

# UNIFORM BUSINESS ORGANIZATIONS CODE (2011)

Drafted by the

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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AMERICAN BAR ASSOCIATION

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and

APPROVED AS A FINAL ACT BY  
THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-TWENTIETH YEAR  
VAIL, COLORADO  
JULY 7 - JULY 13, 2011

*WITH PREFATORY NOTE AND COMMENTS*

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
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December 16, 2012

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## UNIFORM BUSINESS ORGANIZATIONS CODE (2011)

### PREFATORY NOTE

Article 1 (“Article 1”) of the Uniform Business Organizations Code (“Business Organizations Code ” or “Code”) was prepared pursuant to the following resolution of the Executive Committee of the National Conference of Commissioners on Uniform State Laws:

RESOLVED, that a drafting committee be formed to prepare common provisions for business organizations in the following areas: definitions; the mechanics of filings; names of entities, registered agents and registered offices; qualification of foreign entities; administrative powers of the Secretary of State; and the META provisions on merger, interest exchanges, conversions, domestications and divisions . . . .

Formation of the Drafting Committee was based on the recommendations of the May 3, 2006 Report of a Joint Study Committee on an Omnibus Business Organizations Code co-sponsored by the Conference and the American Bar Association (“ABA”), and co-chaired by Harriet Lansing of the Conference and William H. Clark, Jr., of the ABA. The Report can be found online at:

[http://www.uniformlaws.org/shared/docs/business\\_organizations/Omnibus\\_CommitteeReport\\_050306.pdf](http://www.uniformlaws.org/shared/docs/business_organizations/Omnibus_CommitteeReport_050306.pdf).

The Study Committee’s Report included a recommendation that a Business Organizations Code address:

- (1) common definitions;
- (2) the mechanics of filings (e.g. what constitutes a filing and the legal effect of a filing);
- (3) names of entities, registered agents, and registered offices;
- (4) qualification of foreign entities;
- (5) administrative powers of the Secretary of State (annual reports, filing officer responsibilities and administrative dissolution); and
- (6) the provisions of the Model Entity Transactions Act on mergers, interest exchanges, conversions, and domestications.

A second recommendation of the Study Committee was that the drafting project be a collaborative effort with the ABA (as was the work of the Study Committee itself). The Study Committee Report noted that NCCUSL “has traditionally drafted acts governing unincorporated entities and the ABA . . . has traditionally drafted corporate entity statutes.” Since the Act deals with both unincorporated and incorporated entities, there was consensus, according to the Study Committee Report, on “the desirability of having this project conducted as a joint project between NCCUSL and the American Bar Association.” Article 1 was actually the work of two Drafting Committees, one a NCCUSL Drafting Committee chaired by Timothy Berg, and the other an ABA Drafting Committee chaired by William H. Clark, Jr.

Thus Article 1 represents a continuation of the NCCUSL/ABA collaboration with respect to the law governing business (and other) entities. Two earlier products of this collaboration are the Model Entity Transaction Act (“META”) (approved by the Conference at its 2005 Annual Meeting, with amendments resulting from the action of various ABA entities approved by the Conference at its 2007 Annual Meeting) and the Model Registered Agents Act (“MORRA”) (approved by the Conference at its 2006 Annual Meeting). The substantive provisions of MORRA comprise Part Four of Article 1. Provision has been made in the Code for the substantive provisions of META to be enacted as a separate Article 2 of the Code. META and MORRA definitions of general applicability have been incorporated into Section 1-102 of Article 1.

In connection with the approval of Article 1 at the 2009 Annual Meeting of the Conference, a decision was made to proceed with the next phase of the development of the Uniform Business Organizations Code. The arrangement of the Code is based on a “hub and spoke” model in which provisions common to all of the individual entity laws are placed in the hub, and other provisions are left in the individual entity laws which become the spokes. The hub consists of Article 1 and META.

As part of integrating the uniform unincorporated entity laws into the Code, it was decided that it would be beneficial to revise all of those laws to harmonize their language and to reorganize their provisions to facilitate the integration of each act into the Code. The goal in harmonizing the language of the acts was to have parallel provisions in the acts use the same wording as nearly as possible when the same substantive rule was to apply and thus avoid an implication that different wording was intended to produce a substantively different result. The sections of each act were reorganized to avoid gaps in the numbering of the act when provisions that duplicate provisions in the hub are omitted from the act as it appears as a spoke of the Code.

The Drafting Committee on Harmonization of Business Entity Acts was greatly assisted in its work by the very substantial and knowledgeable contributions of the following Observers who diligently attended and actively participated in its meetings:

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**UNIFORM BUSINESS ORGANIZATIONS CODE (2011)**

**[ARTICLE] 1**

**GENERAL PROVISIONS**

**[PART] 1**

**GENERAL PROVISIONS**

**SECTION 1-101. SHORT TITLES.**

(a) This [act] may be cited as the Uniform Business Organizations Code ([year of enactment]).

(b) This [article] may be cited as the Uniform Business Organizations Code - General Provisions.

(c) [Part] 4 may be cited as the Model Registered Agents Act.

**SECTION 1-102. DEFINITIONS.** In this [act], except as otherwise provided in definitions of the same terms in other articles of this [act]:

(1) “[Annual] [Biennial] report” means the report required by Section 1-213.

(2) “Business corporation” means a domestic business corporation incorporated under or subject to [Article] 9 or a foreign business corporation.

(3) “Business trust” means a trust formed under the statutory law of another state which is not a foreign statutory trust and does not have a predominately donative purpose.

(4) “Commercial registered agent” means a person listed under Section 1-405.

(5) “Common-law business trust” means a common-law trust that does not have a predominately donative purpose.

(6) “Debtor in bankruptcy” means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a comparable

order under a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(7) “Distributional interest” means the right under an unincorporated entity’s organic law and organic rules to receive distributions from the entity.

(8) “Domestic”, with respect to an entity, means governed as to its internal affairs by the law of this state.

(9) “Effective date”, when referring to a record filed by the [Secretary of State], means the time and date determined in accordance with Section 1-203.

(10) “Entity”:

(A) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

[(vi) a general cooperative association;]

(vii) a limited cooperative association;

(viii) an unincorporated nonprofit association;

(ix) a statutory trust, business trust, or common-law business trust; or

(x) any other person that has:

(I) a legal existence separate from any interest holder of that

person; or

(II) the power to acquire an interest in real property in its own

name; and

(B) does not include:

(i) an individual;

(ii) a trust with a predominately donative purpose or a charitable trust;

(iii) an association or relationship that is not listed in paragraph (A) and is not a partnership under the rules stated in [Section 202(c) of the Uniform Partnership Act (1997) (Last Amended 2011)] [Section 7 of the Uniform Partnership Act (1914)] or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

(11) "Entity filing" means a record delivered to the [Secretary of State] for filing pursuant to this [act].

(12) "Filed record" means a record filed by the [Secretary of State] pursuant to this [act].

(13) "Filing entity" means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(14) "Foreign", with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

[(15) "General cooperative association" means a domestic general cooperative association formed under or subject to [cite statute of this state under which an incorporated cooperative association is formed] or a foreign general cooperative association.]

(16) "General partnership" means a domestic general partnership formed under or subject to [Article] 3 or a foreign general partnership. The term includes a limited liability partnership.

(17) “Governance interest” means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for or consent to the election of the governors of the entity; or

(C) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(18) “Governor” means:

(A) a director of a business corporation;

(B) a director or trustee of a nonprofit corporation;

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

(E) a manager of a manager-managed limited liability company;

(F) a member of a member-managed limited liability company;

[(G) a director of a general cooperative association;]

(H) a director of a limited cooperative association;

(I) a manager of an unincorporated nonprofit association;

(J) a trustee of a statutory trust, business trust, or common-law business trust; or

(K) any other person under whose authority the powers of an entity are exercised

and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(19) “Interest” means:

(A) a share in a business corporation;

- (B) a membership in a nonprofit corporation;
- (C) a governance interest in a general partnership;
- (D) a governance interest in a limited partnership;
- (E) a governance interest in a limited liability company;
- [(F) a share in a general cooperative association;]
- (G) a member's interest in a limited cooperative association;
- (H) a membership in an unincorporated nonprofit association;
- (I) a beneficial interest in a statutory trust, business trust, or common-law business

trust; or

(J) a governance interest or distributional interest in any other type of unincorporated entity.

(20) "Interest holder" means:

- (A) a shareholder of a business corporation;
- (B) a member of a nonprofit corporation;
- (C) a general partner of a general partnership;
- (D) a general partner of a limited partnership;
- (E) a limited partner of a limited partnership;
- (F) a member of a limited liability company;
- [(G) a shareholder of a general cooperative association;]
- (H) a member of a limited cooperative association;
- (I) a member of an unincorporated nonprofit association;

(J) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(K) any other direct holder of an interest.

(21) “Jurisdiction”, used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(22) “Jurisdiction of formation” means the jurisdiction whose law includes the organic law of an entity.

(23) “Limited cooperative association” means a domestic limited cooperative association formed under or subject to [Article] 6 or a foreign limited cooperative association.

(24) “Limited liability company” means a domestic limited liability company formed under or subject to [Article] 5 or a foreign limited liability company.

(25) “Limited liability limited partnership” means a domestic limited liability limited partnership formed under or subject to [Article] 4 or a foreign limited liability limited partnership.

(26) “Limited liability partnership” means a domestic limited liability partnership registered under or subject to [Article] 3 or a foreign limited liability partnership.

(27) “Limited partnership” means a domestic limited partnership formed under or subject to [Article] 4 or a foreign limited partnership. The term includes a limited liability limited partnership.

(28) “Noncommercial registered agent” means a person that is not a commercial registered agent and is:

(A) an individual or domestic or foreign entity that serves in this state as the registered agent of an entity; or

(B) an individual who holds the office or other position in an entity which is designated as the registered agent pursuant to Section 1-404(a)(2)(B).

(29) “Nonfiling entity” means an entity whose formation does not require the filing of a public organic record.

(30) “Nonprofit corporation” means a domestic nonprofit corporation incorporated under or subject to [Article] 10 or a foreign nonprofit corporation.

(31) “Nonregistered foreign entity” means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the [Secretary of State].

(32) “Organic law” means the law of an entity’s jurisdiction of formation governing the internal affairs of the entity.

(33) “Organic rules” means the public organic record and private organic rules of an entity.

(34) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(35) “Principal office” means the principal executive office of an entity, whether or not the office is located in this state.

(36) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:

(A) the bylaws of a business corporation;

(B) the bylaws of a nonprofit corporation;

(C) the partnership agreement of a general partnership;  
(D) the partnership agreement of a limited partnership;  
(E) the operating agreement of a limited liability company;  
[(F) the bylaws of a general cooperative association;]  
(G) the bylaws of a limited cooperative association;  
(H) the governing principles of an unincorporated nonprofit association; and  
(I) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(37) “Proceeding” includes a civil action, arbitration, mediation, administrative proceeding, criminal prosecution, and investigatory action.

(38) “Property” means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(39) “Public organic record” means the record the filing of which by the [Secretary of State] is required to form an entity and any amendment to or restatement of that record. The term includes:

- (A) the articles of incorporation of a business corporation;
- (B) the articles of incorporation of a nonprofit corporation;
- (C) the certificate of limited partnership of a limited partnership;
- (D) the certificate of organization of a limited liability company;
- [(E) the articles of incorporation of a general cooperative association;]
- (F) the articles of organization of a limited cooperative association; and
- (G) the certificate of trust of a statutory trust or similar record of a business trust.

(40) “Receipt”, as used in this [article], means actual receipt. “Receive” has a

corresponding meaning.

(41) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(42) “Registered agent” means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.

(43) “Registered foreign entity” means a foreign entity that is registered to do business in this state pursuant to a statement of registration filed by the [Secretary of State].

(44) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(45) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(46) “Statutory trust” means a domestic statutory trust formed under or subject to [Article] 8 or a trust formed under the statutory law of a jurisdiction other than this state which would be a statutory trust if formed under the law of this state.

(47) “Transfer” includes:

(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

(E) an encumbrance, including a mortgage or security interest;

(F) a gift; and

(G) a transfer by operation of law.

(48) “Type of entity” means a generic form of entity:

(A) recognized at common law; or

(B) formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

(49) “Unincorporated nonprofit association” means a domestic unincorporated nonprofit association formed under or subject to [Article] 7 or a nonprofit association formed under or subject to the law of a jurisdiction other than this state which would be an unincorporated nonprofit association if formed under or subject to the law of this state.

(50) “Written” means inscribed on a tangible medium. “Writing” has a corresponding meaning.

***Legislative Note:** If this state uses terminology with respect to a particular type of entity different from that set forth in the definitions in this section, it should substitute its own terms. Some states, for example, use the term “articles of organization” for the public organic document of a limited liability company and should substitute that term for “certificate of organization” in paragraph (39)(D). If the state adopts Alternative A for Section 1-214, it should make similar changes in Section 1-214(b).*

### **Comment**

**In general.** The definitions in this section apply generally throughout the Code unless a particular term is defined differently in another article.

**“Commercial registered agent.” [(4)]** – A commercial registered agent is an individual or entity that is in the business of serving as a registered agent in the state and that files a listing statement under Section 1-405. Being listed as a commercial registered agent is voluntary and persons serving as registered agents are not required to be listed under Section 1-405. The benefits to the registered agent of being listed under Section 1-405, however, are substantial and most registered agents will elect to be so listed. Although this definition and Section 1-405 do not expressly require that a foreign entity that is listed as a commercial registered agent be qualified to do business in the state, the activity of serving as a registered agent is one that

requires such registration.

**“Domestic.” [(8)]** – The term “domestic”, with respect to an entity, means in the Code an entity whose internal affairs are governed by the organic laws of the adopting state. Except in the case of general partnerships and unincorporated nonprofit associations, this will mean an entity that is formed, organized, or incorporated under domestic law. In the case of a general partnership organized under the Uniform Partnership Act (1997) (Last Amended 2011) (1997 UPA), it will mean a general partnership whose governing law under 1997 UPA § 104 (§ 3-104 of the Code) is the law of the adopting state. Under 1997 UPA § 104 the governing law is determined by the location of the partnership’s chief executive office, except for limited liability partnerships where the governing law is the state where the statement of qualification is filed. It is a factual question whether the activities and organization of an unincorporated nonprofit association make it a domestic or foreign entity.

**“Entity.” [(10)]** – This definition determines the overall scope of the Code.

This definition is intended to include all forms of private organizations, regardless of whether organized for profit, and artificial legal persons other than those excluded by paragraphs (B)(i)-(v).

This definition does not exclude regulated entities such as public utilities, banks and insurance companies. If any of those types of entities is organized under a separate statute, the state must decide whether that statute should be one of the spokes of the Code. If the statute is not included in the Code, entities formed under it will be automatically excluded from this article by Section 1-103. But in that case, a separate decision must be made as to whether to permit entities formed under it to participate in transactions under Article 2. Particular types of entities may also be excluded from the Code by listing them in optional Section 1-106.

Trusts with a predominantly donative purpose and charitable trusts are subject generally to the Uniform Trust Code (Last Amended 2010) and have been excluded from the definition of “entity,” thus excluding them from the Code. Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or statutory business trusts are “entities.”

Section 6 of the Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) (UUNAA) (§ 7-006 of the Code) gives an unincorporated nonprofit association the power to acquire an estate in real property and thus an unincorporated nonprofit association organized in a state that has adopted that act will be an “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did not have the power to acquire real property. Most states that have not adopted the UUNAA have nonetheless modified the common law rule, but states that have not adopted the UUNAA should analyze whether they should modify the definition of “entity” to add an express reference to unincorporated nonprofit associations.

There is some question as to whether a partnership subject to the Uniform Partnership Act (1914) (1914 UPA) is an entity or merely an aggregation of its partners. That question has

been resolved by Section 201 of the 1997 UPA (§ 3-201 of the Code), which makes clear that a general partnership is an entity with its own separate legal existence. Section 8 of the 1914 UPA gives partnerships subject to it the power to acquire estates in real property and thus such a partnership will be an “entity.” As a result, all general partnerships will be “entities” regardless of whether the state in which they are organized has adopted the 1997 UPA.

Paragraph (B) (i) of this definition excludes a sole proprietorship from the concept of “entity.”

Paragraph (B)(iii) of this definition excludes from the concept of an “entity” any form of co-ownership of property or sharing of returns from property that is not a partnership under 1997 UPA § 202(c) (§ 3-202(c) of the Code) or Section 7 of the 1914 UPA. In that connection, 1997 UPA § 202(c) provides in part:

In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

A virtually identical provision appears in Section 7(3)-(4) of the 1914 UPA.

Paragraph (B)(iv) of this definition excludes decedent’s estates for the same policy reason as trusts with a predominantly donative purpose and charitable trusts.

Paragraph (B)(v) excludes governmental subdivisions, agencies, and instrumentalities because they are not properly within the scope of the Code.

Limited liability partnerships and limited liability limited partnerships are “entities” because they are general partnerships and limited partnerships, respectively, that have made the additional required election claiming LLP or LLLP status. A limited liability partnership is not, therefore, a separate type of entity from the underlying general or limited partnership that has elected limited liability partnership status.

**“Filing entity.” [(13)]** – Whether an entity is a filing entity is determined by reference to whether its legal existence requires the filing of a record with the state filing officer. While the statute refers to an entity that is “formed,” it is intended to encompass corporations which are “incorporated” and limited liability companies which are “organized” as well as entities such as limited partnerships which are “formed” under their organic law. Business trusts (sometimes referred to as “statutory trusts”) present a special problem. In some states a business trust is a filing entity, while in other states business trusts are recognized only by common law. Under section 201(a) of the Uniform Statutory Trust Entity Act (2009) (Last Amended 2011) (§ 8-201(a) of the Code), a statutory trust entity formed under that act is formed by delivery of a certificate of trust to the appropriate filing officer, and is a filing entity.

The term does not include a limited liability partnership because an election filed by a general partnership claiming that status (*e.g.*, a statement of qualification under 1997 UPA § 1001) (§ 3-1001 of the Code) is not required to form the underlying partnership. A limited liability partnership, on the other hand, is a filing entity because formation of the underlying limited partnership requires the filing of a certificate of limited partnership.

**“Foreign.” [(14)]** – The term “foreign,” with respect to an entity, includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by the laws of the state of filing. A nonfiling foreign entity is governed by the laws of the state governing its internal affairs. It is a factual question whether a general partnership whose internal affairs are governed by the 1914 UPA is a domestic or foreign partnership. A 1914 UPA partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are found. Similar issues arise with respect to determining the domestic or foreign status of unincorporated nonprofit associations. The domestic or foreign characterization of partnerships under the 1997 UPA that have not registered as limited liability partnerships will be governed by 1997 UPA § 106(a) (“law of the jurisdiction in which the partnership has its principal office”) (§ 3-106(a) of the Code).

**“Governance interest.” [(17)]** – A governance interest is typically only part of the interest that a person will hold in an unincorporated entity and is usually coupled with a distributional interest (or economic rights). Memberships in some nonprofit corporations and unincorporated nonprofit associations consist solely of governance interests and memberships in other nonprofit entities may not include either governance interests or distributional interests. In some unincorporated business entities, there is a more limited right to transfer governance interests than there is to transfer distributional interests. An interest holder in such an unincorporated business entity who transfers only a distributional interest and retains the governance interest will also retain the status of an interest holder. Whether a transferee who acquires only a distributional interest will acquire the status of an interest holder is determined by the definition of “interest holder.”

Governors of an entity have the kinds of rights listed in the definition of “governance interest” by reason of their position with the entity. For a governor to have a “governance interest,” however, requires that the governor also have those rights for a reason other than the governor’s status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.

**“Governor.” [(18)]** – This term has been chosen to provide a way of referring to a person who has the authority under an entity’s organic law to make management decisions regarding the entity that is different from any of the existing terms used in connection with particular types of entities. Depending on the type of entity or its organic rules, the governors of an entity may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. In other words, a person having only the power to bind the organization pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of

unincorporated entities, most or all of the management decisions may be reserved to the members or partners. Thus, if a manager of a limited liability company were limited to having authority to execute management decisions made by the members and did not have any authority to make independent management decisions, the manager would not be a governor under this definition.

**“Interest.” [(19)]** – In the usual case, the interest held by an interest holder will include both a governance interest and a transferable interest (or economic rights). Members in nonprofit corporations or unincorporated nonprofit associations generally do not have any distributional interest because they do not receive distributions, but they nonetheless may hold a governance interest in which case they would have the status of interest holders for purposes of the Code.

**“Interest holder.” [(20)]** – This Code does not refer to “equity” interests or “equity” owners or holders because the term “equity” could be confusing in the case of a nonprofit entity whose members do not have an interest in the assets or results of operations of the entity but only have a right to vote on its internal affairs.

**“Noncommercial registered agent.” [(28)]** – A noncommercial registered agent is a person that serves as an agent for service of process but that is not listed under Section 1-405. All agents for service of process that are not commercial registered agents are noncommercial registered agents.

**“Organic law.” [(32)]** – Organic law means statutes other than the Code that govern the internal affairs of an entity, as well as the applicable provisions of the Code.

Entity laws in a few states purport to require that some of their internal governance rules applicable to a domestic entity also apply to a foreign entity with significant ties to the state. *See, e.g.,* Cal. Gen. Corp. Law § 2115, N.Y. N-PCL §§ 1318-1321, 15 Pa.C.S. § 6145. Such a “sticky fingers” law is not included within the definition of “organic law” for purposes of the Code because those laws are not part of the law of the entity’s jurisdiction of formation.

**“Person.” [(34)]** – The term “person” has the standard meaning of that term in uniform acts.

**“Private organic rules.” [(36)]** – The term private “organic rules” is intended to include all governing rules of an entity that are binding on all of its interest holders, whether or not in record form, except for the provisions of the entity’s public organic document, if any. The term is intended to include agreements in “record” form as well as oral partnership agreements and oral operating agreements among LLC members.

**“Public organic record”. ” [(39)]** – A “public organic record” is a record that is required to be filed publicly to form, organize, incorporate, or otherwise create an entity. The term does not include a statement of partnership authority filed under 1997 UPA § 303 (§ 3-303 of the Code) or any of the other statements that may be filed under the 1997 UPA since those statements do not create a new entity. A limited liability partnership is the same entity as the

partnership that files the statement. For the same reason, the term also does not include a statement of qualification filed under 1997 UPA § 1001 (§ 3-1001 of the Code) to become a limited liability partnership. Similarly, the term does not include a statement of authority filed under Section 7 of the Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011) (§ 7-007 of the Code) or a statement appointing an agent filed under Section 11 of that act (§ 7-011 of the Code). Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

In those states where a deed of trust or other instrument is publicly filed to create a business trust, that filing will constitute a public organic record. But in those states where a business trust is not created by a public filing, the deed of trust or similar record will be part of the private organic rules of the business trust.

**“Receipt.”** [40] – Section 15 of the Uniform Electronic Transactions Act, which provides rules as to when an electronic record is sent and received, applies to electronic records under this Act.

**“Record.”** [(41)] – The term “record” has the standard meaning of that term in uniform acts.

**“Registered agent.”** [(42)] – This term is used in the Code to refer to agents for service of process in contexts where it is not necessary to differentiate between commercial registered agents and noncommercial registered agents.

**“Sign.”** [(44)] – The term “sign” has the standard meaning of that term in uniform acts.

**“State.”** [(45)] – The term “state” has the standard meaning of that term in uniform acts.

**“Transfer.”** [(47)] – The term “transfer” is broadly defined to include all types of conveyances of interests in property.

**“Type of entity.”** [(48)] – The term “type of entity” has been developed in an attempt to distinguish different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a different form of entity or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of entity from a general partnership, while a limited liability partnership is not a different type of entity from a general partnership. In some states cooperative corporations are categories of business corporations or nonprofit corporations, while in other states cooperatives are a separate type of entity.

**SECTION 1-103. APPLICABILITY OF [ARTICLE].** This [article] applies to an entity formed under or subject to this [act].

### Comment

See the Comment to Section 1-102 (“entity”).

**SECTION 1-104. DELIVERY OF RECORD.**

(a) Except as otherwise provided in this [act], permissible means of delivery of a record include delivery by hand, the United States Postal Service, commercial delivery service, and electronic transmission.

(b) Delivery to the [Secretary of State] is effective only when a record is received by the [Secretary of State].

**Comment**

Delivery to the Secretary of State is effective only upon actual receipt. The effectiveness of records delivered other than to the Secretary of State will be controlled by provisions in other articles of the Code and may vary depending on the type of entity to which the records relate and manner in which the records are delivered.

**SECTION 1-105. RULES AND PROCEDURES.** The [Secretary of State] may:

(1) adopt rules to administer this [act] in accordance with [this state’s administrative procedure act]; and

(2) prescribe procedures that are reasonably necessary to perform the duties required of the [Secretary of State] under this [act] and are not required by [this state’s administrative procedure act] to be adopted as rules.

**Comment**

This section grants the Secretary of State the authority necessary for the efficient performance of the filing and other duties imposed on the Secretary of State by the Code but is not intended as a grant of general authority to establish public policy. The most important aspects of a modern entity statute relate to the creation and maintenance of relationships among persons interested in or involved with an entity; these relationships should be a matter of concern to the parties involved and not subject to regulation or interpretation by the Secretary of State. Further, even in situations where it is claimed that an entity has been formed or is being operated for purposes that may violate the public policies of the state, the Secretary of State generally should not be the governmental official that determines the scope of public policy through administration of the filing responsibilities under the Code. Rather, the attorney general may seek to enjoin the illegal conduct or to dissolve involuntarily the offending entity. See Section 1-

206(a) which makes clear that the duty of the Secretary of State to file documents under the Code is “ministerial.”

**[SECTION 1-106. EXCLUSIONS.** This [act] does not apply to:

- (1) \_\_\_\_\_;
- (2) \_\_\_\_\_;
- (3) \_\_\_\_\_.]

*Legislative Note: List any specific types of entities excluded from this act.*

## **[PART] 2**

### **FILING**

#### **SECTION 1-201. ENTITY FILING REQUIREMENTS.**

(a) To be filed by the [Secretary of State] pursuant to this [act], an entity filing must be received by the [Secretary of State], comply with this [act], and satisfy the following:

- (1) The entity filing must be required or permitted by this [act].
- (2) The entity filing must be physically delivered in written form unless and to the extent the [Secretary of State] permits electronic delivery of entity filings.
- (3) The words in the entity filing must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.
- (4) The entity filing must be signed by or on behalf of a person authorized or required under this [act] to sign the filing.
- (5) The entity filing must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the filing, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this [act] prohibits the disclosure by the [Secretary of State] of

information contained in an entity filing, the [Secretary of State] shall file the entity filing if the filing otherwise complies with this [act] but may redact the information.

(c) When an entity filing is delivered to the [Secretary of State] for filing, any fee required under this [article] and any fee, tax, interest, or penalty required to be paid under this [article] or law other than this [act] must be paid in a manner permitted by the [Secretary of State] or by that law.

(d) The [Secretary of State] may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.

(e) A record filed under this [act] may be signed by an agent.

### **Comment**

The records filed under the Code are referred to as “entity filings” in order to encompass filings under corporation laws, which are typically referred to as “articles,” and filings under limited partnership and other unincorporated entity laws, which are typically referred to as “certificates.”

#### **1. Form of records.**

Section 1-104 provides that delivery of an entity filing to the Secretary of State is effective only upon actual receipt by the Secretary of State.

An entity filing must be in typewritten or printed form unless the Secretary of State permits delivery by electronic transmission. The types of electronic transmission that may be used will be determined by the Secretary of State and is intended to include the evolving methods of electronic delivery, including facsimile transmissions, electronic transmissions between computers and filings through delivery of storage media. The text of an entity filing must be in the English language (except to the limited extent permitted by subsection (a)(3)).

The Secretary of State is not authorized to prescribe forms (except to the extent permitted by Section 1-202) and as a result may not reject entity filings on the basis of form (see Section 1-206) if they contain the information called for by the specific statutory requirement and meet the minimal formal requirements of this section.

#### **2. Signature.**

To be filed a record must be signed by the appropriate person. Who is an appropriate person will be determined by an entity’s organic law. See the definition of “sign” in Section 1-

102 for a description of the manner in which a record may be “signed.”

The requirement in some state statutes that entity filings must be acknowledged or verified as a condition for filing has been eliminated. These requirements serve little purpose in connection with entity filings. On the other hand, many organizations, like lenders or title companies, may desire that specific records include acknowledgements, verifications, or seals; subsection (a)(4) does not prohibit the addition of these forms of execution and their use is not intended to affect the eligibility of the record for filing.

### **3. Contents.**

A record must be filed by the Secretary of State if it contains the information required by the Code. In view of the very limited discretion granted to Secretaries of State under this section and Section 1-206(a) which defines the Secretary of State’s role as “ministerial,” Section 1-206(e) provides that no presumption arises from the fact that the Secretary of State accepted a document for filing. See the Comment to Section 1-206.

#### **SECTION 1-202. FORMS.**

(a) The [Secretary of State] may provide forms for entity filings required or permitted to be made by this [act], but, except as otherwise provided in subsection (b), their use is not required.

(b) The [Secretary of State] may require that a cover sheet for an entity filing and [an annual] [a biennial] report be on forms prescribed by the [Secretary of State].

#### **Comment**

As described in the Comments to Section 1-201, records are entitled to filing if they meet the substantive and formal requirements of the Code. In these circumstances it is not appropriate to vest the Secretary of State with general authority to establish mandatory forms for use under the Code. This section authorizes (but does not require) the Secretary of State to prepare forms suitable for filing under the Code. However, the use of these forms is permissive and cannot be required by the Secretary of State. The Secretary of State is authorized to prescribe forms for annual / biennial reports, however, and for cover sheets for entity filings.

**SECTION 1-203. EFFECTIVE DATE AND TIME.** Except as otherwise provided in this [act] and subject to Section 1-205(d), an entity filing is effective:

(1) on the date and at the time of its filing by the [Secretary of State] as provided in Section 1-206(b);

(2) on the date of filing and at the time specified in the entity filing as its effective time, if later than the time under paragraph (1);

(3) if permitted by this [act], at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date as permitted by this [act] is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

### **Comment**

Records accepted for filing become effective at the date and time of filing, or at another specified time on that date, unless a delayed effective date is stated in the record.

Section 1-206(b) requires the Secretary of State to maintain some means of recording the date and time of delivery of an entity filing, and that the recording of that date and time constitutes filing. That provision gives express statutory authority to the common practice of most Secretaries of State of ignoring processing time and treating a record as filed as of the date and time it is delivered for filing even though it may not be reviewed and accepted for filing until several days after delivery. That section contemplates that time of delivery, as well as the date, will be routinely recorded.

Under paragraph (1) of this section, in the absence of provision for a delayed effective date, an entity filing becomes effective on the date and time of filing by the Secretary of State. Since under 1-206(b) the date and time of filing is the recorded date and time of delivery of the entity filing, together these provisions eliminate any doubt about situations involving same-day transactions in which a record, for example, a statement of merger, is delivered for filing on the morning of the day the merger is to become effective.

Paragraph (3) does not authorize or contemplate the retroactive establishment of an effective date before the date of filing.

### **SECTION 1-204. WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.**

(a) Except as otherwise provided in this [act], a record delivered to the [Secretary of State] for filing may be withdrawn before it takes effect by delivering to the [Secretary of State] for filing a statement of withdrawal.

(b) A statement of withdrawal must:

(1) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(2) identify the record to be withdrawn; and

(3) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(c) On filing by the [Secretary of State] of a statement of withdrawal, the action or transaction evidenced by the original filed record does not take effect.

#### **Comment**

Only records that have not yet taken effect may be withdrawn under this section. If a record has taken effect, it may be corrected under Section 1-205 if the requirements of that section are satisfied. Otherwise, the record must be amended in accordance with the applicable provisions of the Code or, if the record relates to the formation of an entity, the existence of the entity may be terminated in accordance with the applicable provisions of the Code.

#### **SECTION 1-205. CORRECTING FILED RECORD.**

(a) A person on whose behalf a filed record was delivered to the [Secretary of State] for filing may correct the record if:

(1) the record at the time of filing was inaccurate;

(2) the record was defectively signed; or

(3) the electronic transmission of the record to the [Secretary of State] was defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the [Secretary of State] must deliver to the [Secretary of State] for filing a statement of correction.

(c) A statement of correction:

- (1) may not state a delayed effective date;
- (2) must be signed by the person correcting the filed record;
- (3) must identify the filed record to be corrected;
- (4) must specify the inaccuracy or defect to be corrected; and
- (5) must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction is effective when filed.

### **Comment**

This section permits making corrections in entity filings without re-filing the entire record. Under subsection (d), the correction relates back to the original effective date of the entity filing being corrected, except as to persons relying on the original entity filing and adversely affected by the correction. As to these persons, the effective date of the statement of correction is the date the statement is filed.

An entity filing may be corrected either because it contains an inaccuracy or because it was defectively executed (including defects in optional forms of execution that do not affect the eligibility of the original record for filing). In addition, an entity filing may be corrected if its electronic transmission was defective. This is intended to cover the situation where an electronic filing is made but, due to a defect in transmission, the filed record is later discovered to be inconsistent with the record intended to be filed. If no filing is made because of a defect in transmission, a statement of correction may not be used to make a retroactive filing. Therefore, an entity making an electronic filing should take steps to confirm that the filing was received by the Secretary of State.

A provision in a entity filing setting an effective date may be corrected under this section, but the corrected effective date must comply with the requirements of the Code limiting delayed effective dates to within 90 days after filing. A corrected effective date is thus measured from the date of the original filing of the record being corrected, i.e., it cannot be before the date of filing of the record or more than 90 day thereafter.

### **SECTION 1-206. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE.**

- (a) The [Secretary of State] shall file an entity filing delivered to the [Secretary of State]

for filing which satisfies this [act]. The duty of the [Secretary of State] under this section is ministerial.

(b) When the [Secretary of State] files an entity filing, the [Secretary of State] shall record it as filed on the date and at the time of its delivery. After filing an entity filing, the [Secretary of State] shall deliver to the person that submitted the filing a copy of the filing with an acknowledgment of the date and time of filing.

(c) If the [Secretary of State] refuses to file an entity filing, the [Secretary of State], not later than [15] business days after the filing is delivered, shall:

(1) return the entity filing or notify the person that submitted the filing of the refusal; and

(2) provide a brief explanation in a record of the reason for the refusal.

(d) If the [Secretary of State] refuses to file an entity filing, the person that submitted the filing may petition [the appropriate court] to compel its filing. The filing and the explanation of the [Secretary of State] of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(e) The filing of or refusal to file an entity filing does not create a presumption that the information contained in the filing is correct or incorrect.

## **Comment**

### **1. Filing duty in general.**

Under this section the Secretary of State is required to file an entity filing if it “satisfies this [act]” (i.e., both this article and the article that constitutes the organic law of the entity, as well as Article 2 if the entity filing relates to a transaction under that article). The purpose of this language is to limit the discretion of the Secretary of State to a ministerial role in reviewing the contents of entity filings. If the entity filing submitted is in the form prescribed and contains the information required by Section 1-201 and the applicable provision of the Code, the Secretary of State must file it. Consistently with this approach, subsection (a) states explicitly that the filing duty of the Secretary of State is ministerial and subsection (d) provides that the filing of an entity

filing by the Secretary of State does not affect the validity or invalidity of any provision contained in the filing and does not create any presumption with respect to any provision. Persons adversely affected by provisions in an entity filing may test their validity in a proceeding appropriate for that purpose. Similarly, the attorney general of the state may also question the validity of provisions of entity filings filed with the Secretary of State in an independent suit brought for that purpose; in neither case should any presumption be drawn about the validity of the provision from the fact that the Secretary of State accepted the entity filing for filing.

## **2. Mechanics of filing.**

Subsection (b) provides that when the Secretary of State files an entity filing, the Secretary of State records it as filed on the date and time of delivery to the Secretary of State, retains the original record for the state's records, and delivers a copy of the record to the entity or its representative with an acknowledgement of the date and time of filing. In the case of a record transmitted electronically, delivery may be made by electronic transmission. The copy returned will be the exact or conformed copy if one has been required by the Secretary of State, or will be a copy made by the Secretary of State if an exact or conformed copy was not required. Of course, a person desiring a certified copy of any filed record may obtain it from the office of the Secretary of State by paying the fee prescribed in Section 1-214(a).

## **3. Elimination of certificates and similar records.**

Subsection (b) provides that acceptance of a filing is evidenced merely by the Secretary of State's delivery of a copy of the entity filing with an acknowledgment of the date and time of filing. The Code does not provide for the Secretary of State to issue a formal certificate of filing. A copy of the filed record together with an acknowledgment of the date and time of filing should sufficiently indicate that the entity filing has been accepted for filing.

## **4. Rejection of document by Secretary of State.**

Because of the simplification of formal filing requirements and the limited discretion granted to the Secretary of State by the Code, it is probable that rejection of entity filings will occur only rarely. Subsection (c) provides that if the Secretary of State does reject an entity filing, the Secretary of State must return it to the person that submitted the filing within 15 days together with a brief written explanation of the reason for rejection. In the case of an entity filing delivered by electronic transmission, rejection of the filing may be made electronically by the Secretary of State or by a mailing to the entity.

**SECTION 1-207. EVIDENTIARY EFFECT OF COPY OF FILED RECORD.** A certification from the [Secretary of State] accompanying a copy of a filed record is conclusive evidence that the copy is an accurate representation of the original record on file with the [Secretary of State].

## Comment

The limited effect of a certificate issued by the Secretary of State under this section is consistent with the ministerial filing obligation imposed on the Secretary of State under the Code. See Section 1-206(a) which states the ministerial nature of the duties of the Secretary of State under the Code, but compare Section 1-208(c) which provide for a broader effect for a certificate of good standing or registration.

### **SECTION 1-208. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

(a) On request of any person, the [Secretary of State] shall issue a certificate of good standing for a domestic filing entity or a certificate of registration for a registered foreign entity.

(b) A certificate under subsection (a) must state:

(1) the domestic filing entity's name or the registered foreign entity's name used in this state;

(2) in the case of a domestic filing entity:

(A) that its public organic record has been filed and has taken effect;

(B) the date the public organic record became effective;

(C) the period of the entity's duration if the records of the [Secretary of State] reflect that its period of duration is less than perpetual; and

(D) that the records of the [Secretary of State] do not reflect that the entity has been dissolved;

(3) in the case of a registered foreign entity, that it is registered to do business in this state;

(4) that all fees, taxes, interest, and penalties owed to this state by the domestic or foreign entity and collected through the [Secretary of State] have been paid, if:

(A) payment is reflected in the records of the [Secretary of State]; and

(B) nonpayment affects the good standing or registration of the domestic

or foreign entity;

(5) that the most recent [annual] [biennial] report required by Section 1-213 has been delivered to the [Secretary of State] for filing;

(6) that a proceeding is not pending under Section 1-602; and

(7) other facts reflected in the records of the [Secretary of State] pertaining to the domestic or foreign entity which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated in the certificate, a certificate issued by the [Secretary of State] under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

### **Comment**

This section establishes a procedure by which anyone may obtain a conclusive certificate from the Secretary of State that the records of the Secretary of State either (i) do not indicate that a particular domestic entity has ceased to exist or (ii) indicate that a particular foreign entity is registered to do business in the state. The certificate will probably be a standardized form. The Secretary of State is to make those determinations from public records only and is not expected to make a more extensive investigation.

This section refers only to fees, taxes, interest, and penalties collected by the Secretary of State. In some states other agencies may report to the Secretary of State that franchise or other taxes have been paid; in those state, this information may be included in the certificate. In states where this procedure does not unduly delay the issuance of certificates, this section may be revised appropriately. Subsection (b)(4)(B) limits the scope of the statement in the certificate that all fees, taxes, interest, and penalties have been paid to those where nonpayment affects the existence or authorization to do business of the entity.

### **SECTION 1-209. SIGNING OF ENTITY FILING.**

(a) Signing an entity filing is an affirmation under the penalties of perjury that the facts stated in the filing are true in all material respects.

(b) Any record filed under this [act] may be signed by an agent. Whenever this [act] requires a particular individual to sign an entity filing and the individual is deceased or incompetent, the filing may be signed by a personal representative of the individual on behalf of

the individual.

(c) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

#### **Comment**

This section makes it a criminal offense for any person to sign an entity filing that the person knows is false in any material respect. As provided in Section 1-102, “sign” includes any manual, facsimile, conformed, or electronic signature.

#### **SECTION 1-210. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

(a) If a person required by this [act] to sign or deliver a record to the [Secretary of State] for filing under this [act] does not do so, any other person that is aggrieved may petition [the appropriate court] to order:

- (1) the person to sign the record;
- (2) the person to deliver the record to the [Secretary of State] for filing; or
- (3) the [Secretary of State] to file the record unsigned.

(b) If the petitioner under subsection (a) is not the entity to which the record pertains, the petitioner shall make the entity a party to the action.

(c) A record filed under subsection (a)(3) is effective without being signed.

#### **Comment**

This section gives the court the flexibility to order either that a record be signed or that the record be filed by the Secretary of State unsigned. That later circumstance may arise, for example, in a situation where the person who should sign the record is not subject to the jurisdiction of the court. This section also makes clear that the court may order a person with control over a record that has been signed to deliver the record to the Secretary of State for filing.

**SECTION 1-211. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.** If a record delivered to the [Secretary of State] for filing under this [act] and filed by the [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance

on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

#### **Comment**

This section relates to liability to third parties for inaccurate information in a filed record. Section 1-209 provides for criminal liability where the facts in a filed record are not true in all material respects.

**SECTION 1-212. DELIVERY BY [SECRETARY OF STATE] .** Except as otherwise provided by Section 1-412 or by law of this state other than this [act], the [Secretary of State] may deliver a record to a person by delivering it:

- (1) in person to the person that submitted it for filing;
- (2) to the address of the person's registered agent;
- (3) to the principal office address of the person; or
- (4) to another address the person provides to the [Secretary of State] for delivery.

#### **Comment**

This section provides several options for how the Secretary of State may deliver a record in response to a request for the record or after the Secretary of State has filed it.

**SECTION 1-213. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF STATE] .**

(a) A domestic filing entity, domestic limited liability partnership, or registered foreign entity shall deliver to the [Secretary of State] for filing [an annual] [a biennial] report that states:

- (1) the name of the entity and its jurisdiction of formation;
- (2) the name and street and mailing addresses of the entity's registered agent in this state;
- (3) the street and mailing addresses of the entity's principal office; and

(4) the name of at least one governor.

(b) Information in [an annual] [a biennial] report must be current as of the date the report is signed by the entity.

(c) The first [annual] [biennial] report must be delivered to the [Secretary of State] for filing after [January 1] and before [April 1] of the year following the calendar year in which the public organic record of the domestic filing entity became effective, the statement of qualification of a domestic limited liability partnership became effective, or the foreign filing entity registered to do business in this state. Subsequent [annual] [biennial] reports must be delivered to the [Secretary of State] after [January 1] and before [April 1] of each [second] calendar year thereafter.

(d) If [an annual] [a biennial] report does not contain the information required by this section, the [Secretary of State] promptly shall notify the reporting entity in a record and return the report for correction.

(e) If [an annual] [a biennial] report contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the [annual] [biennial] report becomes effective, the differing information in the [annual] [biennial] report is considered a statement of change under Section 1-407.

### **Comment**

The requirement that the report include the name of at least one governor of the entity will be a new requirement for some entities in some states. There has been increasing pressure from law enforcement for access to more information about the ownership and control of legal entities. The identification of a governor for each entity will give law enforcement the ability to contact a person with some knowledge about the affairs of the entity.

### **[SECTION 1-214. FEES.**

### **Alternative A**

(a) The [Secretary of State] shall collect the following fees for copying and certifying the copy of any filed record:

- (1) \$ [ ] per page for copying; and
- (2) \$ [ ] for the certification.

(b) The [Secretary of State] shall collect the following fees when an entity filing is delivered for filing:

- (1) Statement of merger, \$ [ ].
- (2) Statement of withdrawal of merger, \$ [ ].
- (3) Statement of interest exchange, \$ [ ].
- (4) Statement of withdrawal of interest exchange, \$ [ ].
- (5) Statement of conversion, \$ [ ].
- (6) Statement of withdrawal of conversion, \$ [ ].
- (7) Statement of domestication, \$ [ ].
- (8) Statement of withdrawal of domestication, \$ [ ].
- (9) [Annual] [Biennial] report, \$ [ ].
- (10) Articles of incorporation of a business corporation, \$ [ ].
- (11) Articles of incorporation of a nonprofit corporation, \$ [ ].
- (12) Statement of qualification of a limited liability partnership, \$ [ ].
- (13) Certificate of limited partnership of a limited partnership, \$ [ ].
- (14) Certificate of organization of a limited liability company, \$ [ ].
- [(15) Articles of incorporation of a general cooperative association, \$ [ ].]
- (16) Articles of organization of a limited cooperative association, \$ [ ].
- (17) Certificate of trust of a statutory trust, \$ [ ].

- (18) Other public organic document, \$ [ ].
- (19) Commercial-registered-agent listing statement, \$ [ ].
- (20) Commercial-registered-agent termination statement, \$ [ ].
- (21) Registered agent statement of change, \$ [ ].
- (22) Registered agent statement of resignation, no fee.
- (23) Statement designating a registered agent, \$ [ ].
- (24) Foreign entity registration statement, \$ [ ].
- (25) Amendment of foreign entity registration statement, \$ [ ].
- (26) Notice of cancellation of foreign entity registration statement, \$ [ ].
- (27) Statement of withdrawal, \$ [ ].
- (28) Statement of correction, \$ [ ].
- [(29) Other entity filings, \$ [ ]. ]

(c) The withdrawal under Section 1-204 of a filed record before it is effective or the correction of a filed record under Section 1-205 does not entitle the person on whose behalf the record was filed to a refund of the filing fee.

### **Alternative B**

(a) The [Secretary of State] shall adopt rules in accordance with [this state's administrative procedure act] setting fees for entity filings authorized to be delivered to the [Secretary of State] for filing under this [act] and for copying and certifying a copy of any entity filing under this [act].

(b) There is no fee for filing a registered agent's statement of resignation.

(c) The withdrawal under Section 1-204 of a filed record before it is effective or the correction of a filed record under Section 1-205 does not entitle the person on whose behalf the

record was filed to a refund of the filing fee.

### **End of Alternatives]**

***Legislative Note:** If this state includes fees of this kind in a general statute, add these fees to that statute and omit this section. If this state sets fees of this kind by administrative rule, select Alternative B. Subsection (b)(29) of Alternative A will include all entity filings not specifically listed in subsection (b). As an alternative to relying on subsection (b)(29), the state may list in subsection (b) all of the specific entity filings required by the Code.*

### **Comment**

This section establishes the filing fees for all documents that may be delivered to the Secretary of State for filing under the Code.

Subsection (a) establishes standard fees for copying filed documents and certifying that the copies are true copies. The dollar amounts for these services should be conformed to the fees charged for similar services under other provisions of law.

### **[PART] 3**

#### **NAME OF ENTITY**

##### **SECTION 1-301. PERMITTED NAMES.**

(a) Except as otherwise provided in subsection (d), the name of a domestic filing entity or domestic limited liability partnership, and the name under which a foreign entity may register to do business in this state, must be distinguishable on the records of the [Secretary of State] from any:

(1) name of an existing domestic filing entity which at the time is not administratively dissolved;

(2) limited liability partnership;

(3) name of a foreign entity registered to do business in this state under [Part] 5;

(4) name reserved under Section 1-303;

(5) name registered under Section 1-304; or

(6) assumed name registered under [this state's assumed name statute].

(b) If an entity consents in a record to the use of its name and submits an undertaking in a form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable on the records of the [Secretary of State] from any name in any category of names in subsection (a), the name of the consenting entity may be used by the person to which the consent was given.

(c) Except as otherwise provided in subsection (d), in determining whether a name is the same as or not distinguishable on the records of the [Secretary of State] from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”, “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “P.C.”, “professional association”, “PA”, “P.A.”, “Limited”, “Ltd.”, “limited partnership”, “LP”, “L.P.”, “limited liability partnership”, “LLP”, “L.L.P.”, “registered limited liability partnership”, “RLLP”, “R.L.L.P.”, “limited liability limited partnership”, “LLLLP”, “L.L.L.P.”, “registered limited liability limited partnership”, “RLLLLP”, “R.L.L.L.P.”, “limited liability company”, “LLC”, or “L.L.C.” may not be taken into account.

(d) An entity may consent in a record to the use of a name that is not distinguishable on the records of the [Secretary of State] from its name except for the addition of a word, phrase, or abbreviation indicating the type of as provided in subsection (c). In such a case, the entity need not change its name pursuant to subsection (b).

(e) An entity name may not contain the words [insert prohibited words or words that may be used only with approval by the appropriate state agency].

***Legislative Note:*** In subsection (e), add specific words that this state does not permit an entity to use as part of its name, such as “bank”, “banking”, “credit union”, “insurance”, or words of similar import, without approval by the appropriate state agency. If the state limits the use of certain words in the name of an entity unless the entity is of a certain type, those words should also be added in subsection (e). For example, some states prohibit the name of an entity from containing the word “cooperative” unless the entity is organized as a cooperative.

#### **Comment**

This section adopts the “distinguishable on the records” test for availability of an entity name and rejects the “deceptively similar” test widely used in the past.

**SECTION 1-302. NAME REQUIREMENTS FOR CERTAIN TYPES OF ENTITIES.**

(a) The name of a business corporation must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "Corp.", "Inc.", "Co.", or "Ltd.", or words or abbreviations of similar import in another language.

(b) The name of a limited partnership may contain the name of any partner. The name of a limited partnership that is not a limited liability limited partnership must contain the phrase “limited partnership” or the abbreviation “L.P.” or “LP” and may not contain the phrase “limited liability limited partnership” or “registered limited liability limited partnership” or the abbreviation “L.L.L.P.”, “LLLP”, “R.L.L.L.P.”, or “RLLLP”. If the limited partnership is a limited liability limited partnership, the name must contain the phrase “limited liability limited partnership” or the abbreviation “L.L.L.P.” or “LLLP” “R.L.L.L.P.”, or “RLLLP” and may not contain the abbreviation “L.P.” or “LP”.

(c) The name of a limited liability partnership must contain the phrase “limited liability partnership” or “registered limited liability partnership” or the abbreviation “L.L.P.”, “R.L.L.P.”, “LLP”, or “RLLP”.

(d) The name of a limited liability company must contain the phrase “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

(e) The name of a limited cooperative association must contain the phrase “limited cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA”.

“Limited” may be abbreviated as “Ltd.”. “Cooperative” may be abbreviated as “Co-op.”, “Coop.”, “Co-op”, or “Coop”. “Association” may be abbreviated as “Assoc.”, “Assoc”, “Assn.”, or “Assn”.

(f) The name of a statutory trust may contain the words “company”, “association”, “club”, “foundation”, “fund”, “institute”, “society”, “union”, “syndicate”, “limited”, or “trust”, or words or abbreviations of similar import, and may contain the name of a beneficial owner, a trustee, or any other person.

[(g) Insert requirements for names of other types of entities that may be included in this [act], such as general cooperative associations or professional entities.]

## **Comment**

### **1. Corporations.**

Subsection (a) is derived from Model Business Corporation Act, section 4.01(a). The Model Nonprofit Corporation Act does not require the name of a nonprofit corporation to include a corporate designator.

### **2. Limited Partnerships.**

Subsection (b)(1) is derived from Uniform Limited Partnership Act (2001) (Last Amended 2011), § 114(a)-(c). The 1985 version of the Uniform Limited Partnership Act prohibited the use of a limited partner’s name in the name of a limited partnership except in unusual circumstances. That approach derived from the 1916 version of the Uniform Limited Partnership Act and has become antiquated. In 1916, most business organizations were either unshielded (*e.g.*, general partnerships) or partially shielded (*e.g.*, limited partnerships), and it was reasonable for third parties to believe that an individual whose own name appeared in the name of a business would “stand behind” the business. Today most businesses have a full shield (*e.g.*, corporations, limited liability companies, most limited liability partnerships), and corporate, LLC and LLP statutes generally pose no barrier to the use of an owner’s name in the name of the entity. The Code eliminates the restriction on the use of a name of a limited partner and puts limited partnerships on equal footing with these other “shielded” entities.

### **3. Limited Liability Partnerships.**

Subsection (c) is derived from Uniform Partnership Act (1997) (Last Amended 2011), § 902.

#### **4. Limited Liability Companies.**

Subsection (d) is derived from Uniform Limited Liability Company Act (Last Amended 2011), § 112(a).

#### **5. Limited Cooperative Associations.**

Subsection (e) is derived from Uniform Limited Cooperative Association Act (Last Amended 2011), § 115(b).

#### **6. Statutory Trusts.**

Subsection (f) is derived from Uniform Statutory Trust Entity Act (Last Amended 2011), § 213. That act does not require the name of a statutory trust to include a traditional limited liability designator. Such a requirement would be inconsistent with current practice under the Delaware Act. For example, the names of mutual funds typically do not contain a limited liability appellation, though Section 35(d) of the Investment Company Act of 1940, which is applicable to a statutory trust that is a registered investment company, prohibits “materially deceptive or misleading” names. 15 U.S.C. §80a-34(d). See also Rule 35d-1, 17 C.F.R. §270.35d-1 (listing types of names that have been deemed “materially deceptive or misleading”).

### **SECTION 1-303. RESERVATION OF NAME.**

(a) A person may reserve the exclusive use of an entity name by delivering an application to the [Secretary of State] for filing. The application must state the name and address of the applicant and the name to be reserved. If the [Secretary of State] finds that the entity name is available, the [Secretary of State] shall reserve the name for the applicant’s exclusive use for [120] days.

(b) The owner of a reserved entity name may transfer the reservation to another person that is not an individual by delivering to the [Secretary of State] a signed notice in a record of the transfer which states the name and address of the transferee.

#### **Comment**

This section does not provide for the renewal of a name reservation for successive 120 day periods. A new reservation may be filed upon the expiration of a reservation, but by requiring a new filing this section creates the possibility that another party may timely submit a reservation for the same name. It was considered appropriate to allow for that possibility so that the procedure in this section cannot be used to block a name indefinitely. Compare Section 1-

304 which authorizes a renewable registration of certain names.

**SECTION 1-304. REGISTRATION OF NAME.**

(a) A foreign filing entity or foreign limited liability partnership not registered to do business in this state under [Part] 5 may register its name, or an alternate name adopted pursuant to Section 1-506, if the name is distinguishable on the records of the [Secretary of State] from the names that are not available under Section 1-301.

(b) To register its name or an alternate name adopted pursuant to Section 1-506, a foreign filing entity or foreign limited liability partnership must deliver to the [Secretary of State] for filing an application stating the entity's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 1-506. If the [Secretary of State] finds that the name applied for is available, the [Secretary of State] shall register the name for the applicant's exclusive use.

(c) The registration of a name under this section is effective for [one year] after the date of registration.

(d) A foreign filing entity or foreign limited liability partnership whose name registration is effective may renew the registration for successive [one-year] periods by delivering, not earlier than [three months] before the expiration of the registration, to the [Secretary of State] for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding [one-year] period.

(e) A foreign filing entity or foreign limited liability partnership whose name registration is effective may register as a foreign filing entity or foreign limited liability partnership under the registered name or consent in a signed record to the use of that name by another entity.

**Comment**

Unlike the reservation of a name under Section 1-303, a registration of a name under this section may be renewed for successive periods thus permitting a name to be protected for a period longer than the initial registration period. Use of the procedure in this section is limited, however, to the names of foreign filing entities and foreign limited liability partnerships which are not registered to do business in the state. The purpose of this section is to permit a foreign entity to make sure its name will be available in the event it should choose to register in the state at some time in the future.

## **[PART] 4**

### **REGISTERED AGENT OF ENTITY**

#### **SECTION 1-401. DEFINITIONS.** In this [part]:

(1) “Designation of agent” means a statement designating a registered agent delivered to the [Secretary of State] for filing under:

(A) [Section 31 of the Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011)]; or

(B) Section 1-411 by a nonregistered foreign entity or domestic nonfiling entity.

(2) “Registered agent filing” means:

(A) the public organic record of a domestic filing entity;

(B) a statement of qualification of a domestic limited liability partnership;

(C) a registration statement filed pursuant to Section 1-503; or

(D) a designation of agent.

(3) “Represented entity” means:

(A) a domestic filing entity;

(B) a domestic limited liability partnership;

(C) a registered foreign entity;

(D) a domestic or foreign unincorporated nonprofit association for which a designation of agent is in effect;

- (E) a domestic nonfiling entity for which a designation of agent is in effect; or
- (F) a nonregistered foreign entity for which a designation of agent is in effect.

### **Comment**

**“Designation of agent.” [(1)]** – A designation of agent is an optional filing that may be made by an entity that does not otherwise make a public filing in the state naming an agent for service of process. If a state has not enacted the Uniform Unincorporated Nonprofit Association Act (Last Amended 2011), paragraph (A) of this definition should be omitted.

**“Registered agent filing.” [(2)]**– Some states require that filings in addition to those listed in this definition, such as articles of amendment or articles of merger, state the registered agent information of the entity making the filing. In states where that is the case, this definition should be amended to add the following additional provision:

“(E) any other filing with the [Secretary of State] under an entity’s organic law that must include the information required by Section 1-404(a).”

**“Represented entity.” [(3)]**– This definition is used in this part as a way of referring to all of the various types of entities that have registered agents.

### **SECTION 1-402. ENTITIES REQUIRED TO DESIGNATE AND MAINTAIN**

**REGISTERED AGENT.** The following shall designate and maintain a registered agent in this state:

- (1) a domestic filing entity;
- (2) a domestic limited liability partnership; and
- (3) a registered foreign entity.

### **Comment**

The Model Registered Agents Act (2006) (Last Amended 2011), from which this part of Article 1 is derived, does not contain a provision mandating which entities must designate a registered agent, leaving that to the state’s specific entity acts.

When an organic law for a filing entity is integrated into the Code, the provision specifying the contents of the public organic record for that type of filing entity will require a statement of the registered agent for that entity but the organic law will not include an express requirement to have a registered agent.

### **SECTION 1-403. ADDRESSES IN FILING.** If a provision of this [part] other than

Section 1-410(a)(4) requires that a record state an address, the record must state:

- (1) a street address in this state; and
- (2) a mailing address in this state, if different from the address described in paragraph (1).

### **Comment**

When this part requires that a filing state an address, the address used must always be a geographic location. Where a person uses a post office box as its mailing address, paragraph (2) requires that the post office box address also be stated.

This section is derived from Model Registered Agent Act (2006) (Last Amended 2011), § 4.

### **SECTION 1-404. DESIGNATION OF REGISTERED AGENT.**

(a) A registered agent filing must be signed by the represented entity and state:

- (1) the name of the entity's commercial registered agent; or
- (2) if the entity does not have a commercial registered agent:

(A) the name and address of the entity's noncommercial registered agent;

or

(B) the title of an office or other position with the entity, if service of process, notices, and demands are to be sent to whichever individual is holding that office or position, and the address to which process, notices or demands are to be sent.

(b) The designation of a registered agent pursuant to subsection (a)(1) or (2)(A) is an affirmation of fact by the represented entity that the agent has consented to serve.

(c) The [Secretary of State] shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:

- (1) be available for at least 14 calendar days;
- (2) list in alphabetical order the names of the registered agents; and
- (3) state the type of filing and name of the represented entity making the filing.

*Legislative Note: Subsection (c) may be omitted if (1) the records of the Secretary of State or equivalent officer are searchable electronically in a manner that permits filings to be identified by the date of the filing and by the name of the registered agent named in the filing, and (2) the searchable database is updated frequently.*

### **Comment**

Subsection (a)(1) gives an entity the option of listing just the name of its commercial registered agent in a registered agent filing and omitting the address of the registered agent. If the commercial registered agent subsequently changes its address, that change will be reflected in the filing made by the agent under Section 1-405, as amended under Section 1-409, but no change will be necessary in the registered agent filing of any of the entities represented by the commercial registered agent. The address of an entity's commercial registered agent may be ascertained from the records of the Secretary of State by consulting its listing under Section 1-405.

The address of an entity's noncommercial registered agent is usually not a business address of the represented entity. On the other hand, subsection (a)(2)(B) permits an entity to designate a person within the organization, such as its general counsel, to serve as its registered agent; and in that circumstance the address of the registered agent may very well be a business address of the represented entity.

The addresses required by subsection (a) to be stated in a registered agent filing must satisfy the requirements in Section 1-403.

Subsection (b) avoids the need to include with a registered agent filing a consent of the registered agent to serve as such.

Subsection (c) creates a procedure that will permit registered agents to determine if they have been named in filings of which they were not aware by periodically consulting the list prepared by the Secretary of State. Subsection (c) requires the registered agents to be listed in alphabetical order to facilitate the use of the list by registered agents and also to indicate the type of filing (e.g., articles of incorporation, certificates of limited partnership, appointments of agents under Section 1-411, etc.) in which each registered agent is named. Subsection (c) will not be necessary under the circumstances described in the Legislative Note because registered agents may consult the regular database maintained by the Secretary of State to verify when they have been named as a registered agent.

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 5.

### **SECTION 1-405. LISTING OF COMMERCIAL REGISTERED AGENT.**

(a) A person may become listed as a commercial registered agent by delivering to the [Secretary of State] for filing a commercial-registered-agent listing statement signed by the

person which states:

(1) the name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;

(2) that the person is in the business of serving as a commercial registered agent in this state; and

(3) the address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.

(b) A commercial-registered-agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in Section 1-412(d).

(c) If the name of a person delivering to the [Secretary of State] for filing a commercial-registered-agent listing statement is not distinguishable on the records of the [Secretary of State] from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(d) The [Secretary of State] shall note the filing of a commercial-registered-agent listing statement in the [index of filings] [records] maintained by the [Secretary of State] for each entity represented by the agent at the time of the filing. The statement has the effect of amending the registered agent filing for each of those entities to:

(1) designate the person becoming listed as a commercial registered agent as the commercial registered agent of each of those entities; and

(2) delete the name and address of the former agent from the registered agent

filing of each of those entities.

**Legislative Note:** *If the Secretary of State or equivalent officer is not able to identify from the records maintained by the Secretary of State or equivalent officer all of the entities represented by a registered agent, subsection (d) should be amended to read:*

*“(d) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The [Secretary of State] shall note the filing of the commercial-registered-agent listing statement in the index of filings maintained by the [Secretary of State] for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.”*

### **Comment**

This section is a substantial simplification of practice because it removes the need to amend the filed record of every entity represented by a commercial registered agent when the agent changes its address.

Subsection (a)(3) only permits a commercial registered agent to list one address where service of process and other notices may be sent to entities represented by the agent. This may require a change in practice for registered agents who have previously maintained more than one address in a state and have permitted represented entities to choose which address they would use in their registered agent filings. A corporation, for example, located in one part of a state might include in its articles of incorporation an address for its registered agent which is the address of an office of the agent located close to the corporation and which is different than the address used by a corporation in another part of the state which has the same registered agent but uses a different office of the agent. In the example given, the registered agent will need to pick just one address in the state where all service of process will be sent to it. If a commercial registered agent wishes to maintain more than one office in a state where service of process will be received by it, it can accomplish that result by organizing separate entities to conduct its business in the state and filing separate statements for each entity under this section.

The address required by subsection (a)(3) to be stated in a commercial registered agent listing statement must satisfy the requirements of Section 1-403.

Subsection (d) is a transitional provision that deals with the effect on the entities represented by a registered agent at the time the agent is first listed under this section. The effect is to amend the registered agent filing of each such entity to delete the address of the registered agent consistent with Section 1-404(a)(1).

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 6.

**SECTION 1-406. TERMINATION OF LISTING OF COMMERCIAL REGISTERED AGENT.**

(a) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the [Secretary of State] for filing a commercial-registered-agent termination statement signed by the agent which states:

(1) the name of the agent as listed under Section 1-405; and

(2) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(b) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the 31st day after the day on which it is delivered to the [Secretary of State] for filing.

(c) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial-registered-agent termination statement.

(d) When a commercial-registered-agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity pursuant to Section 1-412. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity.

**Comment**

This section provides a procedure for a commercial registered agent to withdraw from the business of providing registered agent services. Use of the procedure in this section will terminate the status of the registered agent as the agent for service of process of all the entities represented by the agent. Thus, the procedure in this section differs from the procedure in Section 1-410, which permits a registered agent to resign with respect to just a single represented entity instead of resigning generally with respect to all of its represented entities.

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 7.

**SECTION 1-407. CHANGE OF REGISTERED AGENT BY REPRESENTED ENTITY.**

(a) A represented entity may change the information on file under Section 1-404(a) by delivering to the [Secretary of State] for filing a statement of change signed by the entity which states:

(1) the name of the entity; and

(2) the information that is to be in effect as a result of the filing of the statement of change.

(b) The interest holders or governors of a domestic entity need not approve the filing of:

(1) a statement of change under this section; or

(2) a similar filing changing the registered agent or registered office, if any, of the entity in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent is an affirmation of fact by the represented entity that the agent has consented to serve.

(d) As an alternative to using the procedure in this section, a represented entity may change the information on file under Section 1-404(a) by amending its most recent registered agent filing in a manner provided by the law of this state other than this [act] for amending the filing.

**Comment**

A change in the identity of the registered agent of a represented entity or a change of the office address of a registered agent are usually routine matters that do not affect the rights of the interest holders of the represented entity. This section permits those changes to be made without a formal amendment of an entity's public organic document, without approval of its interest

holders, and, indeed, even without formal approval by its governors (i.e., the persons managing the entity's affairs, such as the board of directors of a corporation).

Subsection (c) avoids the need to file with a statement of change a consent of the new registered agent being designated.

Subsection (d) makes clear that the procedures in this section are not exclusive. A common way in which an entity changes its registered agent or registered office is to include the change in an amendment of its public organic document.

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 8.

**SECTION 1-408. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL REGISTERED AGENT.**

(a) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under Section 1-404(a), the agent shall deliver to the [Secretary of State] for filing, with respect to each entity represented by the agent, a statement of change signed by the agent which states:

- (1) the name of the entity;
- (2) the name and address of the agent in effect with respect to the entity;
- (3) if the name of the agent has changed, the new name; and
- (4) if the address of the agent has changed, the new address.

(b) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the [Secretary of State] for filing of a statement of change and the changes made in the statement.

**Comment**

This section permits a noncommercial registered agent to change the name and address of the agent that appears in the registered agent filing of an entity represented by the agent. Because the noncommercial registered agent is not listed under Section 1-405, the agent will not be able to use the procedures in Section 1-409 which permit commercial registered agents to make only one filing to change their name and address for all entities represented by them. Thus

the noncommercial registered agent will need to make a filing under this section for each entity represented by the agent.

An address included in a statement of change must satisfy the requirements in Section 1-403.

This section is derived from Model Registered Agent Act (2006) (Last Amended 2011), § 9.

**SECTION 1-409. CHANGE OF NAME, ADDRESS, TYPE OF ENTITY, OR JURISDICTION OF FORMATION BY COMMERCIAL REGISTERED AGENT.**

(a) If a commercial registered agent changes its name, its address as listed under Section 1-405(a), its type of entity, or its jurisdiction of formation, the agent shall deliver to the [Secretary of State] for filing a statement of change signed by the agent which states:

- (1) the name of the agent as listed under Section 1-405(a);
- (2) if the name of the agent has changed, the new name;
- (3) if the address of the agent has changed, the new address; and
- (4) if the agent is an entity:

(A) if the type of entity of the agent has changed, the new type of entity;

and

(B) if the jurisdiction of formation of the agent has changed, the new jurisdiction of formation.

(b) The filing by the [Secretary of State] of a statement of change under subsection (a) is effective to change the information regarding the agent with respect to each entity represented by the agent.

(c) A commercial registered agent promptly shall furnish to each entity represented by it a notice in a record of the filing by the [Secretary of State] of a statement of change relating to the name or address of the agent and the changes made in the statement.

(d) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the [Secretary of State] may cancel the listing of the agent under Section 1-405. A cancellation under this subsection has the same effect as a termination under Section 1-406. Promptly after canceling the listing of an agent, the [Secretary of State] shall serve notice in a record in the manner provided in Section 1-412(b) or (c) on:

(1) each entity represented by the agent, stating that the agent has ceased to be the registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in Section 1-412; and

(2) the agent, stating that the listing of the agent has been canceled under this section.

### **Comment**

This section permits a commercial registered agent to make a single filing that has the effect of changing the name or address of the agent for all of the entities represented by it.

An address included in a statement of change must satisfy the requirements in Section 1-403.

Subsection (d) provides a procedure by which the Secretary of State may cancel the listing of a commercial registered agent when the Secretary of State learns that the agent has changed its address without amending its listing as a commercial registered agent. When the Secretary of State acts to cancel the listing of a commercial registered agent, the Secretary of State is required to notify both (i) the entities represented by the agent that they no longer have a valid registered agent and (ii) the agent that it no longer is listed as a commercial registered agent. Unlike in the case of a resignation under Section 1-410, which is initiated by the registered agent and thus does not require a notice from the Secretary of State to the agent, notice by the Secretary of State to the agent is needed under this section so that the agent has notice that its representation of the entities it previously represented has been terminated.

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 10.

### **SECTION 1-410. RESIGNATION OF REGISTERED AGENT.**

(a) A registered agent may resign as agent for a represented entity by delivering to the

[Secretary of State] for filing a statement of resignation signed by the agent which states:

- (1) the name of the entity;
- (2) the name of the agent;
- (3) that the agent resigns from serving as registered agent for the entity; and
- (4) the address of the entity to which the agent will send the notice required by

subsection (c).

(b) A statement of resignation takes effect on the earlier of:

- (1) the 31st day after the day on which it is filed by the [Secretary of State]; or
- (2) the designation of a new registered agent for the represented entity.

(c) A registered agent promptly shall furnish to the represented entity notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under this [part] for any matter thereafter tendered to it as agent for the represented entity. The resignation does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

### **Comment**

Resignation under this section may be accomplished solely by action of the registered agent and does not require the cooperation or consent of the represented entity. Whether a resignation violates a contract between the registered agent and the represented entity is beyond the scope of this part and subsection (d) preserves whatever claims a represented entity may have against its registered agent for a wrongful termination. Even if a resignation were to violate such a contract, the resignation would still be effective if the provisions of this section are followed.

Resignation under this section relates only to the entity named in the statement of resignation. Thus, the procedure in this section differs from the procedure in Section 1-406 which terminates the status of the agent as agent for all of the entities represented by it.

The requirements of Section 1-403 with respect to addresses do not apply to subsection (a)(4) because the registered agent may not have all the required information available.

Subsection (b) delays the effectiveness of a statement of resignation for 31 days to allow the notice of the resignation that must be sent under subsection (c) to reach the represented entity and to allow the represented entity to arrange for a substitute registered agent.

Subsection (e) makes clear that a registered agent may resign with respect to an entity that is not in good standing and supersedes the contrary administrative practice in some states of refusing to accept any filings with respect to an entity that is not in good standing until the problem with the entity's standing is cured.

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 11.

**SECTION 1-411. DESIGNATION OF REGISTERED AGENT BY  
NONREGISTERED FOREIGN ENTITY OR NONFILING DOMESTIC ENTITY.**

(a) A nonregistered foreign entity or domestic nonfiling entity may deliver to the [Secretary of State] for filing a statement designating a registered agent signed by the entity which states:

- (1) the name, type of entity, and jurisdiction of formation of the entity; and
- (2) the information required by Section 1-404(a).

(b) A statement under subsection (a) is effective for five years after the date of filing unless canceled or terminated earlier.

(c) A statement under subsection (a) must be signed by a person authorized to manage the affairs of the nonregistered foreign entity or domestic nonfiling entity and by the person designated as the agent. The signing of the statement is an affirmation of fact that the person is authorized to manage the affairs of the entity and that the agent has consented to serve.

(d) Designation of a registered agent under subsection (a) does not register a nonregistered foreign entity to do business in this state.

(e) A statement under subsection (a) may not be rejected for filing because the name of the entity signing the statement is not distinguishable on the records of the [Secretary of State] from the name of another entity appearing on those records. The filing of such a statement does not make the name of the entity signing the statement unavailable for use by another entity.

(f) An entity that delivers to the [Secretary of State] for filing a statement under subsection (a) designating a registered agent may cancel the statement by delivering to the [Secretary of State] for filing a statement of cancellation that states the name of the entity and that the entity is canceling its designation of a registered agent in this state.

(g) A statement under subsection (a) for a nonregistered foreign entity terminates on the date the entity becomes a registered foreign entity.

### **Comment**

Filing under this section is elective, and no inference should be drawn from the failure of an entity to make such a filing.

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 12.

### **SECTION 1-412. SERVICE OF PROCESS, NOTICE, OR DEMAND ON ENTITY.**

(a) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office of a domestic filing entity, domestic limited liability partnership, or registered foreign entity must be as shown in the

entity's most recent [annual] [biennial] report filed by the [Secretary of State]. Service is effected under this subsection on the earliest of:

(1) the date the entity receives the mail or delivery by the commercial delivery service;

(2) the date shown on the return receipt, if signed by the entity; or

(3) five days after its deposit with the United States Postal Service or commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under Section 1-405 that it will accept.

(e) Service of process, notice, or demand may be made by other means under law other than this [act].

### **Comment**

Subsection (b) offers three alternative methods for establishing the date service is effected, a date important for determining the time frame in which an entity must respond to the process, notice, or demand served. Under subsection (b)(1), service is effected on the date or receipt by the entity of the mail or commercial delivery. Under subsection (b)(2), service is effected on the date shown on the return receipt, if signed on behalf of the entity. Under subsection (b)(3), service is effected five days after it is deposited with the Postal Service or with a similar commercial delivery service, if correctly addressed and with correct postage or payment. Service is effective at the earliest of the three listed circumstances. But for the party effecting service there are difficulties of proof under the first two circumstances. Under subsection (b)(1) the exact date of the receipt by the entity of mail or commercial delivery is peculiarly within the knowledge of the entity. Under subsection (b)(2) the return receipt must be signed on behalf of the entity. That requirement is designed to assure that the service is actually received by the entity. The problem is that the signature on the return receipt may not always show unambiguously that the signer was acting for the entity and was authorized to do

so. As a practical matter, therefore, parties effecting service under subsection (b) may find it most convenient to rely on subsection (3) and to maintain their own records so that the date of deposit in the mails or with a commercial delivery service can easily be established.

Subsection (c) provides a means for serving process on an entity that cannot be served under subsection (a) or (b). Some entity organic laws require that service of process in that circumstance be made on the Secretary of State, but that leaves unanswered the question of what the Secretary of State should do with the process. A similar approach is taken by Fed. R.Civ.Proc. 4(h)(1).

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 13.

**SECTION 1-413. DUTIES OF REGISTERED AGENT.** The only duties under this [part] of a registered agent that has complied with this [part] are:

(1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;

(2) to provide the notices required by this [act] to the entity at the address most recently supplied to the agent by the entity;

(3) if the agent is a noncommercial registered agent, to keep current the information required by Section 1-404(a) in the most recent registered agent filing for the entity; and

(4) if the agent is a commercial registered agent, to keep current the information listed for it under Section 1-405(a).

#### **Comment**

This section is limited to prescribing the duties of a registered agent under this part. An agent may undertake other responsibilities to a represented entity, such as by contract or course of dealing, but those duties will be determined under other law.

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 14.

**SECTION 1-414. JURISDICTION AND VENUE.** The designation or maintenance in

this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or a proceeding involving the entity.

### **Comment**

This section makes clear that the address of a registered agent does not determine venue. This section may be inconsistent with other law or procedural rules in a state, and thus existing law on venue should be reviewed when this article is considered for adoption in a state. *Compare Cooper v. Chevron U.S.A., Inc.*, 132 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New Mexico statute permitting venue “in the county where the statutory agent designated by the foreign corporation resides”).

This section is derived from Model Registered Agents Act (2006) (Last Amended 2011), § 15.

## **[PART] 5**

### **FOREIGN ENTITIES**

#### **SECTION 1-501. GOVERNING LAW.**

(a) The law of the jurisdiction of formation of an entity governs:

(1) the internal affairs of the entity;

(2) the liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the entity; and

(3) the liability of a series of an unincorporated entity.

(b) A foreign entity is not precluded from registering to do business in this state because of any difference between the law of the entity’s jurisdiction of formation and the law of this state.

(c) Registration of a foreign entity to do business in this state does not authorize the foreign entity to engage in any activities and affairs or exercise any power that a domestic entity of the same type may not engage in or exercise in this state.

## Comment

Subsection (a) provides that the laws of the jurisdiction of formation of a foreign entity, rather than the laws of this State, govern both the internal affairs of the entity and the liability of its interest holders and governors for the obligations of the entity.

Article 4 of the Uniform Statutory Trust Entity Act (2009) (Last Amended 2011) authorizes a statutory trust to create series. If series are properly created, a debt, obligation, or liability associated with the property of a particular series is enforceable only against property of that series, and not against the property of the trust generally or any other series thereof. Subsection (a)(3) respects that type of internal shield, not just in statutory trusts but also in any other form of unincorporated entity that is authorized to create series. If a state respects series in any type of entity, there is no reason not to recognize series in other types of entities as well.

Subsections (b) and (c) together make clear that although a foreign entity may not be denied registration simply because of a difference between the laws of its jurisdiction of formation and the laws of this state, the foreign entity may not engage in any activity or exercise any power in this state that a domestic entity of the same type may not engage in or exercise. Thus subsection (c) puts a registered foreign entity on the same, but no better, footing as a domestic entity.

### **SECTION 1-502. REGISTRATION TO DO BUSINESS IN THIS STATE.**

(a) A foreign filing entity or foreign limited liability partnership may not do business in this state until it registers with the [Secretary of State] under this [article].

(b) A foreign filing entity or foreign limited liability partnership doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

(c) The failure of a foreign filing entity or foreign limited liability partnership to register to do business in this state does not impair the validity of a contract or act of the foreign filing entity or foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(d) A limitation on the liability of an interest holder or governor of a foreign filing entity or of a partner of a foreign limited liability partnership is not waived solely because the foreign filing entity or foreign limited liability partnership does business in this state without registering.

(e) Section 1-501(a) and (b) applies even if a foreign entity fails to register under this [article].

### Comment

The purpose of subsection (b) is to induce foreign entities to register without imposing harsh or erratic sanctions. Often the failure to register is a result of inadvertence or bona fide disagreement as to the scope of Section 1-505 which is necessarily imprecise; and the imposition of harsh sanctions in those situations is inappropriate.

The sanction in subsection (b) of closing the courts of the state to suits brought by foreign entities that should have registered is not a punitive one. Subsection (c) makes clear that the failure to register does not impair the validity of an entity's acts and subsection (d) preserves the effectiveness of any liability shields applicable under the entity's organic law. If an entity should have registered and failed to do so, it may still enforce its contracts simply by registering.

Subsection (b) does not prevent a foreign entity that has failed to register from "defending" an action or proceeding. The distinction between "maintaining" and "defending" an action or proceeding under subsection (b) is determined on the basis of whether affirmative relief is sought. A nonregistered foreign entity may interpose any defense or permissive or mandatory counterclaim to defeat a claimed recovery, but may not obtain an affirmative judgment based on the counterclaim unless it has registered.

**SECTION 1-503. FOREIGN REGISTRATION STATEMENT.** To register to do business in this state, a foreign filing entity or foreign limited liability partnership must deliver a foreign registration statement to the [Secretary of State] for filing. The statement must be signed by the entity and state:

(1) the name of the foreign filing entity or foreign limited liability partnership and, if the name does not comply with Section 1-301, an alternate name adopted pursuant to Section 1-506(a);

(2) the type of entity and, if it is a foreign limited partnership, whether it is a foreign limited liability limited partnership;

(3) the entity's jurisdiction of formation;

(4) the street and mailing addresses of the entity's principal office and, if the law of the

entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of the office; and

(5) the information required by Section 1-404(a).

#### **Comment**

The foreign registration statement provides certain basic information about the foreign entity to ensure that citizens of the state have access to that information in their dealings with the foreign entity. The statement also facilitates the subjection of the entity to the courts of the state.

#### **SECTION 1-504. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.**

A registered foreign entity shall deliver to the [Secretary of State] for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the entity;

(2) the type of entity, including, if it is a foreign limited partnership, whether the entity became or ceased to be a foreign limited liability limited partnership;

(3) the entity's jurisdiction of formation;

(4) an address required by Section 1-503(4); or

(5) the information required by Section 1-404(a).

#### **Comment**

This section works in tandem with the annual / biennial report required by Section 1-213 to keep the information of record in the office of the Secretary of State about a registered foreign entity up to date.

#### **SECTION 1-505. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.**

(a) Activities of a foreign filing entity or foreign limited liability partnership which do not constitute doing business in this state under this [article] include:

(1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

- (2) carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;
- (3) maintaining accounts in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, or security interests in property;
- (8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property so acquired;
- (9) conducting an isolated transaction that is not in the course of similar transactions;
- (10) owning, without more, property; and
- (11) doing business in interstate commerce.

(b) A person does not do business in this state solely by being an interest holder or governor of a foreign entity that does business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign filing entity or foreign limited liability partnership to service of process, taxation, or regulation under law of this state other than this [act].

### **Comment**

The Code does not attempt to formulate an inclusive definition of what constitutes doing business in a state. Rather, the concept is defined in a negative fashion by subsections (a) and

(b), which state that certain activities do not constitute doing business. In general terms, any conduct more regular, systematic, or extensive than that described in subsection (a) constitutes doing business and requires the foreign entity to register to do business. Typical conduct requiring registration includes maintaining an office to conduct local intrastate business, selling personal property not in interstate commerce, entering into contracts relating to the local business or sales, and owning or using real estate for general purposes. But the passive owning of real estate for investment purposes does not constitute doing business. See subsection (a)(10).

The test of “doing business” defined in a negative way in subsections (a) and (b) applies only to the question whether the entity’s contacts with the state are such that it must register under this part. It is not applicable to other questions such as whether the entity is amenable to service of process under state “long-arm” statutes or liable for state or local taxes. An entity that has registered (or is required to register) will generally be subject to suit and state taxation in the state, while an entity that is subject to service of process or state taxation in a state will not necessarily be required to register.

The list of activities set forth in subsection (a) is not exhaustive.

### **1. *Engaging in Litigation***

A foreign entity is not “doing business” solely because it resorts to the courts of the state to recover an indebtedness, enforce an obligation, recover possession of personal property, obtain the appointment of a receiver, intervene in a pending proceeding, bring a petition to compel arbitration, file an appeal bond, or pursue appellate remedies. Similarly, a foreign entity is not required to register merely because it files a complaint with a governmental agency or participates in an administrative proceeding within the state.

### **2. *Internal Affairs of the Corporation***

A foreign entity does not “do business” within a state under this section merely because some of its internal affairs occur within a state. Thus, an entity may hold meetings of its governors or interest holders within a state without first registering. It also may maintain offices or agencies within a state relating solely to the transfer, exchange or registration of its interests without registering. Other activities relating to the internal affairs of the entity that do not constitute doing business under this section include having officers or representatives who reside within or are physically present in the state; while there, the officers or representatives may make executive decisions relating to the internal affairs of the entity without imposing on the entity the requirement that it register, if these activities are not so regular and systematic as to cause the residence to be viewed as a business office.

### **3. *Sales through Independent Contractors***

Under subsection (a)(5), a foreign entity does not need to register if it sells goods in the state through independent contractors. These transactions are viewed as transactions by the independent contractors, not by the entity itself even though the entity sets some limits or ground rules for its contractors. If these controls are sufficiently pervasive, however, the entity may be

deemed to be selling for itself in intrastate commerce, and not through the independent contractors and therefore engaged in doing business in the state.

#### **4. *Creating, Acquiring, or Collecting Debts***

The mere act of making a loan by a foreign entity that is not in the business of making loans does not constitute doing business in the state in which the loan is made. On the same theory a foreign entity may obtain security for the repayment of a loan, and foreclose or enforce the lien or security interest to collect the loan, without being deemed to be doing business. Similarly, a refunding or “roll over” of a loan or its adjustment or compromise does not involve doing business.

#### **5. *Isolated Transactions***

The concept of “doing business” involves regular, repeated, and continuing business contacts of a local nature. A single agreement or isolated transaction within a state does not constitute doing business if there is no intention to repeat the transaction or engage in similar transactions. The Code does not impose the limitation found in some statutes, such as Section 15.01(b)(10) of the Model Business Corporation Act, that the isolated transaction be completed within 30 days. A foreign entity should not be required to register simply because it engages in an isolated transaction that takes longer than 30 days to complete.

#### **6. *Interstate Transactions***

A foreign entity is not “doing business” within the meaning of this section if it is transacting business in interstate commerce (subsection (a)(11)) or soliciting or obtaining orders that must be accepted outside the state before they become contracts (subsection (a)(6)). These limitations reflect the provisions of the United States Constitution that grant to the United States Congress exclusive power over interstate commerce, and preclude states from imposing restrictions or conditions upon this commerce. These sections should be construed in a manner consistent with judicial decisions under the United States Constitution. Under these decisions, a foreign entity is not required to register even though it sells goods within the state if they are shipped to the purchasers in interstate commerce. An entity need not register even if it also does work and performs acts within the state incidental to the interstate business, e.g., if it takes or enforces a security interest incidental to these transactions. Nor is it required to register merely because it sends traveling salesmen or solicitors into a state so long as contracts are not made within the state. Similarly, an office may be maintained by an entity in a state without registering if the office’s functions relate solely to interstate commerce.

Purchases of goods may of course be in interstate commerce as readily as sales. Thus, the purchase of personal property by a foreign entity for shipment in interstate commerce out of the state does not require the entity to register.

### **SECTION 1-506. NONCOMPLYING NAME OF FOREIGN ENTITY.**

(a) A foreign filing entity or foreign limited liability partnership whose name does not

comply with Section 1-301 for an entity of its type may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 1-301. A registered foreign entity that registers under an alternate name under this subsection need not comply with [this state's assumed or fictitious name statute]. After registering to do business in this state with an alternate name, a registered foreign entity shall do business in this state under:

- (1) the alternate name;
- (2) its entity name, with the addition of its jurisdiction of formation; or
- (3) a name the entity is authorized to use under [this state's assumed or fictitious name statute].

(b) If a registered foreign entity changes its name to one that does not comply with Section 1-301, it may not do business in this state until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with Section 1-301.

#### **Comment**

A foreign entity must register under its true name if that name satisfies the requirements on Section 1-301. If the true name unavailable because it is not distinguishable upon the records of the Secretary of State from a name already in use or reserved or registered, the entity may use an alternate name.

A foreign entity that registers to do business in the state may do business under a fictitious name to the same extent as a domestic entity.

#### **SECTION 1-507. WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN ENTITY.**

(a) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the [Secretary of State] for filing. The statement of withdrawal must be signed by the entity and state:

(1) the name of the entity and its jurisdiction of formation;

(2) that the entity is not doing business in this state and that it withdraws its registration to do business in this state;

(3) that the entity revokes the authority of its registered agent to accept service on its behalf in this state; and

(4) an address to which service of process may be made under subsection (b).

(b) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made pursuant to Section 1-412.

#### **Comment**

The statement of withdrawal must set forth an address where service of process may be made on the entity pursuant to Section 1-412. There is no limit on how long the withdrawn entity must keep that address up to date.

#### **SECTION 1-508. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.**

A registered foreign entity that converts to any type of domestic filing entity or to a domestic limited liability partnership is deemed to have withdrawn its registration on the effective date of the conversion.

#### **Comment**

When a registered foreign entity has converted to a domestic filing entity or domestic limited liability partnership, information about the entity in its capacity as a domestic entity will continue to be of record in the office of the Secretary of State. At that point, there is no further reason for it to be registered as the information applicable to it when it was a foreign entity, and this section automatically treats its prior registration as withdrawn.

**SECTION 1-509. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO  
NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

(a) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver a statement of withdrawal to the [Secretary of State] for filing. The statement must be signed by the dissolved or converted entity and state:

(1) in the case of a foreign entity that has completed winding up:

(A) its name and jurisdiction of formation; and

(B) that the foreign entity surrenders its registration to do business in this state; and

(2) in the case of a foreign entity that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:

(A) the name of the converting foreign entity and its jurisdiction of formation;

(B) the type of nonfiling entity to which it has converted and its jurisdiction of formation;

(C) that it surrenders its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf; and

(D) a mailing address to which service of process may be made under subsection (b).

(b) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign filing entity was registered to do business in this state may be made pursuant to Section 1-412.

## Comment

When a registered foreign entity has dissolved and completed winding up, or has converted to a nonfiling entity other than a limited liability partnership, there is no further reason for information about it to appear in the records of the Secretary of State. This section thus requires delivery of a statement of withdrawal for the purpose of removing the entity from the rolls of active entities.

### **SECTION 1-510. TRANSFER OF REGISTRATION.**

(a) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the [Secretary of State] to do business in this state, the foreign entity shall deliver to the [Secretary of State] for filing an application for transfer of registration. The application must be signed by the surviving or converted entity and state:

(1) the name of the registered foreign entity before the merger or conversion;

(2) the type of entity it was before the merger or conversion;

(3) the name of the applicant entity and, if the name does not comply with Section 1-301, an alternate name adopted pursuant to Section 1-506(a);

(4) the type of entity of the applicant entity and its jurisdiction of formation; and

(5) the following information regarding the applicant entity, if different than the information for the foreign entity before the merger or conversion:

(A) the street and mailing addresses of the principal office of the entity and, if the law of the entity's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(B) the information required pursuant to Section 1-404(a).

(b) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in this state is transferred without interruption to the entity into which it has merged or to which it has been converted.

## Comment

The purpose of this section is to clarify the status of the foreign unincorporated entity in the public records of the state. A filing under this section has the two-fold effect of canceling the authority of the foreign entity to do business in the state while at the same time reregistering it as the new type of foreign entity. If the reregistered foreign entity subsequently wishes to cancel its registration to do business in the state, it may do so under Section 1-511.

### **SECTION 1-511. TERMINATION OF REGISTRATION.**

(a) The [Secretary of State] may terminate the registration of a registered foreign entity in the manner provided in subsections (b) and (c) if the entity does not:

(1) pay, not later than [60] days after the due date, any fee, tax, interest, or penalty required to be paid to the [Secretary of State] under this [act] or law of this state other than this [act];

(2) deliver to the [Secretary of State] for filing, not later than [60] days after the due date, [an annual] [a biennial] report;

(3) have a registered agent as required by Section 1-402; or

(4) deliver to the [Secretary of State] for filing a statement of change under Section 1-407 not later than [30] days after a change occurs in the name or address of the entity's registered agent.

(b) The [Secretary of State] may terminate the registration of a registered foreign entity by:

(1) filing a notice of termination or noting the termination in the records of the [Secretary of State]; and

(2) delivering a copy of the notice or the information in the notation to the entity's registered agent or, if the entity does not have a registered agent, to the entity's principal office.

(c) The notice must state or the information in the notation under subsection (b) must

include:

(1) the effective date of the termination, which must be at least [60] days after the date the [Secretary of State] delivers the copy; and

(2) the grounds for termination under subsection (a).

(d) The authority of a registered foreign entity to do business in this state ceases on the effective date of the notice of termination or notation under subsection (b), unless before that date the entity cures each ground for termination stated in the notice or notation. If the entity cures each ground, the [Secretary of State] shall file a record so stating.

#### **Comment**

This section is analogous to the procedures for administrative dissolution under Part 5.

**[SECTION 1-512. ACTION BY [ATTORNEY GENERAL]** . The [Attorney General] may maintain an action to enjoin a foreign filing entity or foreign limited liability partnership from doing business in this state in violation of this [act].]

#### **[PART] 6**

#### **ADMINISTRATIVE DISSOLUTION**

**SECTION 1-601. GROUNDS.** The [Secretary of State] may commence a proceeding under Section 1-602 to dissolve a domestic filing entity administratively if the entity does not:

(1) pay any fee, tax, interest, or penalty required to be paid to the [Secretary of State] not later than [six months] after it is due;

(2) deliver [an annual] [a biennial] report to the [Secretary of State] not later than [six months] after it is due; or

(3) have a registered agent in this state for [60] consecutive days.

#### **Comment**

Limited liability partnerships are not filing entities and thus this part does not apply to

them. Similar provisions apply to limited liability partnerships under the Uniform Partnership Act (1997) (Last Amended 2011), §§ 913 (requiring the filing of annual / biennial reports) and 902-904 (procedures for revocation and reinstatement) (§§ 1-902 – 1-904 of the Code).

#### **SECTION 1-602. PROCEDURE AND EFFECT.**

(a) If the [Secretary of State] determines that one or more grounds exist under Section 1-601 for administratively dissolving a domestic filing entity, the [Secretary of State] shall serve the entity pursuant to Section 1-212 with notice in a record of the [Secretary of State's] determination.

(b) If a domestic filing entity, not later than [60] days after service of the notice required by subsection (a), does not cure or demonstrate to the satisfaction of the [Secretary of State] the nonexistence of each ground determined by the [Secretary of State], the [Secretary of State] shall administratively dissolve the entity by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The [Secretary of State] shall file the statement and serve a copy on the entity pursuant to Section 1-212.

(c) A domestic filing entity that is dissolved administratively continues its existence as the same type of entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under Section 1-603.

(d) The administrative dissolution of a domestic filing entity does not terminate the authority of its registered agent.

#### **Comment**

Many failures to comply with statutory requirements that may give rise to administrative dissolution occur because of oversight or inadvertence and are usually corrected promptly when brought to the entity's attention. Subsections (a) and (b) therefore provide a mandatory notice by the Secretary of State to each entity subject to administrative dissolution and a 60-day grace period following the notice before the statement of administrative dissolution may be filed.

In most instances, the issue whether the entity is subject to administrative dissolution will not be controverted. If an entity is administratively dissolved, it may petition the Secretary of State for reinstatement under Section 1-603 and, if this is denied, it may appeal to the courts under Section 1-604.

**SECTION 1-603. REINSTATEMENT.**

(a) A domestic filing entity that is dissolved administratively under Section 1-602 may apply to the [Secretary of State] for reinstatement [not later than [two] years after the effective date of dissolution]. The application must be signed by the entity and state:

(1) the name of the entity at the time of its administrative dissolution and, if needed, a different name that satisfies Section 1-301;

(2) the address of the principal office of the entity and the name and address of its registered agent;

(3) the effective date of the entity's administrative dissolution; and

(4) that the grounds for dissolution did not exist or have been cured.

(b) To be reinstated, an entity must pay all fees, taxes, interest, and penalties that were due to the [Secretary of State] at the time of the entity's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the [Secretary of State] while the entity was dissolved administratively.

(c) If the [Secretary of State] determines that an application under subsection (a) contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the [Secretary of State] by subsection (b) have been made, the [Secretary of State] shall:

(1) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the [Secretary of State's] determination and the effective date of

reinstatement;

(2) file the statement of reinstatement; and

(3) serve a copy on the entity.

(d) When reinstatement under this section is effective, the following rules apply:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(2) The domestic filing entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred.

(3) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

### **Comment**

Some states require that reinstatement be sought within two years of administrative dissolution. Other states provide a longer time, or do not impose any time limit. The concern with not imposing any time limit is that the process of reinstatement may be abused by unscrupulous people seeking to reinstate a dormant entity that has been abandoned by its original interest holders and that they wish to appropriate for improper ends. On the other hand, the concern with imposing a time limit is that if those in charge of an entity have neglected to file an annual report or otherwise subjected the entity to administrative dissolution, they may also not realize that the two year period is running against them and thus do not learn of the administrative dissolution until after it is too late to correct.

### **SECTION 1-604. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.**

(a) If the [Secretary of State] denies a domestic filing entity's application for reinstatement following administrative dissolution, the [Secretary of State] shall serve the entity with a notice in a record that explains the reasons for denial.

(b) An entity may seek judicial review of denial of reinstatement in [the appropriate court] not later than [30 days] after service of the notice of denial.

## [PART] 7

### MISCELLANEOUS PROVISIONS

**SECTION 1-701. RESERVATION OF POWER TO AMEND OR REPEAL.** The [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all domestic and foreign entities subject to this [act] are governed by the amendment or repeal.

#### Comment

Provisions similar to this section have their genesis in *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat) 518 (1819), which held that the United States Constitution prohibited the application of newly enacted statutes to existing corporations while suggesting the efficacy of a reservation of power similar to this section. This section is a generalized form of the type of provision found in many entity organic laws, the purpose of which is to avoid any possible argument that an entity has contractual or vested rights in any specific statutory provision of its organic law and to ensure that the state may in the future modify its entity statutes as it deems appropriate and require existing entities to comply with the statutes as modified.

All public organic documents of domestic entities organized under the Code and the registration of foreign entities under Part 5 of Article 1 of the Code are subject to the reservation of power set forth in this section. Further, entities formed or registered under earlier statutes superseded by the Code that contained a reservation of power are also subject to the reservation of power in this section and bound by subsequent amendments to the Code.

**SECTION 1-702. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

#### Comment

The supplement principles of law encompass not only the law of agency and estoppel and the law merchant, but all of the other principles listed in UCC Section 1-103: the law relative to capacity to contract, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other common law validating or invalidating causes, such as unconscionability.

**SECTION 1-703. UNIFORMITY OR CONSISTENCY OF APPLICATION AND CONSTRUCTION.** In applying and construing the [articles] of this [act] based on uniform or model acts, consideration must be given to the need to promote uniformity or consistency of the law with respect to its subject matter among states that enact it.

### Comment

This section differs from the usual provision in uniform acts because of the inclusion of the concept of “consistency” – in addition to “uniformity” – of application. In a state that enacts the full Code, it will include articles based on the Model Business Corporation Act and the Model Nonprofit Corporation Act, which are not uniform acts. The same basic principle of interpretation should apply to those acts as found in the Code.

**SECTION 1-704. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

### Comment

This section responds to specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

**SECTION 1-705. SAVINGS CLAUSE.** The repeal of a statute by this [act] does not affect:

- (1) the operation of the statute or any action taken under it before its repeal;
- (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or
- (4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

## Comment

This section continues the prior laws replaced by the Code after the effective date of the Code with respect to a rights accrued and proceedings. But for this section the new law of the Code would displace the old laws in some circumstances. The power of a new act to displace the old statute with respect to conduct occurring before the new act's enactment is substantial. Millard H. Ruud, *The Savings Clause – Some Problems in Construction and Drafting*, 33 Tex. L. Rev. 285, 286-293 (1955). A court generally applies the law that exists at the time it acts.

**[SECTION 1-706. SEVERABILITY CLAUSE.** If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

*Legislative Note: Include this section only if this state lacks a general severability statute or decision by the highest court of this state stating a general rule of severability.*

**SECTION 1-707. REPEALS.** The following acts and parts of acts are repealed:

- (1)
- (2)
- (3) .

**SECTION 1-708. EFFECTIVE DATE.** This [act] takes effect . . .

*Legislative Note: The effectiveness of Article 1 will need to be coordinated with the application of any other articles of the Code that are enacted at the same time as Article 1. There may be transitional provisions in another article that delays the full effectiveness of that article but permits the optional organization of entities under the articles before it applies to all entities. In that case, this article will need to be effective as soon as the other article applies to any entities.*

**[ARTICLE] 2**

**ENTITY TRANSACTIONS**

**[ARTICLE] 3**

**GENERAL PARTNERSHIPS**

**[ARTICLE] 4**

**LIMITED PARTNERSHIPS**

**[ARTICLE] 5**

**LIMITED LIABILITY COMPANIES**

**[ARTICLE] 6**

**LIMITED COOPERATIVE ASSOCIATIONS**

**[ARTICLE] 7**

**UNINCORPORATED NONPROFIT ASSOCIATIONS**

**[ARTICLE] 8**

**STATUTORY TRUST ENTITIES**

**[ARTICLE] 9**

**BUSINESS CORPORATIONS**

**[ARTICLE] 10**

**NONPROFIT CORPORATIONS**