

D R A F T
FOR DISCUSSION ONLY

**ENTITY HARMONIZATION REVISIONS TO THE
REVISED UNIFORM LIMITED
LIABILITY COMPANY ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For March 12-14, 2010 Drafting Committee Meeting

Clean version, without Prefatory Notes or Comments

- *When a revision derives from the Hub, yellow highlighting indicates any passages in the revision which substantially deviate from the Hub.*
- *Footnotes contain a Co-Reporter's explanations as well as some queries.*
- *Some new sections are numbered with a number and a capital letter – e.g. 704A – so as to preserve uniform numbering with states that have already enacted Re-ULLCA or will have done so before this drafting project is complete.*

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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DRAFTING COMMITTEE ON HARMONIZATION OF BUSINESS ENTITY ACTS

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

HARRY J. HAYNSWORTH, 2200 IDS Center, 80 S. 8th St., Minneapolis, MN 55402, *Chair*
WILLIAM H. CLARK, One Logan Square, 18th and Cherry Sts., Philadelphia, PA 19103-6996
ANN E. CONAWAY, Widener University School of Law, 4601 Concord Pike, Wilmington, DE 19803

THOMAS E. GEU, University of South Dakota School of Law, 414 Clark St., Suite 214, Vermillion, SD 57069-2390

DALE G. HIGER, 1302 Warm Springs Ave., Boise, ID 83712

JAMES C. MCKAY, Office of the Attorney General for the District of Columbia, 441 Fourth St. NW, 6th Floor S., Washington, DC 20001

MARILYN E. PHELAN, Texas Tech University, 1802 Hartford, Lubbock, TX 79409

WILLIAM J. QUINLAN, Two First National Plaza, 20 S. Clark St., Suite 2900, Chicago, IL 60603

KEVIN P. SUMIDA, 735 Bishop St., Suite 411, Honolulu, HI 96813

JUSTIN L. VIGDOR, 2400 Chase Square, Rochester, NY 14604

DAVID S. WALKER, Drake University Law School, 2507 University Ave., Des Moines, IA 50311

CARTER G. BISHOP, Suffolk University Law School, 120 Tremont St., Boston, MA 02108-4977, *Co-Reporter*

DANIEL S. KLEINBERGER, William Mitchell College of Law, 875 Summit Ave., St. Paul, MN 55105, *Co-Reporter*

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455, *President*

MARILYN E. PHELAN, Texas Tech University, 1802 Hartford, Lubbock, TX 79409, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

ROBERT R. KEATINGE, 555 17th St., Suite 3200, Denver, CO 80202-3979, *ABA Advisor*

WILLIAM J. CALLISON, 3200 Wells Fargo Center, 1700 Lincoln St., Denver, CO 80203, *ABA Section Advisor*

ALLAN G. DONN, One Commercial Place, Suite 1800, Norfolk, VA 23510, *ABA Section Advisor*

WILLIAM S. FORSBERG, 150 S. Fifth St., Suite 2300, Minneapolis, MN 55402-4238, *ABA Section Advisor*

BARRY B. NEKRITZ, 8000 Willis Tower, 233 S. Wacker Dr., Chicago, IL 60606, *ABA Section Advisor*

JAMES J. WHEATON, 222 Central Park Ave., Suite 2000, Virginia Beach, VA 23462, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

**ENTITY HARMONIZATION REVISIONS TO
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1 **REVISED UNIFORM LIMITED LIABILITY COMPANY ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform
5 Limited Liability Company Act.

6 **SECTION 102. DEFINITIONS.** In this [act]:

7 (1) “Certificate of organization” means the certificate required by Section 201. The term
8 includes the certificate as amended or restated.

9 ¹(2) “Contribution”, except in the phrase “right of contribution,” means any benefit
10 provided by a person to a limited liability company in order to become a member or in the
11 person’s capacity as a member.

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

13 (A) an order for relief under Title 11 of the United States Code or a comparable
14 order under a successor statute of general application; or

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

16 ³(4) “Designated office” means:

17 (A) the office that a limited liability company is required to designate and
18 maintain under Section 113; or

19 (B) the principal office of a foreign limited liability company.

20 (5) “Distribution”, except as otherwise provided in Section 405(g), means a transfer of
21 money or other property from a limited liability company to another person on account of a

¹ Conformed to ULPA.

² Conformed to Hub, § 1-102(4).

³ Further discussion needed to determine how to conform Re-ULLCA (and LP Act) use of designated and principal office with the Hub’s definition and use of principal office.

1 transferable interest and includes a redemption or other purchase by a limited company of a
2 transferable interest.

3 ⁴(6) “Foreign limited liability company” means an unincorporated entity formed under
4 the law of a jurisdiction other than this state and denominated by that law as a limited liability
5 company.

6 (7) “Limited liability company”, except in the phrase “foreign limited liability company”,
7 means an entity formed under this [act].

8 (8) “Manager” means a person that under the operating agreement of a manager-managed
9 limited liability company is responsible, alone or in concert with others, for performing the
10 management functions stated in Section 407(c).

11 (9) “Manager-managed limited liability company” means a limited liability company that
12 qualifies under Section 407(a).

13 (10) “Member” means a person that has become a member of a limited liability company
14 under Section 401 and has not dissociated under Section 602.

15 (11) “Member-managed limited liability company” means a limited liability company
16 that is not a manager-managed limited liability company.

17 (12) “Operating agreement” means the agreement, whether or not referred to as an
18 operating agreement and whether oral, in a record, implied, or in any combination thereof, of all
19 the members of a limited liability company, including a sole member, concerning the matters
20 described in Section 110(a). The term includes the agreement as amended or restated.

21 (13) “Organizer” means a person that acts under Section 201 to form a limited liability
22 company.

⁴ Deleted as unnecessary.

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

7 (15) “Principal office” means the principal executive office of a limited liability company
8 or foreign limited liability company, whether or not the office is located in this state.

9 ⁶(16) “Property” means all property, whether real, personal, or mixed, or tangible or
10 intangible, or any interest therein.

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

13 ⁸(18) “Sign” means, with the present intent to authenticate or adopt a record:

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

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

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

20 (20) “Transfer” includes an assignment, conveyance, sale, lease, mortgage, encumbrance,

⁵ Conformed to Hub, § 1-102(30).

⁶ From Hub, § 1-102(34).

⁷ From Hub, § 1-102(38).

⁸ Already conforms with Hub, § 1-102(40).

⁹ Already conforms with Hub, § 1-102(41).

1 gift, and transfer by operation of law.¹⁰

2 (21) “Transferable interest” means the right, as initially owned by some person in the
3 person’s capacity as a member, to receive distributions from a limited liability company in
4 accordance with the operating agreement. The term applies, whether or not the person remains a
5 member or continues to own any part of the right and includes any fraction of the right.

6 (22) “Transferee” means a person to which all or part of a transferable interest has been
7 transferred, whether or not the transferor is a member.

8 **SECTION 103. KNOWLEDGE; NOTICE.**

9 (a) A person knows a fact when the person:

10 (1) has actual knowledge of it; or

11 (2) is deemed to know it under subsection (d)(1) or law other than this [act].

12 (b) A person has notice of a fact when the person:

13 (1) has reason to know the fact from all of the facts known to the person at the
14 time in question; or

15 (2) is deemed to have notice of the fact under subsection (d)(2);

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

18 (d) A person that is not a member is deemed:

19 (1) to know of a limitation on authority to transfer real property as provided in
20 Section 302(g); and

21 (2) to have notice of a limited liability company’s:

¹⁰ Changes to conform Hub, § 1-102(43), except that Hub should be changed to include gift and transfer by operation of law. QUERY –why delete security interest while retaining mortgage. aren’t both subset’s of “encumbrance”? Compare Hub, § 1-505(a)(7)(acts not constituting doing business): “creating or acquiring indebtedness, mortgages, or security interests in property;”.

1 (A) dissolution, 90 days after a statement of dissolution under Section
2 702(b)(2)(A) becomes effective;

3 (B) termination, 90 days after a statement of termination Section
4 702(b)(2)(F) becomes effective; and

5 (C) merger, conversion, or domestication, 90 days after articles of merger,
6 conversion, or domestication under [Article] 10 become effective.

7 **SECTION 104. NATURE, PURPOSE, AND DURATION OF LIMITED**
8 **LIABILITY COMPANY.**

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

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

12 (c) A limited liability company has perpetual duration.

13 *Legislative Note: This state should consider whether to amend statutes protecting the public*
14 *interest in organizations formed for charitable or similar purposes.*
15

16 **SECTION 105. POWERS.** A limited liability company has the capacity to sue and be
17 sued in its own name and the power to do all things necessary or convenient to carry on its
18 activities.

19 **SECTION 106. GOVERNING LAW.** The law of this state governs:

20 (1) the internal affairs of a limited liability company; and

21 (2) the liability of a member as member and a manager as manager for the debts,
22 obligations, or other liabilities of a limited liability company.

23 **SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by
24 particular provisions of this [act], the principles of law and equity supplement this [act].

25 **SECTION 108. NAME.**

1 (a) The name of a limited liability company must contain the words “limited liability
2 company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”.

3 “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

4 ¹¹(b) Except as otherwise provided in subsections (c) and (d), the name of a limited
5 liability company must be distinguishable on the records of the [Secretary of State] from any:

6 (1)¹² name of a person that is not an individual and that is incorporated,
7 organized, or authorized to transact business in this state;

8 (2) limited liability company name stated in each certificate of organization that
9 contains the statement as provided in Section 201(b)(3) and that has not lapsed;¹³

10 (3) name reserved under Section 109;¹⁴ and

11 (4) assumed name registered under [this state’s assumed name statute]..

12 (c) Subsection (b) does not apply if the other entity or the person for which the name is
13 reserved or registered consents in a record to the use of the name and submits an undertaking in a
14 form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable
15 on the records of the [Secretary of State] from any name in any category of names in subsection
16 (a).

17 (d) Except as otherwise provided in subsection (e), in determining whether a name is the
18 same as or not distinguishable on the records of the [Secretary of State] from the name of another
19 entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”,
20 “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”,
21 “PA”, “Limited”, “Ltd.”, “limited partnership”, “limited liability partnership”, “LLP”,

¹¹ Conformed, with exceptions noted *infra*, to Hub, § 1-301(a).

¹² Roughly comparable to Hub, § 1-301(a)(1) (which uses the defined term of “domestic filing entity”)

¹³ Unique to Re-ULLCA – the double filing requirement.

¹⁴ Re-ULLCA allows foreign LLCs to “reserve” a name, while the Hub separately addresses “registration” of a name by a foreign entity. Complete harmonization with the Hub would require, therefore, inserting another section into this Article.

1 “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”,
2 “LLLLP”, “registered limited liability limited partnership”, “RLLLLP”, “limited liability
3 company”, or “LLC”, may not be taken into account.

4 (e) The holder of a name under subsection (b) may consent in a record to the use of a
5 name that is not distinguishable on the records of the [Secretary of State] from its name except
6 for the addition of a word, phrase, or abbreviation indicating the type of entity described in
7 subsection (d). In such a case, the holder need not change its name pursuant to subsection (b).

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

10 (g) Subject to Section 805, this section applies to a foreign limited liability company
11 transacting business in this state which has a certificate of authority to transact business in this
12 state or which has applied for a certificate of authority.

13 ¹⁵**SECTION 109. RESERVATION OF NAME.**

14 (a) A person may reserve the exclusive use of the name of a limited liability company,
15 including a fictitious or assumed name for a foreign limited liability company whose name is not
16 available, by delivering an application to the [Secretary of State] for filing. The application must
17 state the name and address of the applicant and the name proposed to be reserved. If the
18 [Secretary of State] finds that the name applied for is available, the [Secretary of State] shall
19 reserve the name for the applicant’s exclusive use for a [120]-day period.

20 (b) The owner of a name reserved for a limited liability company may transfer the
21 reservation to another person by delivering to the [Secretary of State] for filing a signed notice in
22 a record of the transfer which states the name and address of the transferee.

23 **SECTION 110. OPERATING AGREEMENT; SCOPE, FUNCTION, AND**

¹⁵ Conformed to Hub, §1-303

1 **LIMITATIONS.**

2 (a) Except as otherwise provided in subsections (b), (c) and (d), the operating agreement
3 governs:

4 (1) relations among the members as members and between the members and the
5 limited liability company;

6 (2) the rights and duties under this [act] of a person in the capacity of manager;

7 (3) the activities of the company and the conduct of those activities; and

8 (4) the means and conditions for amending the operating agreement.

9 (b) To the extent the operating agreement does not otherwise provide for a matter
10 described in subsection (a), this [act] governs the matter.

11 (c) An operating agreement may not:

12 (1) vary a limited liability company's capacity under Section 105 to sue and be
13 sued in its own name;

14 (2) vary the law applicable under Section 106;

15 (3) vary the power of the court under Section 204 except to provide for arbitration
16 of claims seeking relief under that Section;

17 (4) eliminate all fiduciary duty, but may, if not manifestly unreasonable:

18 (i) restrict or eliminate the duties stated in Section 409 (b) and (g);

19 (ii) identify specific types or categories of activities that do not violate the
20 duty of loyalty;

21 (iii) alter the duty of care, except to authorize intentional misconduct or
22 knowing violation of law; and

23 (iv) alter any other fiduciary duty, including eliminating particular aspects
24 of that duty; (v) eliminate the contractual obligation of good faith and fair dealing under Section

1 409(d), but may, prescribe the standards, if not manifestly unreasonable, by which to measure the
2 performance of that obligation;

3 (6) unreasonably restrict the duties and rights stated in Section 410, but the
4 partnership agreement may impose reasonable restrictions on the availability and use of
5 information obtained under that section and may define appropriate remedies, including
6 liquidated damages, for a breach of any reasonable restriction on use;¹⁶

7 (7) vary the power of a court to decree dissolution in the circumstances specified
8 in Section 701(a)(4)(A) and (5), except to provide for arbitration of claims seeking dissolution
9 under those provisions;

10 (8) vary the requirement to wind up a limited liability company's business as
11 specified in Section 702(a) and (b)(1);

12 (9) unreasonably restrict the right of a member to maintain an action under
13 [Article] 9;

14 (10) vary the rights of a member under Section 1014; or

15 (11) except as otherwise provided in Sections 111 and 112(b), restrict the rights
16 under this [act] of a person other than a member or manager.

17 (d) The operating agreement may specify the method by which a specific act or
18 transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one
19 or more disinterested and independent persons after full disclosure of all material facts.

20 (e) To the extent the operating agreement of a member-managed limited liability
21 company expressly relieves a member of a responsibility that the member would otherwise have
22 under this [act] and imposes the responsibility on one or more other members, the operating
23 agreement may, to the benefit of the member that the operating agreement relieves of the

¹⁶ Source: ULPA § 110(b)(4)

1 responsibility, also eliminate or limit any fiduciary duty that would have pertained to the
2 responsibility.

3 (f) The operating agreement may eliminate or limit a member or manager's liability to the
4 limited liability company and members for money damages, whether directly or by providing
5 indemnification therefor, except for:

6 (1) breach of the duty of loyalty;

7 (2) a financial benefit received by the member or manager to which the member
8 or manager is not entitled;

9 (3) a breach of a duty under Section 406;

10 (4) intentional infliction of harm on the company or a member; or

11 (5) an intentional violation of criminal law.

12 (g) The court shall decide any claim under subsection (c)(4) or (5) that a term of an
13 operating agreement is manifestly unreasonable. The court:

14 (1) shall make its determination as of the time the challenged term became part of
15 the operating agreement and by considering only circumstances existing at that time; and

16 (2) may invalidate the term only if, in light of the purposes and activities of the
17 limited liability company, it is readily apparent that:

18 (A) the objective of the term is unreasonable; or

19 (B) the term is an unreasonable means to achieve the provision's

20 objective.

21 **SECTION 111. OPERATING AGREEMENT; EFFECT ON LIMITED**
22 **LIABILITY COMPANY AND PERSONS BECOMING MEMBERS; PREFORMATION**
23 **AGREEMENT.**

24 (a) A limited liability company is bound by and may enforce the operating agreement,

1 whether or not the company has itself manifested assent to the operating agreement.

2 (b) A person that becomes a member of a limited liability company is deemed to assent to
3 the operating agreement.

4 (c) Two or more persons intending to become the initial members of a limited liability
5 company may make an agreement providing that upon the formation of the company the
6 agreement will become the operating agreement. One person intending to become the initial
7 member of a limited liability company may assent to terms providing that upon the formation of
8 the company the terms will become the operating agreement.

9 **SECTION 112. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES**
10 **AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED**
11 **LIABILITY COMPANY.**

12 (a) An operating agreement may specify that its amendment requires the approval of a
13 person that is not a party to the operating agreement or the satisfaction of a condition. An
14 amendment is ineffective if its adoption does not include the required approval or satisfy the
15 specified condition.

16 (b) The obligations of a limited liability company and its members to a person in the
17 person's capacity as a transferee or dissociated member are governed by the operating
18 agreement. Subject only to any court order issued under Section 503(b)(2) to effectuate a
19 charging order, an amendment to the operating agreement made after a person becomes a
20 transferee or dissociated member is effective with regard to any debt, obligation, or other liability
21 of the limited liability company or its members to the person in the person's capacity as a
22 transferee or dissociated member.

23 (c) If a record that has been delivered by a limited liability company to the [Secretary of
24 State] for filing and has become effective under this [act] contains a provision that would be

1 ineffective under Section 110(c) if contained in the operating agreement, the provision is
2 likewise ineffective in the record.

3 (d) Subject to subsection (c), if a record that has been delivered by a limited liability
4 company to the [Secretary of State] for filing and has become effective under this [act] conflicts
5 with a provision of the operating agreement:

6 (1) the operating agreement prevails as to members, dissociated members,
7 transferees, and managers; and

8 (2) the record prevails as to other persons to the extent they reasonably rely on the
9 record.

10 ¹⁷**SECTION 113. OFFICE AND AGENT FOR SERVICE OF PROCESS.**

11 (a) A limited liability company shall designate and continuously maintain in this state:

12 (1) an office, which need not be a place of its activity in this state; and

13 (2) an agent for service of process.

14 (b) A foreign limited liability company that has a certificate of authority under Section
15 802 shall designate and continuously maintain in this state an agent for service of process.

16 (c) An agent for service of process of a limited liability company or foreign limited
17 liability company must be an individual who is a resident of this state or other person with
18 authority to transact business in this state.

19 **SECTION 114. CHANGE OF DESIGNATED OFFICE OR AGENT FOR**
20 **SERVICE OF PROCESS.**

21 (a) A limited liability company or foreign limited liability company may change its

¹⁷ To fully conform sections 113-116 to the Hub would require including the concept of a commercial registered agent, which hardly makes sense for a state unless the state plans to extend the concept to other forms of entity. Therefore, it is question whether such a full conformance makes sense for Re-ULLCA. Alternatively, we could confirm the language of sections 113-116 as much as possible to the language of the Hub. See Article 4 of the Hub.

1 designated office, its agent for service of process, or the address of its agent for service of
2 process by delivering to the [Secretary of State] for filing a statement of change containing:

3 (1) the name of the company;

4 (2) the street and mailing addresses of its current designated office;

5 (3) if the current designated office is to be changed, the street and mailing
6 addresses of the new designated office;

7 (4) the name and street and mailing addresses of its current agent for service of
8 process; and

9 (5) if the current agent for service of process or an address of the agent is to be
10 changed, the new information.

11 (b) Subject to Section 205(c), a statement of change is effective when filed by the
12 [Secretary of State].

13 **SECTION 115. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

14 (a) To resign as an agent for service of process of a limited liability company or foreign
15 limited liability company, the agent must deliver to the [Secretary of State] for filing a statement
16 of resignation containing the company name and stating that the agent is resigning.

17 (b) The [Secretary of State] shall file a statement of resignation delivered under
18 subsection (a) and mail or otherwise provide or deliver a copy to the designated office of the
19 limited liability company or foreign limited liability company and another copy to the principal
20 office of the company if the mailing addresses of the principal office appears in the records of
21 the [Secretary of State] and is different from the mailing address of the designated office.

22 (c) An agency for service of process terminates on the earlier of:

23 (1) the 31st day after the [Secretary of State] files the statement of resignation;

24 (2) when a record designating a new agent for service of process is delivered to

1 the [Secretary of State] for filing on behalf of the limited liability company and becomes
2 effective.

3 **SECTION 116. SERVICE OF PROCESS.**

4 (a) An agent for service of process appointed by a limited liability company or foreign
5 limited liability company is an agent of the company for service of any process, notice, or
6 demand required or permitted by law to be served on the company.

7 (b) If a limited liability company or foreign limited liability company does not appoint or
8 maintain an agent for service of process in this state or the agent for service of process cannot
9 with reasonable diligence be found at the agent's street address, the [Secretary of State] is an
10 agent of the company upon whom process, notice, or demand may be served.

11 (c) Service of any process, notice, or demand on the [Secretary of State] as agent for a
12 limited liability company or foreign limited liability company may be made by delivering to the
13 [Secretary of State] duplicate copies of the process, notice, or demand. If a process, notice, or
14 demand is served on the [Secretary of State], the [Secretary of State] shall forward one of the
15 copies by registered or certified mail, return receipt requested, to the company at its designated
16 office.

17 (d) Service is effected under subsection (c) at the earliest of:

18 (1) the date the limited liability company or foreign limited liability company
19 receives the process, notice, or demand;

20 (2) the date shown on the return receipt, if signed on behalf of the company; or

21 (3) five days after the process, notice, or demand is deposited with the United
22 States Postal Service, if correctly addressed and with sufficient postage.

23 (e) The [Secretary of State] shall keep a record of each process, notice, and demand
24 served pursuant to this section and record the time of, and the action taken regarding, the service.

1 (f) This section does not affect the right to serve process, notice, or demand in any other
2 manner provided by law.

3

1 [ARTICLE] 2

2 FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

3 SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY;
4 CERTIFICATE OF ORGANIZATION.

5 (a) One or more persons may act as organizers to form a limited liability company by
6 signing and delivering to the [Secretary of State] for filing a certificate of organization.

7 (b) A certificate of organization must state:

8 (1) the name of the limited liability company, which must comply with Section
9 108;

10 (2) the street and mailing addresses of the initial designated office and the name
11 and street and mailing addresses of the initial agent for service of process of the company; and

12 (3) if the company will have no members when the [Secretary of State] files the
13 certificate, a statement to that effect.

14 (c) Subject to Section 112(c), a certificate of organization may also contain statements as
15 to matters other than those required by subsection (b). However, a statement in a certificate of
16 organization is not effective as a statement of authority.

17 (d) Unless the filed certificate of organization contains the statement as provided in
18 subsection (b)(3), the following rules apply:

19 (1) A limited liability company is formed when the [Secretary of State] has filed
20 the certificate of organization and the company has at least one member, unless the certificate
21 states a delayed effective date pursuant to Section 205(c).

22 (2) If the certificate states a delayed effective date, a limited liability company is
23 not formed if, before the certificate takes effect, a statement of cancellation is signed and
24 delivered to the [Secretary of State] for filing and the [Secretary of State] files the certificate.

1 (3) Subject to any delayed effective date and except in a proceeding by this state
2 to dissolve a limited liability company, the filing of the certificate of organization by the
3 [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation
4 of a limited liability company.

5 (e) If a filed certificate of organization contains a statement as provided in subsection
6 (b)(3), the following rules apply:

7 (1) The certificate lapses and is void unless, within [90] days from the date the
8 [Secretary of State] files the certificate, an organizer signs and delivers to the [Secretary of State]
9 for filing a notice stating:

10 (A) that the limited liability company has at least one member; and

11 (B) the date on which a person or persons became the company's initial
12 member or members.

13 (2) If an organizer complies with paragraph (1), a limited liability company is
14 deemed formed as of the date of initial membership stated in the notice delivered pursuant to
15 paragraph (1).

16 (3) Except in a proceeding by this state to dissolve a limited liability company, the
17 filing of the notice described in paragraph (1) by the [Secretary of State] is conclusive proof that
18 the organizer satisfied all conditions to the formation of a limited liability company.

19 *Legislative Note: Enacting jurisdictions should consider revising their "name statutes"*
20 *generally, to protect "the limited liability company name stated in each certificate of*
21 *organization that contains the statement as provided in Section 201(b)(3)". Section 108(b)(2).*
22

23 **SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF**
24 **ORGANIZATION.**

25 (a) A certificate of organization may be amended or restated at any time.

1 (b) To amend its certificate of organization, a limited liability company must deliver to
2 the [Secretary of State] for filing an amendment stating:

3 (1) the name of the company;

4 (2) the date of filing of its certificate of organization; and

5 (3) the changes the amendment makes to the certificate as most recently amended
6 or restated.

7 (c) To restate its certificate of organization, a limited liability company must deliver to
8 the [Secretary of State] for filing a restatement, designated as such in its heading, stating:

9 (1) in the heading or an introductory paragraph, the company's present name and
10 the date of the filing of the company's initial certificate of organization;

11 (2) if the company's name has been changed at any time since the company's
12 formation, each of the company's former names; and

13 (3) the changes the restatement makes to the certificate as most recently amended
14 or restated.

15 (d) Subject to Sections 112(c) and 205(c), an amendment to or restatement of a certificate
16 of organization is effective when filed by the [Secretary of State].

17 (e) If a member of a member-managed limited liability company, or a manager of a
18 manager-managed limited liability company, knows that any information in a filed certificate of
19 organization was inaccurate when the certificate was filed or has become inaccurate owing to
20 changed circumstances, the member or manager shall promptly:

21 (1) cause the certificate to be amended; or

22 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of
23 change under Section 114 or a statement of correction under Section 206.

1 **SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO**
2 **[SECRETARY OF STATE].**¹⁸

3 (a) A record delivered to the [Secretary of State] for filing pursuant to this [act] must be
4 signed as follows:

5 (1) Except as otherwise provided in paragraphs (2) through (4), a record signed on
6 behalf of a limited liability company must be signed by a person authorized by the company.

7 (2) A limited liability company's initial certificate of organization must be signed
8 by at least one person acting as an organizer.

9 (3) A notice under Section 201(e)(1) must be signed by an organizer.

10 (4) A record filed on behalf of a dissolved limited liability company that has no
11 members must be signed by the person winding up the company's activities under Section 702(c)
12 or a person appointed under Section 702(d) to wind up those activities.

13 (5) A statement of cancellation under Section 201(d)(2) must be signed by each
14 organizer that signed the initial certificate of organization, but a personal representative of a
15 deceased or incompetent organizer may sign in the place of the decedent or incompetent.

16 (6) A statement of denial by a person under Section 303 must be signed by that
17 person.

18 (7) Any other record must be signed by the person on whose behalf the record is
19 delivered to the [Secretary of State].

20 (b) Any record filed under this [act] may be signed by an agent.

¹⁸ This provision cannot be harmonized with the Hub, because the Hub presupposes such provisions existing in the entity spokes. See Hub, § 1-201(4): "(4) The entity filing must be signed by an individual authorized to sign the filing under this [act]."

1 **SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

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

5 (1) the person to sign the record;

6 (2) the person to deliver the record to the [Secretary of State] for filing; or

7 (3) the [Secretary of State] to file the record unsigned.

8 (b) If a petitioner under subsection (a) is not the limited liability company or foreign
9 limited liability company to which the record pertains, the petitioner shall make the company a
10 party to the action.

11 **SECTION 205. FILING REQUIREMENTS.**¹⁹

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

14 (1) The filing of the record must be required or permitted by this [act].

15 (2) The record must be physically delivered in written form unless the [Secretary
16 of State] permits electronic delivery of records in other than written form.

17 (3) The words in the record must be in English, and numbers must be in Arabic or
18 Roman numerals, but the name of the entity need not be in English if written in English letters or
19 Arabic or Roman numerals.

20 (4) The record must be signed by an individual authorized to sign the filing under
21 Section 203.

22 (5) The record must state the name and capacity, if any, of the individual who
23 signed it but need not contain a seal, attestation, acknowledgment, or verification.

¹⁹ Conformed, as much as possible, to Hub, § 1-201

1 (b) If a law other than this [act] prohibits the disclosure by the [Secretary of State] of
2 information contained in a record filed by the “[Secretary of State], the [Secretary of State] shall
3 accept the filing if the filing otherwise complies with this section but may the [Secretary of State]
4 redact the information.

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

8 (d) The [Secretary of State] may require that a record delivered in written form to the
9 [Secretary of State] for filing be accompanied by an identical or conformed copy.

10 ²⁰**SECTION 205A. EFFECTIVE TIME AND DATE.** Except as otherwise provided
11 in Section 205B and subject to Section 206(c), an entity filing is effective:

12 (1) on the date and at the time of its filing by the [Secretary of State];

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

15 (3) at a specified delayed effective time and date, which may not be more than 90 days
16 after the date of filing; or

17 (4) if a delayed effective date as permitted by this [act] is specified, but no time is
18 specified, at 12:01 a.m. on the date specified.

19 **SECTION 205B. WITHDRAWAL OF FILED RECORD BEFORE**
20 **EFFECTIVENESS.**²¹

21 (a) The parties to a filed record²² may withdraw the record before it takes effect.

²⁰ From Hub, § 1-203

²¹ From Hub, § 1-204

²² The Hub does not define the term “parties to a filed record.” The meaning may be more self-evident in the context of abandonment of mergers, which is the source of Hub, § 1-204. The comment to that section states: “This

1 (b) To withdraw a filed record, the parties to the record must deliver to the [Secretary of
2 State] for filing a statement of withdrawal.

3 (c) A statement of withdrawal must:

4 (1) except as otherwise agreed by the parties, be signed on behalf of each party
5 that signed the filed record being withdrawn;

6 (2) identify the filed record to be withdrawn, the date of its filing, and the parties
7 to it; and

8 (3) if filed by fewer than all parties, state that the filed record has been withdrawn
9 in accordance with the agreement of the parties.

10 (d) On the delivery for filing to the [Secretary of State] of a statement of withdrawal, the
11 action or transaction evidenced by the original filed record does not take effect.

12 ²³**SECTION 206. CORRECTING FILED RECORD.**

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

15 (1) the record at the time of filing contained an inaccuracy;

16 (2) the record was defectively signed; or

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

19 (b) To correct a filed record, the parties to the record²⁴ must deliver to the [Secretary of
20 State]²⁵ a statement of correction.

21 (c) A statement of correction:

provision is considerably broader in scope than section 11.08 of the Revised Model Business Corporation Act (“Abandonment of Merger or Share Exchange”), on which it is patterned.”

²³ Replacement language comes essentially verbatim from Hub, § 1-205, except for the reference in subsection (d) to Section 103(d).

²⁴ QUERY the meaning of “parties to the record”.

²⁵ QUERY: absence of “for filing” – which is the standard formulation.

- 1 (1) may not state a delayed effective day;
- 2 (2) must be signed on behalf of the person correcting the filed record;
- 3 (3) must identify the filed record to be corrected or have attached a copy and state
- 4 the date of its filing;
- 5 (4) must specify the inaccuracy or defect to be corrected; and
- 6 (5) must correct the inaccuracy or defect.

7 (d) A statement of correction is effective as of the effective date of the filed record that it

8 corrects except as to persons relying on the uncorrected filed record and adversely affected by

9 the correction and **for the purposes of Section 103(d)**. As to those persons and **for those**

10 **purposes**²⁶, the statement of correction is effective when filed.

11 ²⁷**SECTION 206A. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF**

12 **REFUSAL TO FILE.**

13 (a) The [Secretary of State] shall file a record delivered to the [Secretary of State] for

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

15 ministerial.

16 (b) When the [Secretary of State] files a record pursuant to this [act], the [Secretary of

17 State] shall record the record as filed on the date and time of its delivery. After filing a record,

18 the [Secretary of State] shall deliver a copy of the filing with an acknowledgment of the date and

19 time of filing to the person on whose behalf the record was delivered for filing and, in the case of

20 a statement of denial, also to the limited liability company to which the statement pertains.

21 (c) If the [Secretary of State] refuses to file a record delivery for filing pursuant to this

22 [act], the [Secretary of State] shall return the record or notify the person that submitted the record

²⁶ Highlighted material is not in the Hub provision.

²⁷ Derived essentially verbatim from Hub, §1-206.

1 not later than [15] business days after the record is delivered, together with a brief explanation in
2 a record of the reason for the refusal.

3 (d) If the [Secretary of State] refuses to file a record pursuant to this act, the person that
4 submitted the filing may appeal the refusal to the [appropriate court] under the following
5 procedures:

6 (1) The appeal is commenced by petitioning the court to compel filing of the
7 record and by attaching to the petition the record and the explanation of the [Secretary of State]
8 of the refusal to file.

9 (2) The court may summarily order the [Secretary of State] to file the record or
10 take other action the court considers appropriate.

11 (3) The final decision of the court may be appealed as in other civil proceedings.

12 (e) **Except as stated in Section 201(d)(3) and (e)(3),**²⁸ the filing of or refusal to file record
13 pursuant to this does not:

14 (1) affect the validity or invalidity of the filing in whole or in part;

15 (2) affect the correctness or incorrectness of information contained in the filing; or

16 (3) create a presumption that the filing is valid or invalid or that information
17 contained in the filing is correct or incorrect.

18 **SECTION 207. LIABILITY FOR INACCURATE INFORMATION IN FILED**
19 **RECORD.**

20 (a) If a record delivered to the [Secretary of State] for filing under this [act] and filed by
21 the [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance
22 on the information may recover damages for the loss from:

²⁸ These paragraphs provide: “the filing of the certificate of organization by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.” QUERY – does the Hub provision need revision in this respect?

1 (1) a person that signed the record, or caused another to sign it on the person's
2 behalf, and knew the information to be inaccurate at the time the record was signed; and

3 (2) subject to subsection (b), a member of a member-managed limited liability
4 company or the manager of a manager-managed limited liability company, if:

5 (A) the record was delivered for filing on behalf of the company; and

6 (B) the member or manager had notice of the inaccuracy for a reasonably
7 sufficient time before the information was relied upon so that, before the reliance, the member or
8 manager reasonably could have:

9 (i) effected an amendment under Section 202;

10 (ii) filed a petition under Section 204; or

11 (iii) delivered to the [Secretary of State] for filing a statement of
12 change under Section 114 or a statement of correction under Section 206.

13 (b) To the extent that the operating agreement of a member-managed limited liability
14 company expressly relieves a member of responsibility for maintaining the accuracy of
15 information contained in records delivered on behalf of the company to the [Secretary of State]
16 for filing under this [act] and imposes that responsibility on one or more other members, the
17 liability stated in subsection (a)(2) applies to those other members and not to the member that the
18 operating agreement relieves of the responsibility.

19 (c) An individual who signs a record authorized or required to be filed under this [act]
20 affirms under penalty of perjury that the information stated in the record is accurate.

1 ²⁹**SECTION 208. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

2 (a) On request of any person, the [Secretary of State] shall issue a certificate of good
3 standing for a limited liability company or a certificate of registration for a qualified foreign
4 limited liability company.

5 (b) A certificate under subsection (a) must set forth:

6 (1) the limited liability company’s name or the qualified foreign limited liability
7 company’s name used in this state;

8 (2) that the limited liability company is formed under the law of this state, the date
9 of its formation, and the period of its duration if less than perpetual, or that the qualified foreign
10 limited liability company is registered to do business in this state;

11 (3) that all fees, taxes, and penalties owed to this state³⁰ collected through the
12 [Secretary of State] have been paid, if:

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

14 (B) nonpayment affects the good standing or registration of the limited
15 liability company or qualified foreign limited liability company;

16 (4) that the most recent annual report required by Section 209 has been delivered
17 for filing to the [Secretary of State];

18 (5) **that there are no facts of record in the office of the [Secretary of State] to**
19 **indicate that the entity has been dissolved;**³¹ and

²⁹ Derived essentially verbatim from Hub, §1-208. The discussion at the last meeting, raised questions as to Conference’s return to the phrase “good standing” However, that phrase is used here. Also, this version uses is “registration” instead of “certificate of authority” for foreign LLCs. Article 8 will be revised accordingly.

³⁰ QUERY – insert here “*by the limited liability company or the qualified foreign limited liability company and*”?

³¹ Hub, § 1-208(b)(5) requires the Secretary of State to indicate “that the entity has not been dissolved.” With an LLC (or limited partnership), the Secretary is not able to go so far. Dissolution can occur without any filing having to be made.

1 (6) other facts of record pertaining to the entity with the [Secretary of State]
2 which the person requesting the certificate reasonably requests.

3 (c) Subject to any qualification stated in the certificate, a certificate issued by the
4 [Secretary of State] under subsection (a) may be relied upon as conclusive evidence that the
5 limited liability company is in existence³² or the qualified foreign limited partnership is
6 registered to do business in this state.

7 ³³**SECTION 209. ANNUAL REPORT FOR [SECRETARY OF STATE].**

8 (a) Each limited liability company and qualified foreign limited liability company state
9 shall deliver to the [Secretary of State] for filing an annual report that sets forth:

10 (1) the name of the company;

11 (2) the street and mailing address of the company's designated office;

12 (3) the name and street and mailing addresses of its agent for service of process in
13 this state;

14 (4) the street and mailing addresses of its principal office;³⁴ and

15 (5) in the case of a foreign limited liability company, the state or other jurisdiction
16 under whose law the company is formed and any alternate name adopted under Section 805(a).³⁵

17 (b) Information in an annual report under this section must be current as of the date the
18 report is signed on behalf of the limited liability company or qualified foreign limited liability
19 company.

20 (c) The first annual report must be delivered to the [Secretary of State] for filing after
21 [January 1] and before [April 1] of the year following the calendar year in which a limited

³² This assertion will not fit an LLC unless we change the act to provide that the LLC continues in existence until it files a notice of termination. (It appears that the Hub may be using "dissolution" in the sense of termination.

³³ Revisions made to harmonize, to the extent possible, with Hub, § 1-211.

³⁴ Still remaining to be worked out - the overlap between the Hub's use of principal office and Re-ULLCA and ULPA's use of designated office.

³⁵ The Style Committee added one more item to this list: "the names of the governors."

1 liability company was formed or a qualified foreign limited liability company registered to do
2 business in this state. Subsequent annual reports must be delivered to the [Secretary of State]
3 after [January 1] and before [April 1] of each calendar year thereafter.

4 (d) If an annual report under this section does not contain the information required by
5 subsection (a), the [Secretary of State] shall promptly notify the reporting limited liability
6 company or foreign limited liability company in a record and return the report for correction.

7 (e) If an annual report under this section contains an address of a designated office or the
8 name or address of an agent for service of process which differs from the information shown in
9 the records of the [Secretary of State] immediately before the annual report becomes effective,
10 the differing information in the annual report is considered a statement of change under Section
11 114.³⁶

12

³⁶ Not included in the Hub.

1 [ARTICLE] 3

2 RELATIONS OF MEMBERS AND MANAGERS

3 TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

4 SECTION 301. NO AGENCY POWER OF MEMBER AS MEMBER.

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

7 (b) A person's status as a member does not prevent or restrict law other than this [act]
8 from imposing liability on a limited liability company because of the person's conduct.

9 SECTION 302. STATEMENT OF AUTHORITY.

10 (a) A limited liability company may deliver to the [Secretary of State] for filing a
11 statement of authority. The statement:

12 (1) must include the name of the company and the street and mailing addresses of
13 its designated office;

14 (2) with respect to any position that exists in or with respect to the company, may
15 state the authority, or limitations on the authority, of all persons holding the position to:

16 (A) execute an instrument transferring real property held in the name of
17 the company; or

18 (B) enter into other transactions on behalf of, or otherwise act for or bind,
19 the company; and

20 (3) may state the authority, or limitations on the authority, of a specific person to:

21 (A) execute an instrument transferring real property held in the name of
22 the company; or

23 (B) enter into other transactions on behalf of, or otherwise act for or bind,
24 the company.

1 (b) To amend or cancel a statement of authority filed by the [Secretary of State] under
2 Section 205(a), a limited liability company must deliver to the [Secretary of State] for filing an
3 amendment or cancellation stating:

4 (1) the name of the company;

5 (2) the street and mailing addresses of the company's designated office;

6 (3) the caption of the statement being amended or canceled and the date the
7 statement being affected became effective; and

8 (4) the contents of the amendment or a declaration that the statement being
9 affected is canceled.

10 (c) A statement of authority affects only the power of a person to bind a limited liability
11 company to persons that are not members.

12 (d) Subject to subsection (c) and Section 103(d) and except as otherwise provided in
13 subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an
14 effective statement of authority is not by itself evidence of knowledge or notice of the limitation
15 by any person.

16 (e) Subject to subsection (c), a grant of authority not pertaining to transfers of real
17 property and contained in an effective statement of authority is conclusive in favor of a person
18 that gives value in reliance on the grant, except to the extent that when the person gives value:

19 (1) the person has knowledge to the contrary;

20 (2) the statement has been canceled or restrictively amended under subsection (b);

21 or

22 (3) a limitation on the grant is contained in another statement of authority that
23 became effective after the statement containing the grant became effective.

24 (f) Subject to subsection (c), an effective statement of authority that grants authority to

1 transfer real property held in the name of the limited liability company and that is recorded by
2 certified copy in the office for recording transfers of the real property is conclusive in favor of a
3 person that gives value in reliance on the grant without knowledge to the contrary, except to the
4 extent that when the person gives value:

5 (1) the statement has been canceled or restrictively amended under subsection (b)
6 and a certified copy of the cancellation or restrictive amendment has been recorded in the office
7 for recording transfers of the real property; or

8 (2) a limitation on the grant is contained in another statement of authority that
9 became effective after the statement containing the grant became effective and a certified copy of
10 the later-effective statement is recorded in the office for recording transfers of the real property.

11 (g) Subject to subsection (c), if a certified copy of an effective statement containing a
12 limitation on the authority to transfer real property held in the name of a limited liability
13 company is recorded in the office for recording transfers of that real property, all persons are
14 deemed to know of the limitation.

15 (h) Subject to subsection (i), an effective statement of dissolution or termination is a
16 cancellation of any filed statement of authority for the purposes of subsection (f) and is a
17 limitation on authority for the purposes of subsection (g).

18 (i) After a statement of dissolution becomes effective, a limited liability company may
19 deliver to the [Secretary of State] for filing and, if appropriate, may record a statement of
20 authority that is designated as a post-dissolution statement of authority. The statement operates
21 as provided in subsections (f) and (g).

22 (j) Unless earlier canceled, an effective statement of authority is canceled by operation of
23 law five years after the date on which the statement, or its most recent amendment, becomes
24 effective. This cancellation operates without need for any recording under subsection (f) or (g).

1 (k) An effective statement of denial operates as a restrictive amendment under this
2 section and may be recorded by certified copy for the purposes of subsection (f)(1).

3 **SECTION 303. STATEMENT OF DENIAL.** A person named in a filed statement of
4 authority granting that person authority may deliver to the [Secretary of State] for filing a
5 statement of denial that:

6 (1) provides the name of the limited liability company and the caption of the statement of
7 authority to which the statement of denial pertains; and

8 (2) denies the grant of authority.

9 **SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.**

10 ³⁷(a) A debt, obligations, or other liability of a limited liability company is: solely the
11 debt, obligation, or other liability of the company. A member, manager, agent of the company, or
12 agent of a manager is not personally liable, directly or indirectly, by way of contribution or
13 otherwise, for a debt, obligation, or other liability of the company solely by reason of being or
14 acting as a member, manager, agent of the company, or agent of a manager.

15 ³⁸(b) The failure of a limited liability company to observe any particular formalities
16 relating to the exercise of its powers or management of its activities is not a ground for imposing
17 liability on any member, manager, agent of the company, or agent of a manager, for any debt,
18 obligation, or other liability of the company.

19

³⁷ Conformed to Trust Act, § 304(a).

³⁸ No comparable provision in the Trust Act, but conformed to the style and substance of Trust Act, § 304(a).

1 [ARTICLE] 4

2 RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY

3 COMPANY

4 SECTION 401. BECOMING MEMBER.

5 (a) If a limited liability company is to have only one member upon formation, the person
6 becomes a member as agreed by that person and the organizer of the company. That person and
7 the organizer may be, but need not be, different persons. If different, the organizer acts on behalf
8 of the initial member.

9 (b) If a limited liability company is to have more than one member upon formation, those
10 persons become members as agreed by the persons before the formation of the company. The
11 organizer acts on behalf of the persons in forming the company and may be, but need not be, one
12 of the persons.

13 (c) If a filed certificate of organization contains the statement required by Section
14 201(b)(3), a person becomes an initial member of the limited liability company with the consent
15 of a majority of the organizers. The organizers may consent to more than one person
16 simultaneously becoming the company's initial members.

17 (d) After formation of a limited liability company, a person becomes a member:

18 (1) as provided in the operating agreement;

19 (2) as the result of a transaction effective under [Article] 10;

20 (3) with the consent of all the members; or

21 (4) if, within 90 consecutive days after the company ceases to have any members:

1 ³⁹(A) transferees owning a majority of the rights to receive distributions
2 consent have at least one specified person become a member; and

3 (B) at least one person becomes a member in accordance with the
4 consent;

5 (e) A person may become a member without acquiring a transferable interest and without
6 making or being obligated to make a contribution to the limited liability company.

7 **SECTION 402. FORM OF CONTRIBUTION.** A contribution may consist of
8 tangible or intangible property or other benefit to a limited liability company, including money,
9 services performed, promissory notes, other agreements to contribute money or property, and
10 contracts for services to be performed.

11 **SECTION 403. LIABILITY FOR CONTRIBUTIONS AND FOR PROPERTY**
12 **IMPROPERLY PAID OR DISTRIBUTED.**⁴⁰

13 (a) A person's obligation to make a contribution to a limited liability company is not
14 excused by the person's death, disability, or other inability to perform personally. If a person
15 does not make a required contribution, the person or the person's estate is obligated to contribute
16 money equal to the value of the part of the contribution which has not been made, at the option
17 of the company.

18 ⁴¹(b) The obligation of a person to make a contribution or return money or other property
19 paid or distributed in violation of this [Act] may be compromised only by consent of all
20 members. A creditor of a limited liability company which extends credit or otherwise acts in
21 reliance on an obligation described in subsection (a), without notice of any compromise under

³⁹ Decision to change the rule was made at the October, 2009 meeting. The revision language is derived from ULPA, § 801(3)(B) (permitting a limited partnership to avoid dissolution following the dissociation a sole general partner).

⁴⁰ Change made to indicate the broader scope involved in the new subsection (b).

⁴¹ Per a decision made at the October, 2009 meeting. Source: ULPA, § 502(c).

1 this subsection, may enforce the original obligation.

2 **SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE**
3 **DISSOLUTION.**

4 (a) Any distributions made by a limited liability company before its dissolution and
5 winding up must be in equal shares among members and dissociated members, except to the
6 extent necessary to comply with any transfer effective under Section 502 and any charging order
7 in effect under Section 503.

8 (b) A person has a right to a distribution before the dissolution and winding up of a
9 limited liability company only if the company decides to make an interim distribution. A
10 person's dissociation does not entitle the person to a distribution.

11 (c) A person does not have a right to demand or receive a distribution from a limited
12 liability company in any form other than money. Except as otherwise provided in Section
13 708(c), a limited liability company may distribute an asset in kind if each part of the asset is
14 fungible with each other part and each person receives a percentage of the asset equal in value to
15 the person's share of distributions.

16 (d) If a member or transferee becomes entitled to receive a distribution, the member or
17 transferee has the status of, and is entitled to all remedies available to, a creditor of the limited
18 liability company with respect to the distribution.

19 **SECTION 405. LIMITATIONS ON DISTRIBUTION.**

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

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

23 (2) the company's total assets would be less than the sum of its total liabilities

1 plus (unless the operating agreement permits otherwise)⁴² the amount that would be needed, if
2 the company were to be dissolved, wound up, and terminated at the time of the distribution, to
3 satisfy the preferential rights upon dissolution, winding up, and termination of members whose
4 preferential rights are superior to those of persons receiving the distribution.

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

9 (c) Except as otherwise provided in subsection (f), the effect of a distribution under
10 subsection (a) is measured:

11 (1) in the case of a distribution by purchase, redemption, or other acquisition of a
12 transferable interest in the company, as of the date money or other property is transferred or debt
13 incurred by the company⁴³;

14 (2) in the case of any other distribution of indebtedness, as
15 of the date the indebtedness is distributed; and

16 (3) in all other cases, as of the date:

17 (A) the distribution is authorized, if the payment occurs within 120 days
18 after that date; or

19 (B) the payment is made, if the payment occurs more than 120 days after
20 the distribution is authorized.

⁴² Source: MBCA § 6.40(c)(2). QUERY – whether the added language is needed, because the item at issue is clearly an *inter se* matter and therefore subject to the operating agreement.

⁴³ MBCA, § 6.04(e) has an additional provision:

in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;" QUERY – should we incorporate the second prong? If so, presumably the reference should be to transferee as well as to member.

1 (d) A limited liability company's indebtedness to a member incurred by reason of a
2 distribution made in accordance with this section is at parity with the company's indebtedness to
3 its general, unsecured creditors except to the extent subordinated by agreement

4 (e) A limited liability company's indebtedness, including indebtedness issued in
5 connection with or as part of a distribution, is not a liability for purposes of subsection (a) if the
6 terms of the indebtedness provide that payment of principal and interest are made only to the
7 extent that a distribution could be made to members under this section.

8 (f) If indebtedness is issued as a distribution, each payment of principal or interest on the
9 indebtedness is treated as a distribution, the effect of which is measured on the date the payment
10 is made.⁴⁴

11 (g) In subsection (a), "distribution" does not include amounts constituting reasonable
12 compensation for present or past services or reasonable payments made in the ordinary course of
13 business under a bona fide retirement plan or other benefits program.

14 **SECTION 406. LIABILITY FOR IMPROPER DISTRIBUTIONS.**

15 (a) Except as otherwise provided in subsection (b), if a member of a member-managed
16 limited liability company or manager of a manager-managed limited liability company consents
17 to a distribution made in violation of Section 405 and in consenting to the distribution fails to
18 comply with Section 409, the member or manager is personally liable to the company for the
19 amount of the distribution that exceeds the amount that could have been distributed without the
20 violation of Section 405.

21 (b) To the extent the operating agreement of a member-managed limited liability
22 company expressly relieves a member of the authority and responsibility to consent to

⁴⁴ QUERY – whether to include a parallel to MBCA, § 6.40(h): “This section shall not apply to distributions in liquidation under chapter 14.”

1 distributions and imposes that authority and responsibility on one or more other members, the
2 liability stated in subsection (a) applies to the other members and not the member that the
3 operating agreement relieves of authority and responsibility.

4 (c) A person that receives a distribution knowing that the distribution to that person was
5 made in violation of Section 405 is personally liable to the limited liability company but only to
6 the extent that the distribution received by the person exceeded the amount that could have been
7 properly paid under Section 405.

8 (d) A person against which an action is commenced because the person is liable under
9 subsection (a) may:

10 (1) implead any other person that is subject to liability under subsection (a) and
11 seek to compel contribution from the person; and

12 (2) implead any person that received a distribution in violation of subsection (c)
13 and seek to compel contribution from the person in the amount the person received in violation
14 of subsection (c).

15 (e) An action under this section is barred if not commenced within two years after the
16 distribution.

17 **SECTION 407. MANAGEMENT OF LIMITED LIABILITY COMPANY.**

18 (a) A limited liability company is a member-managed limited liability company unless
19 the operating agreement:

20 (1) expressly provides that:

21 (A) the company is or will be “manager-managed”;

22 (B) the company is or will be “managed by managers”;

23 (C) management of the company is or will be “vested in managers”; or

24 (2) includes words of similar import.

1 (b) In a member-managed limited liability company, the following rules apply:

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

3 (2) Each member has equal rights in the management and conduct of the
4 company's activities.

5 (3) A difference arising among members as to a matter in the ordinary course of
6 the activities of the company may be decided by a majority of the members.

7 (4) An act outside the ordinary course of the activities of the company may be
8 undertaken only with the consent of all members.

9 (5) The operating agreement may be amended only with the consent of all
10 members.

11 (c) In a manager-managed limited liability company, the following rules apply:

12 (1) Except as otherwise expressly provided in this [act], any matter relating to the
13 activities of the company is decided exclusively by the managers.

14 (2) Each manager has equal rights in the management and conduct of the
15 activities of the company.

16 (3) A difference arising among managers as to a matter in the ordinary course of
17 the activities of the company may be decided by a majority of the managers.

18 (4) The consent of all members is required to:

19 (A) sell, lease, exchange, or otherwise dispose of all, or substantially all,
20 of the company's property, with or without the good will, outside the ordinary course of the
21 company's activities;

22 (B) approve a merger, conversion, or domestication under [Article] 10;

23 (C) undertake any other act outside the ordinary course of the company's
24 activities; and

1 (D) amend the operating agreement.

2 (5) A manager may be chosen at any time by the consent of a majority of the
3 members and remains a manager until a successor has been chosen, unless the manager at an
4 earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual,
5 terminates. A manager may be removed at any time by the consent of a majority of the members
6 without notice or cause.

7 (6) A person need not be a member to be a manager, but the dissociation of a
8 member that is also a manager removes the person as a manager. If a person that is both a
9 manager and a member ceases to be a manager, that cessation does not by itself dissociate the
10 person as a member.

11 (7) A person's ceasing to be a manager does not discharge any debt, obligation, or
12 other liability to the limited liability company or members which the person incurred while a
13 manager.

14 (d) An action requiring the consent of members under this [act] may be taken without a
15 meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the
16 member by signing an appointing record, personally or by the member's agent.

17 (e) The dissolution of a limited liability company does not affect the applicability of this
18 section. However, a person that wrongfully causes dissolution of the company loses the right to
19 participate in management as a member and a manager.

20 (f) This [act] does not entitle a member to remuneration for services performed for a
21 member-managed limited liability company, except for reasonable compensation for services
22 rendered in winding up the activities of the company.

23 **SECTION 408. INDEMNIFICATION AND INSURANCE.**

24 (a) A limited liability company shall reimburse for any payment made and indemnify for

1 any debt, obligation, or other liability incurred by a member of a member-managed company or
2 the manager of a manager-managed company in the course of the member's or manager's
3 activities on behalf of the company, if, in making the payment or incurring the debt, obligation,
4 or other liability, the member or manager complied with the duties stated in Sections 405 and
5 409.

6 (b) A limited liability company may purchase and maintain insurance on behalf of a
7 member or manager of the company against liability asserted against or incurred by the member
8 or manager in that capacity or arising from that status even if, under Section 110(g), the
9 operating agreement could not eliminate or limit the person's liability to the company for the
10 conduct giving rise to the liability.

11 **SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND**
12 **MANAGERS.**

13 (a) The duty of loyalty of a member in a member-managed limited liability company
14 includes the duties:

15 (1) to account to the company and to hold as trustee for it any property, profit, or
16 benefit derived by the member:

17 (A) in the conduct or winding up of the company's activities;

18 (B) from a use by the member of the company's property; or

19 (C) from the appropriation of a limited liability company opportunity;

20 (2) to refrain from dealing with the company in the conduct or winding up of the
21 company's activities as or on behalf of a person having an interest adverse to the company; and

22 (3) to refrain from competing with the company in the conduct of the company's
23 activities before the dissolution of the company.

24 (b) Subject to the business judgment rule, the duty of care of a member-

1 managed limited liability company in the conduct and winding up of the company's activities is
2 to act with the care that a person in a like position would reasonably exercise under similar
3 circumstances and in a manner the member reasonably believes to be in the best interests of the
4 company. In discharging this duty, a member may rely in good faith upon opinions, reports,
5 statements, or other information provided by another person that the member reasonably believes
6 is a competent and reliable source for the information.

7 (c) A member in a member-managed limited liability company or a manager-managed
8 limited liability company shall discharge the duties under this [act] or under the operating
9 agreement and exercise any rights consistently with the contractual obligation of good faith and
10 fair dealing.

11 (d) It is a defense to a claim under subsection (a)(2) and any comparable claim in equity
12 or at common law that the transaction was fair to the limited liability company. Subject to
13 subsections (b)(2) and (f) and any other applicable law, if a member enters into transaction with
14 a limited liability company in which the member has an interest adverse to the company, the
15 member's rights and obligations arising from the transaction are the same as those of a person
16 not a member.

17 (e) All of the members of a member-managed limited liability company or a manager-
18 managed limited liability company may authorize or ratify, after full disclosure of all material
19 facts, a specific act or transaction that otherwise would violate the duty of loyalty.

20 (f) In a manager-managed limited liability company, the following rules apply:

21 (1) Subsections (a), (b), (c), and (d) apply to the manager or managers and not the
22 members.

23 (2) The duty stated under subsection (a)(3) continues until winding up is
24 completed.

1 (3) Subsection (c) applies to the members and managers.

2 (4) Subsection (e) applies only to the members.

3 (5) A member does not have any fiduciary duty to the company or to any other
4 member solely by reason of being a member.

5 **SECTION 410. RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED**
6 **MEMBERS TO INFORMATION.**

7 (a) In a member-managed limited liability company, the following rules apply:

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

13 (2) The company shall furnish to each member:

14 (A) without demand, any information concerning the company's activities,
15 financial condition, and other circumstances which the company knows and is material to the
16 proper exercise of the member's rights and duties under the operating agreement or this [act],
17 except to the extent the company can establish that it reasonably believes the member already
18 knows the information; and

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

22 (3) The duty to furnish information under paragraph (2) also applies to each
23 member to the extent the member knows any of the information described in paragraph (2).

24 (b) In a manager-managed limited liability company, the following rules apply:

1 (1) The informational rights stated in subsection (a) and the duty stated in
2 subsection (a)(3) apply to the managers and not the members.

3 (2) During regular business hours and at a reasonable location specified by the
4 company, a member may obtain from the company and inspect and copy full information
5 regarding the activities, financial condition, and other circumstances of the company as is just
6 and reasonable if:

7 (A) the member seeks the information for a purpose material to the
8 member's interest as a member;

9 (B) the member makes a demand in a record received by the company,
10 describing with reasonable particularity the information sought and the purpose for seeking the
11 information; and

12 (C) the information sought is directly connected to the member's purpose.

13 (3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the
14 company shall in a record inform the member that made the demand:

15 (A) of the information that the company will provide in response to the
16 demand and when and where the company will provide the information; and

17 (B) if the company declines to provide any demanded information, the
18 company's reasons for declining.

19 (4) Whenever this [act] or an operating agreement provides for a member to give
20 or withhold consent to a matter, before the consent is given or withheld, the company shall,
21 without demand, provide the member with all information that is known to the company and is
22 material to the member's decision.

23 (c) On 10 days' demand made in a record received by a limited liability company, a
24 dissociated member may have access to information to which the person was entitled while a

1 member if the information pertains to the period during which the person was a member, the
2 person seeks the information in good faith, and the person satisfies the requirements imposed on
3 a member by subsection (b)(2). The company shall respond to a demand made pursuant to this
4 subsection in the manner provided in subsection (b)(3).

5 (d) A limited liability company may charge a person that makes a demand under this
6 section the reasonable costs of copying, limited to the costs of labor and material.

7 (e) A member or dissociated member may exercise rights under this section through an
8 agent or, in the case of an individual under legal disability, a legal representative. Any
9 restriction or condition imposed by the operating agreement or under subsection (g) applies both
10 to the agent or legal representative and the member or dissociated member.

11 (f) The rights under this section do not extend to a person as transferee.

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

18

1 [ARTICLE] 5

2 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

3 SECTION 501. NATURE OF TRANSFERABLE INTEREST. A transferable
4 interest is personal property.

5 SECTION 502. TRANSFER OF TRANSFERABLE INTEREST.

6 (a) A transfer, in whole or in part, of a transferable interest:

7 (1) is permissible;

8 (2) does not by itself cause a member's dissociation or a dissolution and winding
9 up of the limited liability company's activities; and

10 (3) subject to Section 504, does not entitle the transferee to:

11 (A) participate in the management or conduct of the company's activities;

12 or

13 (B) except as otherwise provided in subsection (c), have access to records
14 or other information concerning the company's activities.

15 (b) A transferee has the right to receive, in accordance with the transfer, distributions to
16 which the transferor would otherwise be entitled.

17 (c) In a dissolution and winding up of a limited liability company, a transferee is entitled
18 to an account of the company's transactions only from the date of dissolution.

19 (d) A transferable interest may be evidenced by a certificate of the interest issued by the
20 limited liability company in a record, and, subject to this section, the interest represented by the
21 certificate may be transferred by a transfer of the certificate.

22 (e) A limited liability company need not give effect to a transferee's rights under this
23 section until the company has notice of the transfer.

24 (f) A transfer of a transferable interest in violation of a restriction on transfer contained in

1 the operating agreement is ineffective as to a person having notice of the restriction at the time of
2 transfer.

3 (g) Except as otherwise provided in Section 602(4)(B), when a member transfers a
4 transferable interest, the transferor retains the rights of a member other than the interest in
5 distributions transferred and retains all duties and obligations of a member.

6 (h) When a member transfers a transferable interest to a person that becomes a member
7 with respect to the transferred interest, the transferee is liable for the member's obligations under
8 Sections 403 and 406(c) known to the transferee when the transferee becomes a member.

9 **SECTION 503. CHARGING ORDER.**

10 (a) On application by a judgment creditor of a member or transferee, a court may enter a
11 charging order against the transferable interest of the judgment debtor for the unsatisfied amount
12 of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest
13 and requires the limited liability company to pay over to the person to which the charging order
14 was issued any distribution that would otherwise be paid to the judgment debtor.

15 (b) To the extent necessary to effectuate the collection of distributions pursuant to a
16 charging order in effect under subsection (a), the court may:

17 (1) appoint a receiver of the distributions subject to the charging order, with the
18 power to make all inquiries the judgment debtor might have made; and

19 (2) make all other orders necessary to give effect to the charging order.

20 (c) Upon a showing that distributions under a charging order will not pay the judgment
21 debt within a reasonable time, the court may foreclose the lien and order the sale of the
22 transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest,
23 does not thereby become a member, and is subject to Section 502.

24 (d) At any time before foreclosure under subsection (c), the member or transferee whose

1 transferable interest is subject to a charging order under subsection (a) may extinguish the
2 charging order by satisfying the judgment and filing a certified copy of the satisfaction with the
3 court that issued the charging order.

4 (e) At any time before foreclosure under subsection (c), a limited liability company or
5 one or more members whose transferable interests are not subject to the charging order may pay
6 to the judgment creditor the full amount due under the judgment and thereby succeed to the
7 rights of the judgment creditor, including the charging order.

8 (f) This [act] does not deprive any member or transferee of the benefit of any exemption
9 laws applicable to the member's or transferee's transferable interest.

10 (g) This section provides the exclusive remedy by which a person seeking to enforce a
11 judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the
12 judgment from the judgment debtor's transferable interest.

13 **SECTION 504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED**
14 **MEMBER.** If a member dies, the deceased member's personal representative or other legal
15 representative may exercise the rights of a transferee provided in Section 502(c) and, for the
16 purposes of settling the estate, the rights of a current member under Section 410.

17

1 [ARTICLE] 6

2 MEMBER'S DISSOCIATION

3 SECTION 601. MEMBER'S POWER TO DISSOCIATE; WRONGFUL
4 DISSOCIATION.

5 (a) A person has the power to dissociate as a member at any time, rightfully or
6 wrongfully, by withdrawing as a member by express will under Section 602(1).⁴⁵

7 (b) A person's dissociation from a limited liability company is wrongful only if the
8 dissociation:

9 (1) is in breach of an express provision of the operating agreement; or

10 (2) occurs before the termination of the company and:

11 (A) the person withdraws as a member by express will;

12 (B) the person is expelled as a member by judicial order under Section
13 602(5);

14 (C) the person is dissociated under Section 602(7)(A) by becoming a
15 debtor in bankruptcy; or

16 (D) in the case of a person that is not a trust other than a business trust, an
17 estate, or an individual, the person is expelled or otherwise dissociated as a member because it
18 willfully dissolved or terminated.

19 (c) A person that wrongfully dissociates as a member is liable to the limited liability
20 company and, subject to Section 901, to the other members for damages caused by the
21 dissociation. The liability is in addition to any other debt, obligation, or other liability of the
22 member to the company or the other members.

⁴⁵ The operating agreement can negate the power as well as the right. See Re-ULLCA, § 110(c) (omitting any reference to this provision from the "operating may not" list).

1 **SECTION 602. EVENTS CAUSING DISSOCIATION.** A person is dissociated as a

2 member from a limited liability company when:

3 (1) the company has notice of the person's express will to withdraw as a member, but, if
4 the person specified a withdrawal date later than the date the company had notice, on that later
5 date;

6 (2) an event stated in the operating agreement as causing the person's dissociation occurs;

7 (3) the person is expelled as a member pursuant to the operating agreement;

8 (4) the person is expelled as a member by the unanimous consent of the other members if:

9 (A) it is unlawful to carry on the company's activities with the person as a
10 member;

11 (B) there has been a transfer of all of the person's transferable interest in the
12 company, other than:

13 (i) a transfer for security purposes; or

14 (ii) a charging order in effect under Section 503 which has not been
15 foreclosed;

16 (C) the person is a corporation and, within 90 days after the company notifies the
17 person that it will be expelled as a member because the person has filed a certificate of
18 dissolution or the equivalent, its charter has been revoked, or its right to conduct business has
19 been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been
20 revoked or its charter or right to conduct business has not been reinstated; or

21 (D) the person is a limited liability company or partnership that has been
22 dissolved and whose business is being wound up;

23 (5) on application by the company, the person is expelled as a member by judicial order
24 because the person:

1 (A) has engaged, or is engaging, in wrongful conduct that has adversely and
2 materially affected, or will adversely and materially affect, the company's activities;

3 (B) has willfully or persistently committed, or is willfully and persistently
4 committing, a material breach of the operating agreement or the person's duties or obligations
5 under Section 409; or

6 (C) has engaged in, or is engaging, in conduct relating to the company's activities
7 which makes it not reasonably practicable to carry on the activities with the person as a member;

8 (6) in the case of a person who is an individual:

9 (A) the person dies; or

10 (B) in a member-managed limited liability company:

11 (i) a guardian or general conservator for the person is appointed; or

12 (ii) there is a judicial order that the person has otherwise become incapable
13 of performing the person's duties as a member under [this act] or the operating agreement;

14 (7) in a member-managed limited liability company, the person:

15 (A) becomes a debtor in bankruptcy;

16 (B) executes an assignment for the benefit of creditors; or

17 (C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or
18 liquidator of the person or of all or substantially all of the person's property;

19 (8) in the case of a person that is a trust or is acting as a member by virtue of being a
20 trustee of a trust, the trust's entire transferable interest in the company is distributed;

21 (9) in the case of a person that is an estate or is acting as a member by virtue of being a
22 personal representative of an estate, the estate's entire transferable interest in the company is
23 distributed;

24 (10) in the case of a member that is not an individual, partnership, limited liability

1 company, corporation, trust, or estate, the termination of the member;

2 (11) the company participates in a merger under [Article] 10, if:

3 (A) the company is not the surviving entity; or,

4 (B) otherwise as a result of the merger, the person ceases to be a member;

5 (12) the company participates in a conversion under [Article] 10;

6 (13) the company participates in a domestication under [Article] 10, if, as a result of the
7 domestication, the person ceases to be a member; or

8 (14) the company terminates.

9 **SECTION 603. EFFECT OF PERSON'S DISSOCIATION AS MEMBER.**

10 (a) When a person is dissociated as a member of a limited liability company:

11 (1) the person's right to participate as a member in the management and conduct
12 of the company's activities terminates;

13 (2) if the company is member-managed, the person's fiduciary duties as a member
14 end with regard to matters arising and events occurring after the person's dissociation; and

15 (3) subject to Section 504 and [Article] 10, any transferable interest owned by the
16 person immediately before dissociation in the person's capacity as a member is owned by the
17 person solely as a transferee.

18 (b) A person's dissociation as a member of a limited liability company does not of itself
19 discharge the person from any debt, obligation, or other liability to the company or the other
20 members which the person incurred while a member.

21

22

1 [ARTICLE] 7

2 DISSOLUTION AND WINDING UP

3 SECTION 701. EVENTS CAUSING DISSOLUTION.

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

6 (1) an event or circumstance that the operating agreement states causes
7 dissolution;

8 (2) the consent of all the members;

9 (3) the passage of 90 consecutive days during which the company has no
10 members;

11 (4) on application by a member, the entry by [appropriate court] of an order
12 dissolving the company on the grounds that:

13 (A) the conduct of all or substantially all of the company's activities is
14 unlawful; or

15 (B) it is not reasonably practicable to carry on the company's activities in
16 conformity with the certificate of organization and the operating agreement; or

17 (5) on application by a member, the entry by [appropriate court] of an order
18 dissolving the company on the grounds that the managers or those members in control of the
19 company:

20 (A) have acted, are acting, or will act in a manner that is illegal or
21 fraudulent; or

22 (B) have acted or are acting in a manner that is oppressive and was, is, or
23 will be directly harmful to the applicant.

24 (b) In a proceeding brought under subsection (a)(5), the court may order a remedy other

1 than dissolution.

2 **SECTION 702. WINDING UP.**

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

5 (b) In winding up its activities, a limited liability company:

6 (1) shall discharge the company's debts, obligations, or other liabilities, settle and
7 close the company's activities, and marshal and distribute the assets of the company; and

8 (2) may:

9 (A) deliver to the [Secretary of State] for filing a statement of dissolution
10 stating the name of the company and that the company is dissolved;

11 (B) preserve the company activities and property as a going concern for a
12 reasonable time;

13 (C) prosecute and defend actions and proceedings, whether civil, criminal,
14 or administrative;

15 (D) transfer the company's property;

16 (E) settle disputes by mediation or arbitration;

17 (F) deliver to the [Secretary of State] for filing a statement of termination,
18 stating the name of the company and that the company is terminated and including any other
19 information the limited liability company determines; and

20 (G) perform other acts necessary or appropriate to the winding up.

21 (c) If a dissolved limited liability company has no members, the legal representative of
22 the last person to have been a member may wind up the activities of the company. If the person
23 does so, the person has the powers of a sole manager under Section 407(c) and is deemed to be a
24 manager for the purposes of Section 304(a)(2).

1 (d) If the legal representative under subsection (c) declines or fails to wind up the
2 company's activities, a person may be appointed to do so by the consent of transferees owning a
3 majority of the rights to receive distributions as transferees at the time the consent is to be
4 effective. A person appointed under this subsection:

5 (1) has the powers of a sole manager under Section 407(c) and is deemed to be a
6 manager for the purposes of Section 304(a)(2); and

7 (2) shall promptly deliver to the [Secretary of State] for filing an amendment to
8 the company's certificate of organization to:

9 (A) state that the company has no members;

10 (B) state that the person has been appointed pursuant to this subsection to
11 wind up the company; and

12 (C) provide the street and mailing addresses of the person.

13 (e) The [appropriate court] may order judicial supervision of the winding up of a
14 dissolved limited liability company, including the appointment of a person to wind up the
15 company's activities:

16 (1) on application of a member, if the applicant establishes good cause;

17 (2) on the application of a transferee, if:

18 (A) the company does not have any members;

19 (B) the legal representative of the last person to have been a member
20 declines or fails to wind up the company's activities; and

21 (C) within a reasonable time following the dissolution a person has not
22 been appointed pursuant to subsection (c); or

23 (3) in connection with a proceeding under Section 701(a)(4) or (5).

24 **SECTION 702B. REVERSING DISSOLUTION.** At any time after the dissolution of

1 a limited liability company and before the winding up of its business is completed, all of the
2 members may waive the right to have the partnership's business wound up and the partnership
3 terminated. In that event:

4 (1) the limited liability company resumes carrying on its business as if dissolution had
5 never occurred, and any liability incurred by the limited liability company after the dissolution
6 and before the waiver is determined as if dissolution had never occurred; and

7 (2) the rights of a third party⁴⁶ arising out of conduct in reliance on the dissolution before
8 the third party knew or received a notification of the waiver may not be adversely affected.

9 **SECTION 703. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
10 **LIABILITY COMPANY.**⁴⁷

11 (a) Except as otherwise provided in subsection (d), a dissolved limited liability company
12 may give notice of a known claim under subsection (b), which has the effect as provided in
13 subsection (c).

14 (b) A dissolved limited liability company may in a record notify its known claimants of
15 the dissolution. The notice must:

16 (1) specify the information required to be included in a claim;

17 (2) provide a mailing address to which the claim is to be sent;

18 (3) state the deadline for receipt of the claim, which may not be less than 120 days
19 after the date the notice is received by the claimant; and

20 (4) state that the claim will be barred if not received by the deadline.

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

⁴⁶ Source: RUPA, § 803(b). QUERY whether "and" (between items (1) and (2)) should be "but" or "except that"?

⁴⁷ Compared with MBCA § 14.06. Differences are stylistic, and those differences are not new. That is, the differences do not reflect recent changes to the MBCA.

1 (1) the claim is not received by the specified deadline; or

2 (2) if the claim is timely received but rejected by the company:

3 (A) the company causes the claimant to receive a notice in a record stating
4 that the claim is rejected and will be barred unless the claimant commences an action against the
5 company to enforce the claim within 90 days after the claimant receives the notice; and

6 (B) the claimant does not commence the required action within the 90
7 days.

8 (d) This section does not apply to a claim based on an event occurring after the effective
9 date of dissolution or a liability that on that date is contingent.

10 **SECTION 704. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY**
11 **COMPANY.**

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

15 (b) The notice authorized by subsection (a) must:

16 (1) be published at least once in a newspaper of general circulation in the [county]
17 in this state in which the dissolved limited liability company's principal office is located or, if it
18 has none in this state, in the [county] in which the company's designated office is or was last
19 located;

20 (2) describe the information required to be contained in a claim and provide a
21 mailing address to which the claim is to be sent; and

22 (3) state that a claim against the company is barred unless an action to enforce the

1 claim is commenced within five years after publication of the notice.⁴⁸

2 (c) If a dissolved limited liability company publishes a notice in accordance with
3 subsection (b), unless the claimant commences an action to enforce the claim against the
4 company within five years after the publication date of the notice, the claim of each of the
5 following claimants is barred:

6 (1) a claimant that **did not receive notice in a record**⁴⁹ under Section 703;

7 (2) a claimant whose claim was timely sent to the company but not acted on; and

8 (3) a claimant whose claim is contingent at, or based on an event occurring after,
9 the effective date of dissolution.

10 (d) A claim not barred under this section or Section 703 may be enforced:

11 (1) against a dissolved limited liability company, to the extent of its undistributed
12 assets; and

13 (2) except as provided in Section 704A(d), if assets of the company have been
14 distributed after dissolution, against a member or transferee to the extent of that person's
15 proportionate share of the claim or of the assets distributed to the member or transferee after
16 dissolution, whichever is less, but a person's total liability for all claims under this paragraph
17 does not exceed the total amount of assets distributed to the person after dissolution.

18 ⁵⁰**SECTION 704A. COURT PROCEEDINGS.**

19 (a) A dissolved limited liability company that has published a notice under section 704
20 may file an application with the [name or describe] court of the county where the dissolved
21 company's principal office (or, if none in this state, its designated office) is located for a
22 determination of the amount and form of security to be provided for payment of claims that are

⁴⁸ MBCA § 14.07(c) states "three years".

⁴⁹ MBCA § 14.07(c)(1) refers to "given written notice" rather than "received".

⁵⁰ Source: MBCA, § 14.08.

1 contingent or have not been made known to the dissolved corporation or that are based on an
2 event occurring after the effective date of dissolution but that, based on the facts known to the
3 dissolved company, are reasonably estimated to arise after the effective date of dissolution.
4 Provision need not be made for any claim that is or is reasonably anticipated to be barred under
5 section 704(c).

6 (b) Within 10 days after the filing of the application, notice of the proceeding shall be
7 given by the dissolved limited liability company to each claimant holding a contingent claim
8 whose contingent claim is shown on the records of the dissolved company.

9 (c) The court may appoint a guardian ad litem to represent all claimants whose identities
10 are unknown in any proceeding brought under this section. The reasonable fees and expenses
11 of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved
12 limited liability company.

13 (d) Provision by the dissolved limited liability company for security in the amount and
14 the form ordered by the court under subsection (a) shall satisfy the dissolved company's
15 obligations with respect to claims that are contingent, have not been made known to the
16 dissolved company or are based on an event occurring after the effective date of dissolution, and
17 such claims may not be enforced against a member or transferee who received assets in
18 liquidation.

19 ⁵¹**SECTION 705. ADMINISTRATIVE DISSOLUTION.**

20 (a) The [Secretary of State] may commence a proceeding under subsections (b) and (c) to
21 dissolve a limited liability company administratively if the company does not:

22 (1) pay any fee, tax, or penalty required to be paid to the [Secretary of State] not

⁵¹ Conformed the Hub, §§ 1-601 and 1-602, but keep in one section to preserve numbering

1 later than [six months] after it⁵² is due;

2 (2) deliver an annual report to the [Secretary of State] not later than [six months]
3 after it⁵³ is due; or

4 (3) have a registered agent in this state for [60] days⁵⁴.

5 (b) If the [Secretary of State] determines that one or more grounds exist for dissolving a
6 limited liability company, the [Secretary of State] shall serve the company⁵⁵ with a notice in a
7 record of the [Secretary of State's] determination.

8 (c) If a limited liability company, not later than [60] days after service of the notice is
9 effected pursuant to subsection (b), does not correct each ground for dissolution or demonstrate
10 to the satisfaction of the [Secretary of State] that each ground determined by the [Secretary of
11 State] does not exist, the [Secretary of State] shall dissolve the company administratively by
12 signing a **declaration**⁵⁶ of dissolution that recites the ground or grounds for dissolution and its
13 effective date. The [Secretary of State] shall file the original of the declaration and serve a copy
14 on the company⁵⁷.

15 (d) A limited liability company that is dissolved administratively continues in existence
16 as an entity but, may not carry on any **activities**⁵⁸ except as necessary to wind up its activities
17 and liquidate its affairs under Sections 702 and 708, to notify claimants under Sections 703 and
18 704, or to apply for reinstatement under Section 706.

19 (e) The administrative dissolution of a limited liability company does not terminate the

⁵² QUERY – antecedent of “it” – though discernable – does not follow strict rules of syntax.

⁵³ QUERY – antecedent of “it” – though discernable – does not follow strict rules of syntax.

⁵⁴ QUERY – consecutive days?

⁵⁵ Hub, § 1-602(a) includes here “pursuant to Section 1-412”.

⁵⁶ Hub, § 1-602(b) uses “statement of dissolution,” but Re-ULLCA uses that term for a record filed on behalf of an LLC.

⁵⁷ Hub, § 1-602(a) includes here “pursuant to Section 1-412”.

⁵⁸ Hub, § 1-602(c) refers to “business.” Re-ULLCA uses (throughout) the broader term “activities.”

1 authority of its agent for service of process⁵⁹.

2 **SECTION 706. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
3 **DISSOLUTION.**

4 (a) A limited liability company that is dissolved administratively under Section 705 may
5 apply to the [Secretary of State] for reinstatement within two years after the effective date of
6 dissolution. The application must state:

7 (1) the name of the company at the time of its administrative dissolution and, if
8 needed, a different name that satisfies Section 108

9 (2) the address of the principal⁶⁰ office of the limited liability company and the
10 name and address of the registered agent;

11 (3) the effective date of limited liability company's dissolution; and

12 (4) that the grounds for dissolution either did not exist or have been eliminated;

13 (b) To be reinstated, a limited liability company must pay all fees, taxes, and penalties
14 that were due to the [Secretary of State] at the time of its administrative dissolution and all fees,
15 taxes, and penalties that would have been due to the [Secretary of State] while the limited
16 liability company was dissolved administratively.

17 (c) If the [Secretary of State] determines that an application contains the information
18 required by subsection (a), is satisfied that the information is correct, and determines that all
19 payments required to be made to the [Secretary of State] by subsection (b) have been made, the
20 [Secretary of State] shall cancel the declaration of dissolution and prepare a statement, of
21 reinstatement that states the [Secretary of State's] determination and the effective date of
22 restatement, file the original of the statement, and serve a copy on the limited liability.

⁵⁹ Hub, § 1-602(d) refers to "registered agent," a concept not yet infused into Re-ULLCA.

⁶⁰ QUERY – need to return to this provision after the "designated/principal" decision is made.

1 (d) When reinstatement under this section is effective, it relates back to and takes effect
2 as of the effective date of the administrative dissolution and the limited liability company
3 resumes its carrying on its activities as if the administrative dissolution had never occurred,
4 except for the rights of a person arising out of an act or omission in reliance on the dissolution
5 before the person knew or had reason to know of the reinstatement..

6 ⁶¹**SECTION 707. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.**

7 (a) If the [Secretary of State] denies a limited liability company's application for
8 reinstatement following administrative dissolution, the [Secretary of State] shall serve the limited
9 liability company⁶² with a notice in arecord that explains the reason or reasons for the denial.

10 (b) A limited liability company may seek judicial review of denial of reinstatement in the
11 [appropriate court] not later than [30] days after service of the notice of denial.

12 **SECTION 708. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED**
13 **LIABILITY COMPANY'S ACTIVITIES.**

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

16 (b) After a limited liability company complies with subsection (a), any surplus must be
17 distributed in the following order, subject to any charging order in effect under Section 503:

18 (1) to each person owning a transferable interest that reflects contributions made
19 by a member and not previously returned, an amount equal to the value of the unreturned
20 contributions; and

21 (2) in equal shares among members and dissociated members, except to the extent
22 necessary to comply with any transfer effective under Section 502.

⁶¹ Conformed to Hub, § 1-604.

⁶² Hub, § 1-602(a) includes here "pursuant to Section 1-412".

1 (c) If a limited liability company does not have sufficient surplus to comply with
2 subsection (b)(1), any surplus must be distributed among the owners of transferable interests in
3 proportion to the value of their respective unreturned contributions.

4 (d) All distributions made under subsections (b) and (c) must be paid in money.

5

6

1 [ARTICLE] 8

2 FOREIGN LIMITED LIABILITY COMPANIES

3 SECTION 801. GOVERNING LAW.⁶³

4 (a) The law of the state or other jurisdiction under which a foreign limited liability
5 company is formed governs:

6 (1) the internal affairs of the company; and

7 (2) the liability of a member as member and a manager as manager for the debts,
8 obligations, or other liabilities of the company⁶⁴.

9 (b) A foreign limited liability company may not be precluded from registering to do
10 business in this state because of any difference between the law of the limited liability
11 company's jurisdiction of formation and the laws of this state.

12 (c) Registration as a foreign limited liability company to do business in this state does not
13 authorize that company⁶⁵ to engage in any business or exercise any power that a limited liability
14 company may not engage in or exercise in this state.

15 ⁶⁶SECTION 802. REGISTRATION TO DO BUSINESS⁶⁷ IN THIS STATE.

16 (a) A foreign limited liability company may not do business in this state until it registers
17 with the [Secretary of State] under this [article].

18 (b) A limited liability company doing business in this state may not maintain an action in
19 this state unless it is registered to do business in this state.

20 (c) The failure of a foreign limited liability company to register to do business in this

⁶³ Conformed to Hub, § 1-501.

⁶⁴ The Style Committee changed the Hub provision to the singular – i.e., “a debt, obligation, or other liability”.
QUERY whether to conform to this stylistic change.

⁶⁵ Hub, §1-501(c) has “it” here, but my third grade teacher would rise from her grave.

⁶⁶ Derived essentially verbatim from Hub, § 1-502 and replacing Re-ULLCA § 808..

⁶⁷ NOTE - “doing business” has been the term of art forever (or at least the mind of this man runneth not to the
contrary). However, LLCs are not necessarily “business” entities.

1 state does not impair the validity of a contract or act of the foreign limited liability company or
2 preclude it from defending a proceeding⁶⁸ in this state.

3 (d) A member or manager of a foreign limited liability company is not liable for the
4 debts, obligations, or other liabilities of the company solely because the company transacted
5 business in this state without registering to do business in this state.⁶⁹

6 (e) Section 801(a) and (b) applies even if a foreign limited liability company fails to
7 register under this [article].

8 ⁷⁰**SECTION 802. FOREIGN REGISTRATION STATEMENT.** To register to do
9 business in this state, a foreign limited liability company must deliver a foreign registration
10 statement to the [Secretary of State] for filing. The application must state:

11 (1) the name of the company and, if the name does not comply with Section 108, an
12 alternate name adopted pursuant to Section 805(a);

13 (2) the name of the jurisdiction under whose law the company is formed;⁷¹

14 (3) the street and mailing addresses of the company's principal office and, if the law of
15 the jurisdiction under which the company is formed require the company to maintain an office in
16 that jurisdiction, the street and mailing addresses of the required office; and

17 (4) the name and street and mailing addresses of the company's initial agent for service

⁶⁸ Before Style Committee revisions, the Hub referred here and in subsection (b) to “an action or proceeding”.
QUERY why the formulation is now different between the two subsections.

⁶⁹ Source: Re-ULLCA, § 808(c), which is substituted because Hub, § 105(d) overlaps and does not fit with Re-ULLCA, § 801 (whose prominence and content are important). Hub, § 105(d) (post Style) provides: “The liability of an interest holder or governor of a foreign filing entity or of a partner of a foreign limited liability partnership is governed by the laws of its jurisdiction of formation. Any limitation on that liability is not waived solely because the foreign filing entity or foreign limited liability partnership does business in this state without registering.”

⁷⁰ Conformed to Hub, § 1-503.

⁷¹ Hub, § 1-503(3) refers to “jurisdiction of formation,” which is a defined term. Hub, § 1-102(19) (“‘Jurisdiction of formation’ means the jurisdiction whose law includes the organic law of an entity.”). The Re-ULLCA language is revised here by deleting “state or other” as superfluous.

1 of process in this state.⁷²

2 ⁷³**SECTION 802A. AMENDMENT OF FOREIGN REGISTRATION**

3 **STATEMENT.**

4 (a) A foreign limited liability company registered to do business in this state shall deliver
5 to the [Secretary of State] for filing an amendment to its foreign registration statement if there is
6 a change in:

7 (1) the name of the entity;⁷⁴

8 (2) the name the jurisdiction under whose law the company is formed;⁷⁵

9 (3) the address or addresses required by Section 802(3); and

10 (4) the name and street and mailing addresses of the company's agent for service
11 of process in this state.⁷⁶

12 (b) The requirements of Section 1-503 for an original foreign registration statement apply
13 to an amendment of a foreign registration statement under this section.

14 **SECTION 803. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.**

15 (a) Activities of a foreign limited liability company which do not constitute doing
16 business in this state under the meaning of this [article] include:

⁷² Hub, § 1-504(5) refers simply to “the information required by Section 1-404(a).” Hub, Article 4 is the registered agent article, and § 1-404(a) states:

(a) A registered agent filing must state:

(1) the name of the represented 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) if the entity designates an officer or employee to accept service of process, the title of the office or other position and the address of the business office of that person.

⁷³ Source: Hub, § 1-504.

⁷⁴ Omitted, Hub, § 1-504(a)(2): “the type of entity, including, if it is a limited partnership, whether the entity became or ceased to be a limited liability limited partnership;”

⁷⁵ Hub, § 1-504(a)(3) provides: “the jurisdiction of formation”. See the notes under Section 802 of this draft for an explanation of this draft's use of different language.

⁷⁶ Hub, § 1-504(a)(5) provides: “the information required by Section 1-404(a)”.

- 1 (1) maintaining, defending, mediating, arbitrating or settling a proceeding;⁷⁷
- 2 (2) carrying on any activity concerning its internal affairs, including holding
- 3 meetings of its members or managers;
- 4 (3) maintaining accounts in financial institutions;
- 5 (4) maintaining offices or agencies for the transfer, exchange, and registration of
- 6 the company's membership interests or maintaining trustees or depositories with respect to those
- 7 membership interests;⁷⁸
- 8 (5) selling through independent contractors;
- 9 (6) soliciting or obtaining orders, by any means if the orders require acceptance
- 10 outside this state before they become contracts;
- 11 (7) creating or acquiring indebtedness, mortgages, or security interests in
- 12 property;
- 13 (8) securing or collecting debts or enforcing mortgages or other security interests
- 14 in property securing the debts and holding, protecting, or maintaining property;
- 15 (9) conducting an isolated transaction that is not in the course of similar
- 16 transactions;
- 17 (10) owning, without more, real or personal property;⁷⁹
- 18 (11) doing business in interstate commerce.
- 19 (b) This section does not apply in determining the contacts or activities that may subject a
- 20 foreign limited liability company to service of process, taxation, or regulation under law of this

⁷⁷ See earlier note re: "action or proceeding" becoming "action" in one instance and "proceeding" in another.

⁷⁸ Hub refers to "interests," a term defined by Hub § 1-102(16)(E) to mean "a membership interest in a limited liability company." QUERY whether this definition (and the Hub's more general one) should be expanded to include a transferable interest. Note that Hub, § 1-102(16)(J) does separately refer to transferable interests: "a governance interest or transferable interest in any other type of unincorporated entity." However, the Hub's entity-specific definitions of "interest" refer only to the entire "bundle of sticks."

⁷⁹ Source: MBCA, § § 15.01(b)(9).

1 state other than this [act].

2 ⁸⁰**SECTION 805. NONCOMPLYING NAME OF FOREIGN LIMITED**

3 **LIABILITY COMPANY.**

4 (a) A foreign limited liability company whose name does not comply with Section 108
5 may not register to do business in this state until it adopts, for the purpose of doing business in
6 this state, an alternate name that complies with Section 108. A foreign limited liability company
7 that registers under an alternate name under this subsection need not comply with [this state's
8 fictitious or assumed name statute]. After registering to do business in this state with an alternate
9 name, a foreign limited liability company may do business in this state under:

10 (1) the alternate name;

11 (2) the name in the jurisdiction under whose law the company is formed, with that
12 jurisdiction clearly identified;⁸¹ or

13 (3) an assumed or fictitious name the company is authorized to use under [this
14 state's fictitious or assumed name statute].

15 (b) If a foreign limited liability company registered to transact business in this state
16 changes its name to one that does not comply with Section 108, it may not do business in this
17 state until it complies with subsection (a) by amending its registration to adopt an alternate name
18 that complies with Section 108..

19 **NOT INCLUDED: HUB, §§ 1-508, 1-509, 1-510 (B/C THEY CONTEMPLATE META-**
20 **RELATED TRANSACTIONS)**

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

⁸⁰ No longer necessary, given the new Section 206A, which is derived from Hub, § 1-206.

⁸¹ Hub, § 1-506(a)(3) states: "its entity name, with the addition of its jurisdiction of formation clearly identified;".

1 **SECTION 1-509. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO**
2 **NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP**
3 **SECTION 1-510. TRANSFER OF REGISTRATION**

4
5 ⁸²**SECTION 806. TERMINATION OF REGISTRATION.**

6 (a) The [Secretary of State] may termination the registration of a foreign limited liability
7 company to do business in this state in the manner provided in subsections (b) and (c) if the
8 company does not:

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

11 (2) deliver to the [Secretary of State] for filing, not later than 60 days after the due
12 date, its annual report required under Section 209;

13 (3) appoint and maintain an agent for service of process as required by Section
14 113(b); or

15 (4) deliver for filing a statement of a change under Section 114 within 30 days
16 after a change has occurred in the name or address of the agent.⁸³

17 (b) The [Secretary of State] may terminate the registration of a foreign limited liability
18 company by filing a notice of termination or noting the termination in the record of the
19 [Secretary of State] and by by delivering⁸⁴ a copy of the notice or the information in the notation
20 to the company’s agent for service of process in this state, or if the company does not appoint
21 and maintain a proper agent in this state, to the company’s designated office. The notice must
22 state:

⁸² Conformed to Hub, § 1-511.

⁸³ Hub, § 1-511 has no parallel to Section 806(a)(4) and Hub, § 1-511(3) refers to Hub, § 1-402.

⁸⁴ QUERY – does “delivery” necessarily entail receipt?

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

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

4 (c) The authority of a foreign limited liability company to does business in this state
5 ceases on the effective date of the notice of termination unless before that date the company
6 cures each ground for termination stated in the notice filed under subsection (b).⁸⁵ If the
7 company cures each ground, the [Secretary of State] shall file a record so stating.

8 ⁸⁶**SECTION 807. WITHDRAWAL OF REGISTRATION OF REGISTERED**
9 **FOREIGN ENTITY.**

10 (a) A foreign entity registered to do business in this state may withdraw its registration by
11 delivering a statement of withdrawal to the [Secretary of State] for filing. The statement of
12 withdrawal must state:

13 (1) the name of the foreign entity and the name of the jurisdiction under whose
14 law it is formed;

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

17 (3) that the entity revokes the authority of its registered agent to accept service on
18 its behalf; and

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

20 (b) After the withdrawal of the registration of an entity, service of process in any
21 proceeding based on a cause of action arising during the time it was registered to do business in

⁸⁵ QUERY – whether this provision should also refer to the Secretary’s notation option.

⁸⁶ conformed to Hub, § 1-507.

1 this state may be made⁸⁷ by registered or certified mail, return receipt requested, or by similar
2 commercial delivery service, addressed to the entity at its principal office in accordance with any
3 applicable judicial rules and procedures and with the envelope conspicuously marked “important
4 legal notice” or with words of similar import. 88Service is effected under this subsection on the
5 earliest of:

6 (1) the date the entity receives the mail or delivery by a similar commercial
7 delivery service;

8 (2) the date shown on the return receipt, if signed on behalf of the entity; or

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

11 (c) If process, notice, or demand cannot be served on a foreign limited liability company
12 pursuant to subsection (b), service may be made by handing a copy to the manager, clerk, or
13 other individual in charge of any regular place of business or activity of the company if the
14 individual served is not a plaintiff in the action. ⁸⁹

15 ⁹⁰**SECTION 809. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]
16 may maintain an action to enjoin a foreign limited liability company from doing business in this
17 state in violation of this [act].

18

⁸⁷⁸⁷ Hub, § 1-507(b) provides: “(After the withdrawal of the registration of an entity, service of process in any proceeding based on a cause of action arising during the time it was registered to do business in this state may be made pursuant to Section 1-412.” This draft does not incorporate Hub, Article 4. The language that follows is derived from Hub, § 1-412(b), changed as explained in the next footnote.

⁸⁸ Hub, § 1-412(b) states: “If an entity that filed a registered-agent filing with the [Secretary of State] no longer has 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 governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures. The names of the governors and the address of the principal office may be as shown in the most recent [annual] [biennial] report filed with the [Secretary of State].” However, Hub, § 1-211 (annual/biennial report) does not mention governors. The highlighted language is a stand-in for governor information, at least temporarily.

⁸⁹⁸⁹ All the provisions of this Section now appear in Section 802, except for subsection (d).

⁹⁰ Conformed to Hub, § 1-512.

1 [ARTICLE] 9

2 ACTIONS BY MEMBERS

3 SECTION 901. DIRECT ACTION BY MEMBER.

4 (a) Subject to subsection (b), a member may maintain a direct action against another
5 member, a manager, or the limited liability company to enforce the member's rights and
6 otherwise protect the member's interests, including rights and interests under the operating
7 agreement or this [act] or arising independently of the membership relationship.

8 (b) A member maintaining a direct action under this section must plead and prove an
9 actual or threatened injury that is not solely the result of an injury suffered or threatened to be
10 suffered by the limited liability company.

11 SECTION 902. DERIVATIVE ACTION. A member may maintain a derivative action
12 to enforce a right of a limited liability company if:

13 (1) the member first makes a demand on the other members in a member-managed
14 limited liability company, or the managers of a manager-managed limited liability company,
15 requesting that they cause the company to bring an action to enforce the right, and the managers
16 or other members do not bring the action within a reasonable time; or

17 (2) a demand under paragraph (1) would be futile.

18 SECTION 903. PROPER PLAINTIFF. A derivative action may be maintained only
19 by a person that is a member at the time the action is commenced and:

20 (1) that was a member when the conduct giving rise to the action occurred; or

21 (2) whose status as a member devolved upon the person by operation of law or pursuant
22 to the terms of the operating agreement from a person that was a member at the time of the

1 conduct.⁹¹

2 **SECTION 904. PLEADING.** In a derivative action under Section 902, the complaint
3 must state with particularity:

4 (1) the date and content of plaintiff's demand and the response to the demand by the
5 managers or other members; or

6 (2) why demand should be excused as futile.⁹²

7 **SECTION 905. SPECIAL LITIGATION COMMITTEE.**

8 (a) If a limited liability company is named as or made a party in a derivative proceeding,
9 the company may appoint a special litigation committee to investigate the claims asserted in the
10 proceeding and determine whether pursuing the action is in the best interests of the company. If
11 the company appoints a special litigation committee, on motion by the committee made in the
12 name of the company, except for good cause shown, the court shall stay discovery for the time
13 reasonably necessary to permit the committee to make its investigation. This subsection does not
14 prevent the court from enforcing a person's right to information under Section 410 or, for good
15 cause shown, granting extraordinary relief in the form of a temporary restraining order or
16 preliminary injunction.

17 (b) A special litigation committee may be composed of one or more disinterested and
18 independent individuals, who may be members.

19 (c) A special litigation committee may be appointed:

20 (1) in a member-managed limited liability company:

21 (A) by the consent of a majority of the members not named as defendants
22 or plaintiffs in the proceeding; and

⁹¹ Conformed to ULPA, § 1002 (returning to the contemporaneous ownership rule).

⁹² Conformed to ULPA, § 1004(2)

1 (B) if all members are named as defendants or plaintiffs in the proceeding,
2 by a majority of the members named as defendants; or

3 (2) in a manager-managed limited liability company:

4 (A) by a majority of the managers not named as defendants or plaintiffs in
5 the proceeding; and

6 (B) if all managers are named as defendants or plaintiffs in the proceeding,
7 by a majority of the managers named as defendants.

8 (d) After appropriate investigation, a special litigation committee may determine that it is
9 in the best interests of the limited liability company that the proceeding:

10 (1) continue under the control of the plaintiff;

11 (2) continue under the control of the committee;

12 (3) be settled on terms approved by the committee; or

13 (4) be dismissed.

14 (e) After making a determination under subsection (d), a special litigation committee
15 shall file with the court a statement of its determination and its report supporting its
16 determination, giving notice to the plaintiff. The court shall determine whether the members of
17 the committee were disinterested and independent and whether the committee conducted its
18 investigation and made its recommendation in good faith, independently, and with reasonable
19 care, with the committee having the burden of proof. If the court finds that the members of the
20 committee were disinterested and independent and that the committee acted in good faith,
21 independently, and with reasonable care, the court shall enforce the determination of the
22 committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a)
23 and allow the action to proceed under the direction of the plaintiff.

1 **SECTION 906. PROCEEDS AND EXPENSES.**

2 (a) Except as otherwise provided in subsection (b):

3 (1) any proceeds or other benefits of a derivative action under Section 902,
4 whether by judgment, compromise, or settlement, belong to the limited liability company and not
5 to the plaintiff; and

6 (2) if the plaintiff receives any proceeds, the plaintiff shall remit them
7 immediately to the company.

8 (b) If a derivative action under Section 902 is successful in whole or in part, the court
9 may award the plaintiff reasonable expenses, including reasonable attorney’s fees and costs,
10 from the recovery of the limited liability company.

11

12

1 [ARTICLE] 10

2 MERGER, CONVERSION, AND DOMESTICATION

3 SECTION 1001. DEFINITIONS. In this [article]:

4 (1) "Constituent limited liability company" means a constituent organization that is a
5 limited liability company.

6 (2) "Constituent organization" means an organization that is party to a merger.

7 (3) "Converted organization" means the organization into which a converting
8 organization converts pursuant to Sections 1006 through 1009.

9 (4) "Converting limited liability company" means a converting organization that is a
10 limited liability company.

11 (5) "Converting organization" means an organization that converts into another
12 organization pursuant to Section 1006.

13 (6) "Domesticated company" means the company that exists after a domesticating foreign
14 limited liability company or limited liability company effects a domestication pursuant to
15 Sections 1010 through 1013.

16 (7) "Domesticating company" means the company that effects a domestication pursuant
17 to Sections 1010 through 1013.

18 (8) "Governing statute" means the statute that governs an organization's internal affairs.

19 (9) "Organization" means a general partnership, including a limited liability partnership,
20 limited partnership, including a limited liability limited partnership, limited liability company,
21 business trust, corporation, or any other person having a governing statute. The term includes a
22 domestic or foreign organization regardless of whether organized for profit.

23 (10) "Organizational documents" means:

24 (A) for a domestic or foreign general partnership, its partnership agreement;

1 (B) for a limited partnership or foreign limited partnership, its certificate of
2 limited partnership and partnership agreement;

3 (C) for a domestic or foreign limited liability company, its certificate or articles of
4 organization and operating agreement, or comparable records as provided in its governing
5 statute;

6 (D) for a business trust, its agreement of trust and declaration of trust;

7 (E) for a domestic or foreign corporation for profit, its articles of incorporation,
8 bylaws, and other agreements among its shareholders which are authorized by its governing
9 statute, or comparable records as provided in its governing statute; and

10 (F) for any other organization, the basic records that create the organization and
11 determine its internal governance and the relations among the persons that own it, have an
12 interest in it, or are members of it.

13 (11) “Personal liability” means liability for a debt, obligation, or other liability of an
14 organization which is imposed on a person that co-owns, has an interest in, or is a member of the
15 organization:

16 (A) by the governing statute solely by reason of the person co-owning, having an
17 interest in, or being a member of the organization; or

18 (B) by the organization’s organizational documents under a provision of the
19 governing statute authorizing those documents to make one or more specified persons liable for
20 all or specified debts, obligations, or other liabilities of the organization solely by reason of the
21 person or persons co-owning, having an interest in, or being a member of the organization.

22 (12) “Surviving organization” means an organization into which one or more other
23 organizations are merged whether the organization preexisted the merger or was created by the
24 merger.

1 **SECTION 1002. MERGER.**

2 (a) A limited liability company may merge with one or more other constituent
3 organizations pursuant to this section, Sections 1003 through 1005, and a plan of merger, if:

4 (1) the governing statute of each of the other organizations authorizes the merger;

5 (2) the merger is not prohibited by the law of a jurisdiction that enacted any of the
6 governing statutes; and

7 (3) each of the other organizations complies with its governing statute in effecting
8 the merger.

9 (b) A plan of merger must be in a record and must include:

10 (1) the name and form of each constituent organization;

11 (2) the name and form of the surviving organization and, if the surviving
12 organization is to be created by the merger, a statement to that effect;

13 (3) the terms and conditions of the merger, including the manner and basis for
14 converting the interests in each constituent organization into any combination of money, interests
15 in the surviving organization, and other consideration;

16 (4) if the surviving organization is to be created by the merger, the surviving
17 organization's organizational documents that are proposed to be in a record; and

18 (5) if the surviving organization is not to be created by the merger, any
19 amendments to be made by the merger to the surviving organization's organizational documents
20 that are, or are proposed to be, in a record.

21 **SECTION 1003. ACTION ON PLAN OF MERGER BY CONSTITUENT**
22 **LIMITED LIABILITY COMPANY.**

23 (a) Subject to Section 1014, a plan of merger must be consented to by all the members of
24 a constituent limited liability company.

1 (b) Subject to Section 1014 and any contractual rights, after a merger is approved, and at
2 any time before articles of merger are delivered to the [Secretary of State] for filing under
3 Section 1004, a constituent limited liability company may amend the plan or abandon the
4 merger:

5 (1) as provided in the plan; or

6 (2) except as otherwise prohibited in the plan, with the same consent as was
7 required to approve the plan.

8 **SECTION 1004. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

9 (a) After each constituent organization has approved a merger, articles of merger must be
10 signed on behalf of:

11 (1) each constituent limited liability company, as provided in Section 203(a); and

12 (2) each other constituent organization, as provided in its governing statute.

13 (b) Articles of merger under this section must include:

14 (1) the name and form of each constituent organization and the jurisdiction of its
15 governing statute;

16 (2) the name and form of the surviving organization, the jurisdiction of its
17 governing statute, and, if the surviving organization is created by the merger, a statement to that
18 effect;

19 (3) the date the merger is effective under the governing statute of the surviving
20 organization;

21 (4) if the surviving organization is to be created by the merger:

22 (A) if it will be a limited liability company, the company's certificate of
23 organization; or

24 (B) if it will be an organization other than a limited liability company, the

1 organizational document that creates the organization that is in a public record;

2 (5) if the surviving organization preexists the merger, any amendments provided
3 for in the plan of merger for the organizational document that created the organization that are in
4 a public record;

5 (6) a statement as to each constituent organization that the merger was approved
6 as required by the organization's governing statute;

7 (7) if the surviving organization is a foreign organization not authorized to
8 transact business in this state, the street and mailing addresses of an office that the [Secretary of
9 State] may use for the purposes of Section 1005(b); and

10 (8) any additional information required by the governing statute of any constituent
11 organization.

12 (c) Each constituent limited liability company shall deliver the articles of merger for
13 filing in the [office of the Secretary of State].

14 (d) A merger becomes effective under this [article]:

15 (1) if the surviving organization is a limited liability company, upon the later of:

16 (A) compliance with subsection (c); or

17 (B) subject to Section 205(c), as specified in the articles of merger; or

18 (2) if the surviving organization is not a limited liability company, as provided by
19 the governing statute of the surviving organization.

20 **SECTION 1005. EFFECT OF MERGER.**

21 (a) When a merger becomes effective:

22 (1) the surviving organization continues or comes into existence;

23 (2) each constituent organization that merges into the surviving organization
24 ceases to exist as a separate entity;

1 (3) all property owned by each constituent organization that ceases to exist vests
2 in the surviving organization;

3 (4) all debts, obligations, or other liabilities of each constituent organization that
4 ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

5 (5) an action or proceeding pending by or against any constituent organization
6 that ceases to exist may be continued as if the merger had not occurred;

7 (6) except as prohibited by other law, all of the rights, privileges, immunities,
8 powers, and purposes of each constituent organization that ceases to exist vest in the surviving
9 organization;

10 (7) except as otherwise provided in the plan of merger, the terms and conditions
11 of the plan of merger take effect; and

12 (8) except as otherwise agreed, if a constituent limited liability company ceases to
13 exist, the merger does not dissolve the limited liability company for the purposes of [Article] 7;

14 (9) if the surviving organization is created by the merger:

15 (A) if it is a limited liability company, the certificate of organization
16 becomes effective; or

17 (B) if it is an organization other than a limited liability company, the
18 organizational document that creates the organization becomes effective; and

19 (10) if the surviving organization preexisted the merger, any amendments
20 provided for in the articles of merger for the organizational document that created the
21 organization become effective.

22 (b) A surviving organization that is a foreign organization consents to the jurisdiction of
23 the courts of this state to enforce any debt, obligation, or other liability owed by a constituent
24 organization, if before the merger the constituent organization was subject to suit in this state on

1 the debt, obligation, or other liability. A surviving organization that is a foreign organization and
2 not authorized to transact business in this state appoints the [Secretary of State] as its agent for
3 service of process for the purposes of enforcing a debt, obligation, or other liability under this
4 subsection. Service on the [Secretary of State] under this subsection must be made in the same
5 manner and has the same consequences as in Section 116(c) and (d).

6 **SECTION 1006. CONVERSION.**

7 (a) An organization other than a limited liability company or a foreign limited liability
8 company may convert to a limited liability company, and a limited liability company may
9 convert to an organization other than a foreign limited liability company pursuant to this section,
10 Sections 1007 through 1009, and a plan of conversion, if:

11 (1) the other organization’s governing statute authorizes the conversion;

12 (2) the conversion is not prohibited by the law of the jurisdiction that enacted the
13 other organization’s governing statute; and

14 (3) the other organization complies with its governing statute in effecting the
15 conversion.

16 (b) A plan of conversion must be in a record and must include:

17 (1) the name and form of the organization before conversion;

18 (2) the name and form of the organization after conversion;

19 (3) the terms and conditions of the conversion, including the manner and basis for
20 converting interests in the converting organization into any combination of money, interests in
21 the converted organization, and other consideration; and

22 (4) the organizational documents of the converted organization that are, or are
23 proposed to be, in a record.

1 **SECTION 1007. ACTION ON PLAN OF CONVERSION BY CONVERTING**
2 **LIMITED LIABILITY COMPANY.**

3 (a) Subject to Section 1014, a plan of conversion must be consented to by all the
4 members of a converting limited liability company.

5 (b) Subject to Section 1014 and any contractual rights, after a conversion is approved,
6 and at any time before articles of conversion are delivered to the [Secretary of State] for filing
7 under Section 1008, a converting limited liability company may amend the plan or abandon the
8 conversion:

9 (1) as provided in the plan; or

10 (2) except as otherwise prohibited in the plan, by the same consent as was
11 required to approve the plan.

12 **SECTION 1008. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE**
13 **DATE.**

14 (a) After a plan of conversion is approved:

15 (1) a converting limited liability company shall deliver to the [Secretary of State]
16 for filing articles of conversion, which must be signed as provided in Section 203(a) and must
17 include;

18 (A) a statement that the limited liability company has been converted into
19 another organization;

20 (B) the name and form of the organization and the jurisdiction of its
21 governing statute;

22 (C) the date the conversion is effective under the governing statute of the
23 converted organization;

24 (D) a statement that the conversion was approved as required by this [act];

1 (E) a statement that the conversion was approved as required by the
2 governing statute of the converted organization; and

3 (F) if the converted organization is a foreign organization not authorized
4 to transact business in this state, the street and mailing addresses of an office which the
5 [Secretary of State] may use for the purposes of Section 1009(c); and

6 (2) if the converting organization is not a converting limited liability company,
7 the converting organization shall deliver to the [Secretary of State] for filing a certificate of
8 organization, which must include, in addition to the information required by Section 201(b):

9 (A) a statement that the converted organization was converted from
10 another organization;

11 (B) the name and form of that converting organization and the jurisdiction
12 of its governing statute; and

13 (C) a statement that the conversion was approved in a manner that
14 complied with the converting organization's governing statute.

15 (b) A conversion becomes effective:

16 (1) if the converted organization is a limited liability company, when the
17 certificate of organization takes effect; and

18 (2) if the converted organization is not a limited liability company, as provided by
19 the governing statute of the converted organization.

20 **SECTION 1009. EFFECT OF CONVERSION.**

21 (a) An organization that has been converted pursuant to this [article] is for all purposes
22 the same entity that existed before the conversion.

23 (b) When a conversion takes effect:

24 (1) all property owned by the converting organization remains vested in the

1 converted organization;

2 (2) all debts, obligations, or other liabilities of the converting organization

3 continue as debts, obligations, or other liabilities of the converted organization;

4 (3) an action or proceeding pending by or against the converting organization may
5 be continued as if the conversion had not occurred;

6 (4) except as prohibited by law other than this [act], all of the rights, privileges,
7 immunities, powers, and purposes of the converting organization remain vested in the converted
8 organization;

9 (5) except as otherwise provided in the plan of conversion, the terms and
10 conditions of the plan of conversion take effect; and

11 (6) except as otherwise agreed, the conversion does not dissolve a converting
12 limited liability company for the purposes of [Article] 7.

13 (c) A converted organization that is a foreign organization consents to the jurisdiction of
14 the courts of this state to enforce any debt, obligation, or other liability for which the converting
15 limited liability company is liable if, before the conversion, the converting limited liability
16 company was subject to suit in this state on the debt, obligation, or other liability. A converted
17 organization that is a foreign organization and not authorized to transact business in this state
18 appoints the [Secretary of State] as its agent for service of process for purposes of enforcing a
19 debt, obligation, or other liability under this subsection. Service on the [Secretary of State] under
20 this subsection must be made in the same manner and has the same consequences as in Section
21 116(c) and (d).

22 **SECTION 1010. DOMESTICATION.**

23 (a) A foreign limited liability company may become a limited liability company pursuant
24 to this section, Sections 1011 through 1013, and a plan of domestication, if:

1 (1) the foreign limited liability company’s governing statute authorizes the
2 domestication;

3 (2) the domestication is not prohibited by the law of the jurisdiction that enacted
4 the governing statute; and

5 (3) the foreign limited liability company complies with its governing statute in
6 effecting the domestication.

7 (b) A limited liability company may become a foreign limited liability company pursuant
8 to this section, Sections 1011 through 1013, and a plan of domestication, if:

9 (1) the foreign limited liability company’s governing statute authorizes the
10 domestication;

11 (2) the domestication is not prohibited by the law of the jurisdiction that enacted
12 the governing statute; and

13 (3) the foreign limited liability company complies with its governing statute in
14 effecting the domestication.

15 (c) A plan of domestication must be in a record and must include:

16 (1) the name of the domesticating company before domestication and the
17 jurisdiction of its governing statute;

18 (2) the name of the domesticated company after domestication and the jurisdiction
19 of its governing statute;

20 (3) the terms and conditions of the domestication, including the manner and basis
21 for converting interests in the domesticating company into any combination of money, interests
22 in the domesticated company, and other consideration; and

23 (4) the organizational documents of the domesticated company that are, or are
24 proposed to be, in a record.

1 **SECTION 1011. ACTION ON PLAN OF DOMESTICATION BY**
2 **DOMESTICATING LIMITED LIABILITY COMPANY.**

3 (a) A plan of domestication must be consented to:

4 (1) by all the members, subject to Section 1014, if the domesticating company is a
5 limited liability company; and

6 (2) as provided in the domesticating company's governing statute, if the company
7 is a foreign limited liability company.

8 (b) Subject to any contractual rights, after a domestication is approved, and at any time
9 before articles of domestication are delivered to the [Secretary of State] for filing under Section
10 1012, a domesticating limited liability company may amend the plan or abandon the
11 domestication:

12 (1) as provided in the plan; or

13 (2) except as otherwise prohibited in the plan, by the same consent as was
14 required to approve the plan.

15 **SECTION 1012. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE**
16 **DATE.**

17 (a) After a plan of domestication is approved, a domesticating company shall deliver to
18 the [Secretary of State] for filing articles of domestication, which must include:

19 (1) a statement, as the case may be, that the company has been domesticated from
20 or into another jurisdiction;

21 (2) the name of the domesticating company and the jurisdiction of its governing
22 statute;

23 (3) the name of the domesticated company and the jurisdiction of its governing
24 statute;

1 (4) the date the domestication is effective under the governing statute of the
2 domesticated company;

3 (5) if the domesticating company was a limited liability company, a statement that
4 the domestication was approved as required by this [act];

5 (6) if the domesticating company was a foreign limited liability company, a
6 statement that the domestication was approved as required by the governing statute of the other
7 jurisdiction; and

8 (7) if the domesticated company was a foreign limited liability company not
9 authorized to transact business in this state, the street and mailing addresses of an office that the
10 [Secretary of State] may use for the purposes of Section 1013(b).

11 (b) A domestication becomes effective:

12 (1) when the certificate of organization takes effect, if the domesticated company
13 is a limited liability company; and

14 (2) according to the governing statute of the domesticated company, if the
15 domesticated organization is a foreign limited liability company.

16 **SECTION 1013. EFFECT OF DOMESTICATION.**

17 (a) When a domestication takes effect:

18 (1) the domesticated company is for all purposes the company that existed before
19 the domestication;

20 (2) all property owned by the domesticating company remains vested in the
21 domesticated company;

22 (3) all debts, obligations, or other liabilities of the domesticating company
23 continue as debts, obligations, or other liabilities of the domesticated company;

24 (4) an action or proceeding pending by or against a domesticating company may

1 be continued as if the domestication had not occurred;

2 (5) except as prohibited by other law, all of the rights, privileges, immunities,
3 powers, and purposes of the domesticating company remain vested in the domesticated
4 company;

5 (6) except as otherwise provided in the plan of domestication, the terms and
6 conditions of the plan of domestication take effect; and

7 (7) except as otherwise agreed, the domestication does not dissolve a
8 domesticating limited liability company for the purposes of [Article] 7.

9 (b) A domesticated company that is a foreign limited liability company consents to the
10 jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by
11 the domesticating company, if, before the domestication, the domesticating company was subject
12 to suit in this state on the debt, obligation, or other liability. A domesticated company that is a
13 foreign limited liability company and not authorized to transact business in this state appoints the
14 [Secretary of State] as its agent for service of process for purposes of enforcing a debt,
15 obligation, or other liability under this subsection. Service on the [Secretary of State] under this
16 subsection must be made in the same manner and has the same consequences as in Section
17 116(c) and (d).

18 (c) If a limited liability company has adopted and approved a plan of domestication under
19 Section 1010 providing for the company to be domesticated in a foreign jurisdiction, a statement
20 surrendering the company's certificate of organization must be delivered to the [Secretary of
21 State] for filing stating:

22 (1) the name of the company;

23 (2) a statement that the certificate of organization is being surrendered in
24 connection with the domestication of the company in a foreign jurisdiction;

1 (3) a statement the domestication was approved as required by this [act]; and
2 (4) the jurisdiction of formation of the domesticated foreign limited liability
3 company.

4 **SECTION 1014. RESTRICTIONS ON APPROVAL OF MERGERS,**
5 **CONVERSIONS, AND DOMESTICATIONS.**

6 (a) If a member of a constituent, converting, or domesticating limited liability company
7 will have personal liability with respect to a surviving, converted, or domesticated organization,
8 approval or amendment of a plan of merger, conversion, or domestication are ineffective without
9 the consent of the member, unless:

10 (1) the company's operating agreement provides for approval of a merger,
11 conversion, or domestication with the consent of fewer than all the members; and

12 (2) the member has consented to the provision of the operating agreement.

13 (b) A member does not give the consent required by subsection (a) merely by consenting
14 to a provision of the operating agreement that permits the operating agreement to be amended
15 with the consent of fewer than all the members.

16 ⁹³**SECTION 1014A. AMENDMENT OR ABANDONMENT OF PLAN OF**
17 **MERGER, CONVERSION, DOMESTICATION.**

18 (a) A plan of merger, domestication, or conversation of a limited liability company may
19 be amended, subject to Section 1014:

20 (1) in the same manner as the plan was approved, if the plan does not provide for
21 the manner in which it may be amended; or

22 (2) by the managers or members of the company in the manner provided in the

⁹³ This Section is based on Entity Transaction Act, § 204 (pertaining to merger) and has been modified in an attempt to avoid amending each part of this Article to include the abandonment/amendment concept.

1 plan, but am member that was entitled to vote on or consent to approval of the plan is entitled to
2 vote on or consent to any amendment of the plan that will change:

3 (A) the amount or kind of interests, securities, obligations, rights to
4 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
5 received by the members of any party to the plan;

6 (B) the organizational documents of the surviving, converted, or
7 domesticated organization that will be in effect immediately after the merger, conversion, or
8 domestication becomes effective, except for changes that, under the governing statute of the
9 organization, do not require approval of the persons considered by the governing statute to be
10 owners of the organization; or

11 (C) any other terms or conditions of the plan, if the change would
12 adversely affect the member in any material respect.

13 (b) After a plan of merger, conversion, or domestication has been approved by a limited
14 liability company and before a statement of merger, conversion, or domestication becomes
15 effective, the plan may be abandoned:

16 (1) as provided in the plan; or

17 (2) unless prohibited by the plan, in the same manner as the plan was approved.

18 (c) If a plan of merger is abandoned after a statement of merger, conversion, or
19 domestication has been filed with the [Secretary of State] and before the filing becomes
20 effective, a statement of abandonment, signed on behalf of a constituent organization, converting
21 organization, or domesticating organization, must be filed with the [Secretary of State] before the
22 time the statement of merger, conversion, or domestication becomes effective. The statement of
23 abandonment takes effect upon filing, and the merger, conversion, or domestication is abandoned
24 and does not become effective. The statement of abandonment must contain:

1 (1) the name of each constituent organization that is authorized [registered] to do
2 business in this state or whose governing statute is a statute of this statute;

3 (2) the date on which the statement of merger, conversion, or domestication was
4 filed; and

5 (3) a statement that the merger, conversion, or domestication has been abandoned
6 in accordance with this Section.

7 **SECTION 1015. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an
8 entity from being merged, converted, or domesticated under law other than this [act].

9

1 [ARTICLE] 11

2 MISCELLANEOUS PROVISIONS

3 SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
4 applying and construing this uniform act, consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among states that enact it.

6 SECTION 1102. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
7 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal
8 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
9 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
11 U.S.C. Section 7003(b).

12 SECTION 1103. SAVINGS CLAUSE. This [act] does not affect an action
13 commenced, proceeding brought, or right accrued before this [act] takes effect.

14 SECTION 1104. APPLICATION TO EXISTING RELATIONSHIPS.

15 (a) Before [all-inclusive date], this [act] governs only:

16 (1) a limited liability company formed on or after [the effective date of this act];

17 and

18 (2) except as otherwise provided in subsection (c), a limited liability company
19 formed before [the effective date of this act] which elects, in the manner provided in its operating
20 agreement or by law for amending the operating agreement, to be subject to this [act].

21 (b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this
22 [act] governs all limited liability companies.

23 (c) For the purposes applying this [act] to a limited liability company formed before [the
24 effective date of this act]:

1 (1) the company’s articles of organization are deemed to be the company’s
2 certificate of organization; and

3 (2) for the purposes of applying Section 102(10) and subject to Section 112(d),
4 language in the company’s articles of organization designating the company’s management
5 structure operates as if that language were in the operating agreement.

6 **Legislative Note:** *It is recommended that the “all-inclusive” date should be at least one year*
7 *after the date of enactment but no longer than two years.*

8
9 *Each enacting jurisdiction should consider whether: (i) this Act makes material changes*
10 *to the “default” (or “gap filler”) rules of jurisdiction’s predecessor statute; and (ii) if so,*
11 *whether subsection (c) should carry forward any of those rules for pre-existing limited liability*
12 *companies. In this assessment, the focus is on pre-existing limited liability companies that have*
13 *left default rules in place, whether advisedly or not. The central question is whether, for such*
14 *limited liability companies, expanding subsection (c) is necessary to prevent material changes to*
15 *the members’ “deal.”*

16
17 *For an example of this type of analysis in the context of another business entity act, see*
18 *the Uniform Limited Partnership Act (2001), § 1206(c).*

19
20 *Section 301 (de-codifying statutory apparent authority) does not require any special*
21 *transition provisions, because: (i) applying the law of agency, as explained in the Comments to*
22 *Sections 301 and 407, will produce appropriate results; and (ii) the notion of “lingering*
23 *apparent authority” will protect any third party that has previously relied on the statutory*
24 *apparent authority of a member of a particular member-managed LLC or a manager of a*
25 *particular manager-managed LLC. RESTATEMENT (THIRD) OF AGENCY § 3.11, cmt. c (2006).*

26
27 *It is unnecessary to expand subsection (c) of this Act if the state’s predecessor act is the*
28 *original Uniform Limited Liability Company Act, revised to provide for perpetual duration.*
29

30 **SECTION 1105. REPEALS.** Effective [all-inclusive date], the following acts and parts
31 of acts are repealed: [the state limited liability company act, as amended, and in effect
32 immediately before the effective date of this act].

33 **SECTION 1106. EFFECTIVE DATE.** This [act] takes effect on