a copy of the process are:
  - (1) delivered personally outside the Nation to such foreign limited liability company by a person and in the manner authorized to serve process by law of the jurisdiction in which service is made; or
  - (2) sent by or on behalf of the plaintiff to such foreign limited liability company by registered mail, return receipt requested, at the post office address specified for the purpose of mailing process, on file in the Nation Clerk, or with any official body performing the equivalent function, in the jurisdiction of its formation, or if no such address is specified, to its registered or other office specified, or if no such office is specified, to the last address of such foreign limited liability company known to the plaintiff.
- (d) When service of a copy of process was effected by personal service, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after such service, with the clerk of the court. Service of process shall be complete ten days after such papers are filed with the clerk of the court.
- (e) Where service of a copy of process was effected by mailing in accordance with this section, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after receipt of the return receipt signed by the foreign limited liability company or other official proof of delivery or of the original envelope mailed. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such foreign limited liability company or other official proof of delivery or, if acceptance was refused by it, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process together with notice of the mailing by registered mail and refusal to accept shall be promptly sent to such foreign limited liability company at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be

complete ten days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered mail or to sign the return receipt shall not affect the validity of the service and such foreign limited liability company refusing to accept such registered mail shall be charged with knowledge of the contents thereof.

(f) Service made as provided in this section shall have the same force as personal service made within the Nation.

(g) Nothing in this section shall limit or affect the right to serve any process required or permitted by law to be served upon a foreign limited liability company in any other manner now or hereafter permitted by law or applicable rules of procedure.

### **305. RECORDS OF PROCESS SERVED ON THE NATION CLERK**

The Nation Clerk shall keep a record of each process served upon the Nation Clerk under this Code, including the date of such service and the action of the Nation Clerk with reference thereto.