

D R A F T
FOR APPROVAL

**MODEL REGISTERED AGENTS ACT
AND AMENDMENTS TO ENTITY ACTS TO
RATIONALIZE ANNUAL FILINGS**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR
HILTON HEAD, SOUTH CAROLINA
JULY 7-14, 2006

**MODEL REGISTERED AGENTS ACT
AND AMENDMENTS TO ENTITY ACTS
TO RATIONALIZE ANNUAL FILINGS**

WITH INTRODUCTION AND COMMENTS

Copyright ©2006
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and comments, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners, or the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

**DRAFTING COMMITTEE ON MODEL REGISTERED AGENTS ACT AND
AMENDMENTS TO ENTITY ACTS TO RATIONALIZE ANNUAL FILINGS**

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

TERRY J. CARE, 333 S. Sixth St., Las Vegas, NV 89101, *Chair*

MIKE CERBO, State of Colorado, 200 E. Colfax Ave., Rm. 271, Denver, CO 80209

STEPHEN Y. CHOW, One Beacon St., 30th Floor, Boston, MA 02108-3106

SUE ANN DERR, State Capitol Building, 2300 N. Lincoln, Oklahoma City, OK 73105

PETER J. HAMASAKI, P.O. Box 2800, Honolulu, HI 96803-2800

THOMAS S. HEMMENDINGER, 362 Broadway, Providence, RI 02909-1434

EARL F. LEITESS, 3 Whitecap Lane, Ocean Pines, MD 21811

LEONARD J. REESE, 1806 Niles Rd., Austin, TX 78703

RODNEY W. SATTERWHITE, P.O. Box 1540, Midland, TX 79702

WILLIAM H. CLARK, JR., One Logan Square, 18th & Cherry Streets, Philadelphia, PA
19103-6996, *Reporter*

EX OFFICIO

HOWARD J. SWIBEL, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606, *President*

LANI LIU EWART, 1099 Alakea St., Suite 1800, Honolulu, HI 96813, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

HEATHER D. JEFFERSON, 300 Martin Luther King Blvd., Ste. 200, Wilmington, DE 19801-
2465, *ABA Advisor*

**INTERNATIONAL ASSOCIATION OF COMMERCIAL
ADMINISTRATORS ADVISORS**

TIMOTHY R. POULIN, 101 State House Station, Augusta, ME 04333-0101, *Chair, Business
Organization Section, International Association of Commercial Administrators*

KELLY KOPYT, 1 Ashburton Pl., Rm. 1710, Boston, MA 02108, *Vice-Chair, Business
Organization Section, International Association of Commercial Administrators*

GARTH B. JACOBSON, 520 Pike St., Suite 2610, Seattle, WA 98101

JODY M. ROBERTS, 800 Brazos, Suite 1100, Austin, TX 78701

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL
35487-0382, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

**MODEL REGISTERED AGENTS ACT
AND AMENDMENTS TO ENTITY ACTS TO RATIONALIZE ANNUAL FILINGS**

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION | 1 |
| SECTION 1. SHORT TITLE | 3 |
| SECTION 2. DEFINITIONS | 3 |
| SECTION 3. FEES | 15 |
| SECTION 4. ADDRESSES IN FILINGS | 16 |
| SECTION 5. APPOINTMENT OF REGISTERED AGENT | 16 |
| SECTION 6. LISTING OF COMMERCIAL REGISTERED AGENT | 18 |
| SECTION 7. TERMINATION OF LISTING OF COMMERCIAL REGISTERED AGENT | 20 |
| SECTION 8. CHANGE OF REGISTERED AGENT BY ENTITY | 21 |
| SECTION 9. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL REGISTERED AGENT..... | 22 |
| SECTION 10. CHANGE OF NAME, ADDRESS, OR TYPE OF ORGANIZATION BY COMMERCIAL REGISTERED AGENT | 23 |
| SECTION 11. RESIGNATION OF REGISTERED AGENT..... | 24 |
| SECTION 12. APPOINTMENT OF AGENT BY NONFILING OR NONQUALIFIED FOREIGN ENTITY | 26 |
| SECTION 13. SERVICE OF PROCESS ON ENTITIES | 27 |
| SECTION 14. DUTIES OF REGISTERED AGENT | 28 |
| SECTION 15. JURISDICTION AND VENUE. | 29 |
| SECTION 16. CONSISTENCY OF APPLICATION..... | 30 |
| SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT | 30 |
| SECTION 18. SAVINGS CLAUSE..... | 30 |
| SECTION 19. EFFECTIVE DATE..... | 30 |

APPENDIX

| | |
|---|----|
| CONFORMING AMENDMENTS AND REPEALS | 31 |
|---|----|

MODEL REGISTERED AGENTS ACT AND AMENDMENTS TO ENTITY ACTS TO RATIONALIZE ANNUAL FILINGS

INTRODUCTION

The Model Registered Agents Act (the “Act”) is one of several projects undertaken by the Conference and the American Bar Association (“ABA”) to integrate state entity laws into a more coherent and rational scheme. Other projects include the development of the Model Entity Transactions Act jointly by the Conference and the ABA and the addition of Chapter 9 to the Model Business Corporation Act by the Committee on Corporate Laws of the ABA.

The Act grew out of discussions within the International Association of Commercial Administrators (“IACA”), which is the association of state corporation bureaus and similar filing officers in the United States and Canada. IACA was approached by representatives of corporation service companies who were seeking to solve several problems they have encountered in their provision of registered agent services. IACA had also been considering on its own how filing requirements in state corporation bureaus could be simplified and standardized. IACA decided that the time was right for it to develop proposed statutory provisions on two subjects:

1. A standard set of provisions that would apply to all forms of entities that are required to designate in a public filing an agent for service of process.
2. A standard form of annual report to be filed with secretaries of state by all forms of entities.

The Ad Hoc Committee on Entity Rationalization of the ABA Section on Business Law (the “ABA Committee”) had been working cooperatively with IACA for several years on other projects of mutual interest. After IACA had prepared a first draft of provisions on registered agents and annual reports, the ABA Committee joined the drafting effort. The ABA Committee also approached the leadership of the Conference with the suggestion that the Conference also join the drafting effort. The result was the development of the Act.

The original draft of the Act contained separate articles dealing with the two subjects originally identified by IACA: (i) registered agents and (ii) annual report filings. After detailed consideration, the drafting committee and its advisors were all agreed that a separate article on annual reports was not necessary and should be omitted from the Act. Instead, the changes needed to standardize annual report filings are included in the appendix of conforming amendments to the Act. Thus, the Act has two parts:

1. The provisions of the Act itself, which deal with registered agent issues and apply to all forms of entities.
2. An appendix of conforming changes to all of the existing uniform, model, and prototype entity laws that have two separate purposes:
 - o some of the conforming amendments integrate the uniform, model, and prototype entity laws with the new registered agent provisions, and

- the remaining conforming amendments standardize the provisions of the uniform, model, and prototype entity laws on annual report filings.

Under existing uniform, model, and prototype entity laws, an entity's registered agent and the location of the registered agent's office serve three purposes:

1. the registered agent is an agent of the entity authorized to receive service of process on behalf of the entity;
2. the location of the office of the registered agent determines where venue is to be laid in certain actions under the entity's organic law; and
3. the location of the office of the registered agent also determines where certain notices required by the entity's organic law are to be published.

The first function, that of being an agent for service of process, is the principal reason why the appointment of a registered agent is required under entity organic laws. The remaining two functions made sense at a time when the registered office address of an entity was often a business address for the entity. In recent years, however, it has become common for entities to use as their registered agents businesses whose principal activity is the provision of registered agent services, and thus the address of the registered agent has become divorced from any real connection with the business activities of the represented entity.

The conforming amendments in the Appendix to this Act accordingly eliminate the function of the registered office address as a means of determining where venue or publication is appropriate. Venue and publication will be determined by the location of an entity's principal office; or, if the principal office is outside the state, venue and publication will be in a county specified by the legislature (for example, the county where the state capitol is located).

This Act also eliminates the provisions found in some entity organic laws that make the Secretary of State the default agent for service of process under certain circumstances.

1 **MODEL REGISTERED AGENTS ACT**

2

3 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Registered Agents Act.

4 **SECTION 2. DEFINITIONS.**

5 (a) In this [act]:

6 (1) “Appointment of agent” means a statement appointing an agent for service of
7 process filed by:

8 (A) a domestic or foreign unincorporated nonprofit association [under
9 Section 10 of the Uniform Unincorporated Nonprofit Association Act]; or

10 (B) a domestic entity that is not a filing entity or a nonqualified foreign
11 entity under Section 12.

12 (2) “Commercial registered agent” means an individual or a domestic or foreign
13 entity that is listed under Section 6.

14 (3) “Domestic entity” means an entity whose internal affairs are governed by the
15 law of this state.

16 (4) “Entity” means a person that has a separate legal existence or has the power
17 to acquire an interest in real property in its own name other than:

18 (A) an individual;

19 (B) a testamentary, inter vivos, or charitable trust, with the exception of a
20 business trust, statutory trust, or similar trust;

21 (C) an association or relationship that is not a partnership by reason of
22 [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of any
23 other jurisdiction;

- 1 (D) a decedent's estate; or
- 2 (E) a public corporation, government or governmental subdivision,
- 3 agency, or instrumentality, or a quasi-governmental instrumentality.
- 4 (5) "Filing entity" means an entity that is created by the filing of a public organic
- 5 document.
- 6 (6) "Foreign entity" means an entity other than a domestic entity.
- 7 (7) "Foreign qualification document" means an application for a certificate of
- 8 authority or other foreign qualification filing with the [Secretary of State] by a foreign entity.
- 9 (8) "Governor" means a person by or under whose authority the powers of an
- 10 entity are exercised and under whose direction the business and affairs of the entity are managed
- 11 pursuant to the organic law and organic rules of the entity.
- 12 (9) "Interest holder" means a direct holder of an interest.
- 13 (10) "Jurisdiction of organization," with respect to an entity, means the
- 14 jurisdiction whose law includes the organic law of the entity.
- 15 (11) "Noncommercial registered agent" means a person that is not listed as a
- 16 commercial registered agent under Section 6 and that is:
- 17 (A) an individual or a domestic or foreign entity that serves in this state as
- 18 the agent for service of process of an entity; or
- 19 (B) the individual who holds the office or other position in an entity that
- 20 is designated as the agent for service of process pursuant to Section 5(a)(2)(B).
- 21 (12) "Nonqualified foreign entity" means a foreign entity that is not authorized to
- 22 transact business in this state pursuant to a filing with the [Secretary of State].
- 23 (13) "Nonresident LLP statement" means:

1 (A) a statement of qualification of a domestic limited liability partnership
2 that does not have an office in this state; or

3 (B) a statement of foreign qualification of a foreign limited liability
4 partnership that does not have an office in this state.

5 (14) “Person” means an individual, corporation, estate, trust, partnership, limited
6 liability company, business or similar trust, association, joint venture, public corporation,
7 government or governmental subdivision, agency, or instrumentality, or any other legal or
8 commercial entity.

9 (15) “Public organic document” means the public record the filing of which
10 creates an entity, and any amendment to or restatement of that record.

11 (16) “Qualified foreign entity” means a foreign entity that is authorized to
12 transact business in this state pursuant to a filing with the [Secretary of State].

13 (17) “Record” means information that is inscribed on a tangible medium or that is
14 stored in an electronic or other medium and is retrievable in perceivable form.

15 (18) “Registered agent” means a commercial registered agent or a
16 noncommercial registered agent.

17 (19) “Registered agent filing” means:

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

19 (B) a nonresident LLP statement;

20 (C) a foreign qualification document; or

21 (D) an appointment of agent.

22 (20) “Represented entity” means:

23 (A) a domestic filing entity;

1 (B) a domestic or qualified foreign limited liability partnership that does
2 not have an office in this state;

3 (C) a qualified foreign entity;

4 (D) a domestic or foreign unincorporated nonprofit association for which
5 an appointment of agent has been filed;

6 (E) a domestic entity that is not a filing entity for which an appointment
7 of agent has been filed; or

8 (F) a nonqualified foreign entity for which an appointment of agent has
9 been filed.

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

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

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

14 (22) “Type,” with respect to an entity, means a generic form of entity:

15 (A) recognized at common law; or

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

19 (b) In this section:

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

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

(B) vote for the election of the governors of the entity; or
(C) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(2) “Interest” means:

- (A) a governance interest in an unincorporated entity;
- (B) a transferable interest in an unincorporated entity; or
- (C) a share or membership in a corporation.

(3) “Organic law” means the statutes, if any, other than this [act], governing the internal affairs of an entity.

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

(5) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(6) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

Comment

In general. This section outlines the vocabulary of terms used in the Act.

All of the definitions in subsection (b), as well as many of the definitions in subsection (a), were developed for use in the Model Entity Transactions Act (META). States that have adopted META should consider arranging their entity laws in such a manner that the definitions in META will apply more broadly and do not need to be repeated in other laws. The definitions that are common to this Act and META are:

- “domestic entity”
- “entity”
- “filing entity”
- “foreign entity”

1 “governance interest”
2 “governor”
3 “interest”
4 “interest holder”
5 “jurisdiction of organization”
6 “nonqualified foreign entity”
7 “organic law”
8 “organic rules”
9 “person”
10 “private organic rules”
11 “public organic document”
12 “qualified foreign entity”
13 “record”
14 “sign”
15 “transferable interest”
16 “type”
17

18 **Subsection (a).** The definitions in subsection (a) are used throughout the Act, in
19 contrast to the definitions in subsection (b) which are used only in the definitions in this section.
20

21 **“Appointment of agent.” [(1)]** – An appointment of agent is an optional filing that may
22 be made by an entity that does not otherwise make a public filing in the state naming an agent for
23 service of process. If a state has not enacted the Uniform Unincorporated Nonprofit Association
24 Act, paragraph (A) of this definition should be omitted.
25

26 **“Commercial registered agent.” [(2)]** – A commercial registered agent is an individual
27 or entity that is in the business of serving as a registered agent in the state and that files a
28 statement under Section 6. Being listed as a commercial registered agent is voluntary and
29 persons serving as registered agents are not required to be listed under Section 6. The benefits to
30 the registered agent of being listed under Section 6, however, are substantial and most registered
31 agents will elect to be so listed. Although this definition and Section 6 do not expressly require
32 that a foreign entity that is listed as a commercial registered agent be qualified to do business in
33 the state, the activity of serving as a registered agent is one that requires such registration.
34

35 **“Domestic entity.” [(3)]** – The term “domestic entity” in this Act means an entity whose
36 internal affairs are governed by the organic laws of the adopting jurisdiction. Except in the case
37 of general partnerships and unincorporated nonprofit associations, this will mean an entity that is
38 formed, organized, or incorporated under domestic law. In the case of a general partnership
39 organized under the Uniform Partnership Act (1997) (“RUPA”), it will mean a general
40 partnership whose governing law under RUPA § 106 is the law of the adopting state. Under
41 RUPA § 106 the governing law is determined by the location of the partnership’s chief executive
42 office, except for limited liability partnerships where the governing law is the state where the
43 statement of qualification is filed. It is a factual question whether the activities and organization
44 of an unincorporated nonprofit association make it a domestic or foreign entity.
45

46 **“Entity.” [(4)]** – The term “entity” includes:

- Business corporation.
- Business trust.
- General partnership, whether or not a limited liability partnership.
- Limited liability company.
- Limited partnership, whether or not a limited liability limited partnership.
- Nonprofit corporation.
- Unincorporated nonprofit association.

The term does not include a sole proprietorship.

This definition is intended to include all forms of private organizations, regardless of whether organized for profit, and artificial legal persons other than those excluded by paragraphs (A) through (E). Thus, this definition is broader than the definition of “business entity” in, e.g., Code of Ala. § 10-15-2(2) which does not include nonprofit entities. This definition does not exclude regulated entities such as public utilities, banks and insurance companies.

Inter vivos and testamentary trusts are treated in many states as having a separate legal existence, but they have been excluded from the definition of “entity.” Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or statutory business trusts are “entities.”

Section 4 of the Uniform Unincorporated Nonprofit Association Act gives an unincorporated nonprofit association the power to acquire an estate in real property and thus an unincorporated nonprofit association organized in a state that has adopted that act will be an “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did not have the power to acquire real property. Most states that have not adopted the Uniform Act have nonetheless modified the common law rule, but states that have not adopted the Uniform Act should analyze whether they should modify the definition of “entity” to add an express reference to unincorporated nonprofit associations.

There is some question as to whether a partnership subject to the Uniform Partnership Act (1914) (UPA) is an entity or merely an aggregation of its partners. That question has been resolved by Section 201 of the Uniform Partnership Act (1997) (RUPA), which makes clear that a general partnership is an entity with its own separate legal existence. Section 8 of UPA gives partnerships subject to it the power to acquire estates in real property and thus such a partnership will be an “entity.” As a result, all general partnerships will be “entities” regardless of whether the state in which they are organized has adopted RUPA.

Paragraph (C) of this definition excludes from the concept of an “entity” any form of co-ownership of property or sharing of returns from property that is not a partnership under RUPA. In that connection, Section 202(c) of RUPA provides in part:

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

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

(2) The sharing of gross returns does not by itself establish a partnership, even if

1 the persons sharing them have a joint or common right or interest in property from
2 which the returns are derived.
3

4 Limited liability partnerships and limited liability limited partnerships are “entities”
5 because they are general partnerships and limited partnerships, respectively, that have made the
6 additional required election claiming LLP or LLLP status. A limited liability partnership is not,
7 therefore, a separate type of entity from the underlying general or limited partnership that has
8 elected limited liability partnership status.
9

10 **“Filing entity.” [(5)]** – Whether an entity is a filing entity is determined by reference to
11 whether its legal existence is attributable to the filing of a document with the state filing officer.
12 While the statute refers to an entity that is “created,” it is intended to encompass corporations
13 which are “incorporated,” limited liability companies which are “organized,” and limited
14 partnerships which are “formed” by a filing required by the organic law governing the entity.
15 Business trusts (sometimes referred to as “statutory trusts”) present a special problem. In some
16 states, for example, a business trust is a filing entity, while in other states business trusts are
17 recognized only by common law.
18

19 The term does not include a limited liability partnership because an election filed by a
20 general partnership claiming that status (*e.g.*, a statement of qualification under Uniform
21 Partnership Act (1997), § 1001) does not create the entity. A limited liability limited partnership,
22 on the other hand, is a filing entity because the underlying limited partnership is created by filing
23 a certificate of limited partnership.
24

25 This definition is patterned after Model Business Corporation Act § 1.40(9A) (“filing
26 entity”).
27

28 **“Foreign entity.” [(6)]** – The term “foreign entity” includes any non-domestic entity of
29 any type. Where a foreign entity is a filing entity, the entity is governed by the laws of the state
30 of filing. A nonfiling foreign entity is governed by the laws of the state governing its internal
31 affairs. It is a factual question whether a general partnership whose internal affairs are governed
32 by the Uniform Partnership Act (1914) (UPA) is a domestic or foreign partnership. A UPA
33 partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are
34 found. Similar issues arise with respect to determining the domestic or foreign status of
35 unincorporated nonprofit associations. The domestic or foreign characterization of partnerships
36 under the Uniform Partnership Act (1997) (RUPA) that have not registered as limited liability
37 partnerships will be governed by RUPA § 106(a) (“state where the partnership’s chief executive
38 office is located”).
39

40 **“Foreign qualification document.” [(7)]** – This definition should be construed broadly
41 to include filings in the state that are required when a foreign entity is conducting activities in the
42 state, regardless of whether the process is referred to as “obtaining a certificate of authority to do
43 business,” “qualifying to do business,” “being authorized to transact business,” or some other
44 formulation.
45

46 **“Governor.” [(8)]** – This term has been chosen to provide a way of referring to a person

1 who has the authority under an entity’s organic law to make management decisions regarding the
2 entity that is different from any of the existing terms used in connection with particular types of
3 entities. *Compare* Colo. § 7-90-102(35.7) which uses the term “manager” to refer to this
4 concept, even though “manager” is also a term of art in connection with limited liability
5 companies. Depending on the type of entity or its organic rules, the governors of an entity may
6 have the power to act on their own authority, or they may be organized as a board or similar
7 group and only have the power to act collectively, and then only through a designated agent. In
8 other words, a person having only the power to bind the organization pursuant to the instruction
9 of the governors is not a governor. Under the organic rules, particularly those of unincorporated
10 entities, most or all of the management decisions may be reserved to the members or partners.
11 Thus, if a manager of a limited liability company were limited to having authority to execute
12 management decisions made by the members and did not have any authority to make
13 independent management decisions, the manager would not be a governor under this definition.
14

15 Except as described above, the term “governor” includes:

- 16 • Director of a business corporation.
- 17 • Director or trustee of a nonprofit corporation.
- 18 • General partner of a general partnership.
- 19 • General partner of a limited partnership.
- 20 • Manager of a limited liability company.
- 21 • Member of a member-managed limited liability company.
- 22 • Trustee of a business trust.
- 23

24 **“Interest holder.” [(9)]** – This Act does not refer to “equity” interests or “equity”
25 owners or holders because the term “equity” could be confusing in the case of a nonprofit entity
26 whose members do not have an interest in the assets or results of operations of the entity but only
27 have a right to vote on its internal affairs. *Compare* Code of Ala. § 10-15-2(4) (“equity owner”).
28

29 The term “interest holder” includes:

- 30 • Beneficiary of a business trust.
- 31 • General partner of a general partnership.
- 32 • General partner of a limited partnership.
- 33 • Limited partner of a limited partnership.
- 34 • Member of a limited liability company.
- 35 • Member of a nonprofit corporation.
- 36 • Member of an unincorporated nonprofit association.
- 37 • Shareholder of a business corporation.
- 38

39 This definition has been patterned after Model Business Corporation Act § 1.40(13B)
40 (“interest holder”).
41

42 **“Jurisdiction of organization.” [(10)]** – The term “jurisdiction of organization” refers to
43 the jurisdiction whose laws include the organic law of the entity.
44

45 **“Noncommercial registered agent.” [(11)]** – A noncommercial registered agent is a
46 person that serves as an agent for service of process but that is not listed under Section 6. All

1 agents for service of process that are not commercial registered agents are noncommercial
2 registered agents.

3
4 **“Nonqualified foreign entity.” [(12)]** – A nonqualified foreign entity is one for which
5 there is no foreign qualification document in effect in the adopting state.

6
7 **“Nonresident LLP statement.” [(13)]** – A nonresident LLP statement is the filing that is
8 made by a limited liability partnership under Section 1001 of the Uniform Partnership Act
9 (1997).

10
11 **“Person.” [(14)]** – The term “person” has the standard meaning of that term in uniform
12 acts.

13
14 **“Public organic document.” [(15)]** – A “public organic document” is a document that is
15 filed of public record to form, organize, incorporate, or otherwise create an entity. The term does
16 not include a statement of partnership authority filed under Section 303 of the Uniform
17 Partnership Act (1997) or any of the other statements that may be filed under that act since those
18 statements do not create a new entity. A limited liability partnership is the same entity as the
19 partnership that files the statement. For the same reason, the term also does not include a
20 statement of qualification filed under Section 1001 of that act to become a limited liability
21 partnership. Similarly, the term does not include a statement of authority filed under Section 5 of
22 the Uniform Unincorporated Nonprofit Association Act or a statement appointing an agent filed
23 under Section 10 of that act. Where a public organic document has been amended or restated,
24 the term means the public organic document as last amended or restated.

25
26 The term “public organic document” includes:

- 27
- 28 • Articles of incorporation of a business corporation.
 - 29 • Articles of incorporation of a nonprofit corporation.
 - 30 • Certificate of limited partnership.
 - 31 • Certificate of organization of a limited liability company.

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

36
37 **“Qualified foreign entity.” [(16)]** – A qualified foreign entity is one for which there is a
38 foreign qualification document in effect in the adopting state.

39
40 **“Record.” [(17)]** – The term “record” has the standard meaning of that term in uniform
41 acts.

42
43 **“Registered agent.” [(18)]** – This term is used in the Act to refer to agents for service of
44 process in contexts where it is not necessary to differentiate between commercial registered
45 agents and noncommercial registered agents.

1 **“Registered agent filing.” [(19)]** – Some states require that filings in addition to those
2 listed in this definition, such as articles of amendment or articles of merger, state the registered
3 agent information of the entity making the filing. In states where that is the case, this definition
4 should be amended to add the following additional provision:

5
6 “(E) any other filing with the [Secretary of State] under an entity’s organic law that
7 must include the information required by Section 5(a).”
8

9 **“Represented entity.” [(20)]** – This definition lists the various classes of entities for
10 which registered agents act as agents for service of process.
11

12 **“Sign.” [(21)]** – The term “sign” has the standard meaning of that term in uniform acts.
13

14 **“Type.” [(22)]** – The term “type” has been developed in an attempt to distinguish
15 different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a
16 different form of entity or a variation of the same form. For example, a limited partnership,
17 although it has been defined as a partnership, is a different type of entity from a general
18 partnership, while a limited liability partnership is not a different type of entity from a general
19 partnership. In some states cooperative corporations are categories of business corporations or
20 nonprofit corporations, while in other states cooperatives are a separate type of entity.
21

22 **Subsection (b).** The definitions in subsection (b) are used only in the other definitions
23 in this section.
24

25 **“Governance interest.” [(1)]** – A governance interest is typically only part of the interest
26 that a person will hold in an entity and is usually coupled with a transferable interest (or
27 economic rights). However, memberships in some nonprofit corporations and unincorporated
28 nonprofit associations consist solely of governance interests and memberships in other nonprofit
29 entities may not include either governance interests or transferable interests. In some
30 unincorporated business entities, there is a more limited right to transfer governance interests
31 than there is to transfer transferable interests. An interest holder in such an unincorporated
32 business entity who transfers only a transferable interest and retains the governance interest will
33 also retain the status of an interest holder. Whether a transferee who acquires only a transferable
34 interest will acquire the status of an interest holder is determined by the definition of “interest
35 holder.”
36

37 Shares in a business corporation that are nonvoting nonetheless have a governance
38 interest because they entitle the holder to certain rights of access to information and to certain
39 statutory voting rights on amendments of the articles of incorporation.
40

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

1
2 **“Interest.” [(2)]** – In the usual case, the interest held by an interest holder will include
3 both a governance interest and a transferable interest (or economic rights). Members in many
4 nonprofit corporations or unincorporated nonprofit associations do not have a transferable
5 interest because they do not receive distributions, but they nonetheless may hold a governance
6 interest in which case they would have the status of interest holders under this Act. An interest
7 holder in an unincorporated business entity may transfer all or part of the interest holder’s
8 transferable interest without the transferee acquiring the governance interest of the transferor. In
9 that case, whether the transferor will retain the status of an interest holder will be determined by
10 the applicable organic law and the transferee will have the status of an interest holder under
11 paragraph (B) of this definition. That paragraph will also apply to subsequent transferees from
12 the original transferee.

13
14 The term “interest” includes:

- 15 • Beneficial interest in a business trust.
- 16 • Membership in a nonprofit corporation.
- 17 • Membership in an unincorporated nonprofit association.
- 18 • Membership interest in a limited liability company.
- 19 • Partnership interest in a general partnership.
- 20 • Partnership interest in a limited partnership.
- 21 • Shares in a business corporation.

22
23 **“Organic law.” [(3)]** – Organic law includes statutes other than this Act that govern the
24 internal affairs of an entity. Entity laws in a few states purport to require that some of their
25 internal governance rules applicable to a domestic entity also apply to a foreign entity with
26 significant ties to the state. *See, e.g.,* Cal. Gen. Corp. Law § 2115, N.Y. N-PCL §§ 1318-1321,
27 15 Pa.C.S. § 6145. Such a “sticky fingers” law is included within the definition of “organic law”
28 for purposes of this Act.

29
30 **“Organic rules.” [(4)]** – The term “organic rules” means an entity’s public organic
31 document and the private organic rules.

32
33 **“Private organic rules.” [(5)]** – The term private “organic rules” is intended to include
34 all governing rules of an entity that are binding on all of its interest holders, whether or not in
35 written form, except for the provisions of the entity’s public organic document, if any. The term
36 is intended to include agreements in “record” form as well as oral partnership agreements and
37 oral operating agreements among LLC members. Where private organic rules have been
38 amended or restated, the term means the private organic rules as last amended or restated.

39
40 The term “private organic rules” includes:

- 41 • Bylaws of a business corporation.
- 42 • Bylaws of a business trust.
- 43 • Bylaws of a nonprofit corporation.
- 44 • Constitution and bylaws of an unincorporated nonprofit association.
- 45 • Operating agreement of a limited liability company.
- 46 • Partnership agreement of a general partnership.

- Partnership agreement of a limited partnership.

“Transferable interest.” [(6)] – The term “transferable interest” is taken from Section 102(22) of the Uniform Limited Partnership Act (2001).

SECTION 3. FEES.

(a) The [Secretary of State] shall collect the following fees when a filing is made under this [act]:

| <u>document</u> | <u>fee</u> |
|--|------------|
| (1) commercial registered agent listing statement | \$__ |
| (2) commercial registered agent termination statement | \$__ |
| (3) statement of change | \$__ |
| (4) statement of resignation | no fee |
| (5) statement appointing an agent for service of process | \$__ |

(b) The [Secretary of State] shall collect the following fees for copying and certifying a copy of any document filed under this [act]:

- (1) \$__ a page for copying; and
- (2) \$__ for a certificate.

Legislative note: *In a state where filing fees are set by rule making, this section may be replaced with the statement “The [Secretary of State] shall by rule set fees for filings, and the services provided, under this [act].”*

Comment

Subsection (a) establishes the filing fees for all documents that may be filed under the Act. The dollar amounts for each filing should be inserted by the adopting state with reference to the filing fees charged for other filings with its Secretary of State.

Subsection (a)(4) provides that a fee is not required in connection with a filing of a statement of resignation. That permits a person who is named as a registered agent without the

1 person's consent, or who agrees to serve as registered agent for a fee and the fee is not paid, to
2 reflect properly the status of the person in the records of the Secretary of State without expense.

3
4 Subsection (b) establishes fees for copying and certifying documents filed under the Act.
5 The dollar amounts for these fees should be inserted by the adopting state with reference to the
6 fees charged for those services under the state's various entity laws.

7
8 This section is patterned after Section 1.22 of the Model Business Corporation Act.
9

10 **SECTION 4. ADDRESSES IN FILINGS.** Whenever this [act] requires that a filing
11 state an address, the filing must state:

12 (1) an actual street address or rural route box number in this state; and

13 (2) a mailing address in this state, if different from the address under paragraph (1).

14 **Comment**

15
16 When this Act requires that a filing state an address, the address used must always be a
17 geographic location. Where a person uses a post office box as its address, paragraph (2) requires
18 that the post office box address also be stated.
19

20 **SECTION 5. APPOINTMENT OF REGISTERED AGENT.**

21 (a) A registered agent filing must state:

22 (1) the name of the represented entity's commercial registered agent; or

23 (2) if the entity does not have a commercial registered agent:

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

25 or

26 (B) the title of an office or other position with the entity if service of
27 process is to be sent to the person holding that office or position, and the address of the business
28 office of that person.

29 (b) The appointment of a registered agent pursuant to subsection (a)(1) or (2)(A) is an
30 affirmation by the represented entity that the agent has consented to serve as such.

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

(1) be kept available for at least two weeks;

(2) list in alphabetical order the names of the registered agents; and

(3) state the type of filing and name of the represented entity making the filing.

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

Comment

Subsection (a)(1) gives an entity the option of listing just the name of its commercial registered agent in its registered agent filing and omitting the address of the registered agent. If the commercial registered agent subsequently changes its address, that change will be reflected in the filing made by the agent under Section 6, as amended under Section 10, but no change will be necessary in the registered agent filing of any of the entities represented by the commercial registered agent. The address of an entity's commercial registered agent may be ascertained from the records of the Secretary of State by consulting its listing under Section 6.

The address of an entity's noncommercial registered agent is usually not an address of the represented entity. On the other hand, subsection 5(a)(2)(B) permits an entity to designate a person within the organization, such as its general counsel, to serve as its registered agent; and in that circumstance the address of the registered agent may very well be a business address of the represented entity.

Subsection (c) creates a procedure that will permit registered agents to determine if they have been named in filings of which they were not aware by periodically consulting the list prepared by the Secretary of State. Subsection (c) requires the registered agents to be listed in alphabetical order to facilitate the use of the list by registered agents and also to indicate the type of filing (e.g., articles of incorporation, certificates of limited partnership, appointments of agents under Section 12 of this Act, etc.) in which each registered agent is named. Subsection (c) will not be necessary under the circumstances described in the Legislative Note because registered agents may consult the regular database maintained by the Secretary of State to verify when they have been named as a registered agent.

Subsection (a) is a generalization of Section 5.01 of the Model Business Corporation Act, Section 114 of the Uniform Limited Partnership Act, and Section 108 of the Uniform Limited Liability Company Act.

1 **SECTION 6. LISTING OF COMMERCIAL REGISTERED AGENT.**

2 (a) An individual or a domestic or foreign entity may become listed as a commercial
3 registered agent by filing with the [Secretary of State] a commercial registered agent listing
4 statement signed by or on behalf of the person which states:

5 (1) the name of the individual or the name, type, and jurisdiction of organization
6 of the entity;

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

9 (3) the address of a place of business of the person in this state to which service
10 of process and other notice and documents being served on or sent to entities represented by it
11 may be delivered.

12 (b) A commercial registered agent listing statement may include the information
13 regarding acceptance of service of process in a record by the commercial registered agent
14 provided for in Section 13(d).

15 (c) If the name of a person filing a commercial registered agent listing statement is not
16 distinguishable on the records of the [Secretary of State] from the name of another commercial
17 registered agent listed under this section, the person must adopt a fictitious name that is so
18 distinguishable and use that name in its statement and when it does business in this state as a
19 commercial registered agent.

20 (d) A commercial registered agent listing statement takes effect on filing.

21 (e) The [Secretary of State] shall note the filing of the commercial registered agent
22 listing statement in the index of filings maintained by the [Secretary of State] for each entity
23 represented by the registered agent at the time of the filing. The statement has the effect of

1 deleting the address of the registered agent from the registered agent filing of each of those
2 entities.

3 **Legislative note:** *If the Secretary of State is not able to identify from the records maintained by*
4 *the Secretary of State all of the entities represented by a registered agent, subsection (e) should*
5 *be amended to read:*

6
7 *“(e) The commercial registered agent listing statement must be accompanied*
8 *by a list in alphabetical order of the entities represented by the person. The*
9 *[Secretary of State] shall note the filing of the commercial registered agent listing*
10 *statement in the index of filings maintained by the [Secretary of State] for each*
11 *listed entity. The statement has the effect of deleting the address of the registered*
12 *agent from the registered agent filing of each of those entities.”*

13 14 **Comment**

15
16 This section is a substantial simplification of practice because it removes the need to
17 amend the filed record of every entity represented by a commercial registered agent when the
18 agent changes its address.

19
20 Subsection (a)(3) only permits a commercial registered agent to list one address where
21 service of process and other notices may be sent to entities represented by the agent. This may
22 require a change in practice for registered agents who have previously maintained more than one
23 address in a state and have permitted represented entities to choose which address they would
24 use in their registered agent filings. A corporation, for example, located in one part of a state
25 might include in its articles of incorporation an address for its registered agent which is the
26 address of an office of the agent located close to the corporation and which is different than the
27 address used by a corporation in another part of the state which has the same registered agent but
28 uses a different office of the agent. In the example given, the registered agent will need to pick
29 just one address in the state where all service of process will be sent to it. If a commercial
30 registered agent wishes to maintain more than one office in a state where service of process will
31 be received by it, it can accomplish that result by organizing separate entities to conduct its
32 business in the state and filing separate statements for each entity under this section.

33
34 Subsection (e) is a transitional provision that deals with the effect on the entities
35 represented by a registered agent at the time the agent is first listed under this section. The effect
36 is to amend the registered agent filing of each such entity to delete the address of the registered
37 agent consistent with Section 5(a)(1).

38
39 This section is patterned generally after 15 Pa.C.S. § 109.
40
41

1 **SECTION 7. TERMINATION OF LISTING OF COMMERCIAL REGISTERED**
2 **AGENT.**

3 (a) A commercial registered agent may terminate its listing as a commercial registered
4 agent by filing with the [Secretary of State] a commercial registered agent termination statement
5 signed by or on behalf of the agent which states:

6 (1) the name of the agent as currently listed under Section 6; and

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

9 (b) A commercial registered agent termination statement takes effect on the 31st day
10 after the day on which it is filed.

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

13 (d) When a commercial registered agent termination statement takes effect, the
14 registered agent ceases to be an agent for service of process on each entity formerly represented
15 by it. Until an entity formerly represented by a terminated commercial registered agent appoints
16 a new registered agent, service of process may be made on the entity as provided in Section 13.
17 Termination of the listing of a commercial registered agent under this section does not affect any
18 contract rights a represented entity may have against the agent.

19 **Comment**
20

21 This section provides a procedure for a commercial registered agent to withdraw from the
22 business of providing registered agent services. Use of the procedure in this section will
23 terminate the status of the registered agent as the agent for service of process of all the entities
24 represented by the agent. Thus, the procedure in this section differs from the procedure in
25 Section 11, which permits a registered agent to resign with respect to just a single represented
26 entity instead of resigning generally with respect to all of its represented entities.
27

1 **SECTION 8. CHANGE OF REGISTERED AGENT BY ENTITY.**

2 (a) A represented entity may change the information currently on file under Section 5(a)
3 by filing with the [Secretary of State] a statement of change signed on behalf of the entity which
4 states:

5 (1) the name of the entity; and

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

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

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

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

12 (c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by
13 the represented entity that the agent has consented to serve as such.

14 (d) A statement of change filed under this section takes effect on filing.

15 (e) Instead of using the procedures in this section, a represented entity may change the
16 information currently on file under Section 5(a) by amending its most recent registered agent
17 filing in the manner provided by the laws of this state other than this [act] for amending that
18 filing.

19 **Comment**

20
21 Changes of the registered agent or the office address of a registered agent are usually
22 routine matters that do not affect the rights of the interest holders of the entity. This section
23 permits those changes to be made without a formal amendment of an entity's public organic
24 document, without approval of its interest holders, and, indeed, even without formal approval by
25 its governors (i.e., the persons managing the entity's affairs, such as the board of directors of a
26 corporation).
27

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

3
4 Subsection (e) makes clear that the procedures in this section are not exclusive. A
5 common way in which an entity changes its registered agent or registered office is to include the
6 change in an amendment of its public organic document.

7
8 Subsection (a) is a generalization of Section 5.02(a) of the Model Business Corporation
9 Act, Section 115 of the Uniform Limited Partnership Act, and Section 109 of the Uniform
10 Limited Liability Company Act. As to subsection (c), compare Section 5.02(a)(5) of the Model
11 Business Corporation Act. Subsection (d) is patterned after Section 115(b) of the Uniform
12 Limited Partnership Act.

13
14 **SECTION 9. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL**
15 **REGISTERED AGENT.**

16 (a) If a noncommercial registered agent changes its name or its address as currently in
17 effect with respect to a represented entity pursuant to Section 5(a), the agent shall file with the
18 [Secretary of State], with respect to each entity represented by the agent, a statement of change
19 signed by or on behalf of the agent which states:

20 (1) the name of the entity;

21 (2) the name and address of the agent as currently in effect with respect to the
22 entity;

23 (3) if the name of the agent has changed, its new name; and

24 (4) if the address of the agent has changed, the new address.

25 (b) A statement of change filed under this section takes effect on filing.

26 (c) A noncommercial registered agent shall promptly furnish the represented entity with
27 notice in a record of the filing of a statement of change and the changes made by the filing.

28 **Comment**

29
30 This section permits a noncommercial registered agent to change the name and address of
31 the agent that appears in the registered agent filing of an entity represented by the agent.

1 Because the noncommercial registered agent is not listed under Section 6, the agent will not be
2 able to use the procedures in Section 10 which permit commercial registered agents to make only
3 one filing to change their name and address for all entities represented by them. Thus the
4 noncommercial registered agent will need to make a filing under this section for each entity
5 represented by the agent.

6
7 This section is patterned after 15 Pa.C.S. § 108.
8

9 **SECTION 10. CHANGE OF NAME, ADDRESS, OR TYPE OF ORGANIZATION**
10 **BY COMMERCIAL REGISTERED AGENT.**

11 (a) If a commercial registered agent changes its name, its address as currently listed
12 under Section 6(a), or its type or jurisdiction of organization, the agent shall file with the
13 [Secretary of State] a statement of change signed by or on behalf of the agent which states:

- 14 (1) the name of the agent as currently listed under Section 6(a);
15 (2) if the name of the agent has changed, its new name;
16 (3) if the address of the agent has changed, the new address; and
17 (4) if the type or jurisdiction of organization of the agent has changed, the new
18 type or jurisdiction of organization.

19 (b) The filing of a statement of change under subsection (a) is effective to change the
20 information regarding the commercial registered agent with respect to each entity represented by
21 the agent.

22 (c) A statement of change filed under this section takes effect on filing.

23 (d) A commercial registered agent shall promptly furnish each entity represented by it
24 with notice in a record of the filing of a statement of change relating to the name or address of
25 the agent and the changes made by the filing.

26 (e) If a commercial registered agent changes its address without filing a statement of
27 change as required by this section, the [Secretary of State] may cancel the listing of the agent

1 under Section 6. A cancellation under this subsection has the same effect as a termination under
2 Section 7. Promptly after canceling the listing of an agent, the [Secretary of State] shall serve
3 notice in a record in the manner provided in Section 13(b) or (c) on:

4 (1) each entity represented by the agent, stating that the agent has ceased to be an
5 agent for service of process on the entity and that, until the entity appoints a new registered
6 agent, service of process may be made on the entity as provided in Section 13; and

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

9 **Comment**

10
11 This section permits a commercial registered agent to make a single filing that has the
12 effect of changing the name or address of the agent for all of the entities represented by it.
13

14 Subsection (e) provides a procedure by which the Secretary of State may cancel the
15 listing of a commercial registered agent when the Secretary of State learns that the agent has
16 changed its address without amending its listing as a commercial registered agent. When the
17 Secretary of State acts to cancel the listing of a commercial registered agent, the Secretary of
18 State is required to notify both (i) the entities represented by the agent that they no longer have a
19 valid registered agent and (ii) the agent that it no longer is listed as a commercial registered
20 agent. Unlike in the case of a resignation under Section 11 which is initiated by the registered
21 agent and thus does not require a notice from the Secretary of State to the agent, notice by the
22 Secretary of State to the agent is needed under this section so that the agent has notice that its
23 representation of the entities it previously represented has terminated under Section 7.
24

25 This section is patterned after 15 Pa.C.S. § 109(b).
26

27 **SECTION 11. RESIGNATION OF REGISTERED AGENT.**

28 (a) A registered agent may resign at any time with respect to a represented entity by
29 filing with the [Secretary of State] a statement of resignation signed by or on behalf of the agent
30 which states:

31 (1) the name of the entity;

32 (2) the name of the agent;

1 (3) that the agent resigns from serving as agent for service of process for the
2 entity; and

3 (4) the name and address of the person to which the agent will send the notice
4 required by subsection (c).

5 (b) A statement of resignation takes effect on the earlier of the 31st day after the day on
6 which it is filed or the appointment of a new registered agent for the represented entity.

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

9 (d) When a statement of resignation takes effect, the registered agent ceases to have
10 responsibility for any matter tendered to it as agent for the represented entity. A resignation
11 under this section does not affect any contractual rights the entity has against the agent.

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

14 **Comment**

15
16 Resignation under this section may be accomplished solely by action of the registered
17 agent and does not require the cooperation or consent of the represented entity. Whether a
18 resignation violates a contract between the registered agent and the represented entity is beyond
19 the scope of this Act and subsection (d) preserves whatever claims a represented entity may have
20 against its registered agent for a wrongful termination. Even if a resignation were to violate such
21 a contract, the resignation would still be effective if the provisions of this section are followed.

22
23 Resignation under this section relates only to the entity named in the statement of
24 resignation. Thus, the procedure in this section differs from the procedure in Section 7 which
25 terminates the status of the agent as agent for all of the entities represented by it.

26
27 Subsection (b) delays the effectiveness of a statement of resignation for 31 days to allow
28 the notice of the resignation that must be sent under subsection (c) to reach the represented entity
29 and to allow the represented entity to arrange for a substitute registered agent.

30
31 Subsection (e) makes clear that a registered agent may resign with respect to an entity
32 that is not in good standing and supersedes the contrary administrative practice in some states of

1 refusing to accept any filings with respect to an entity that is not in good standing until the
2 problem with the entity's standing is cured.
3

4 Subsection (a) is a generalization of Section 5.03(a) of the Model Business Corporation
5 Act, Section 116(a) of the Uniform Limited Partnership Act, and Section 110(a) of the Uniform
6 Limited Liability Company Act. Subsection (b) is a generalization of Section 5.03(c) of the
7 Model Business Corporation Act, Section 116(c) of the Uniform Limited Partnership Act, and
8 Section 110(c) of the Uniform Limited Liability Company Act. Subsection (c) is derived from
9 Section 5.03(b) of the Model Business Corporation Act, Section 116(b) of the Uniform Limited
10 Partnership Act, and Section 110(b) of the Uniform Limited Liability Company Act, except that
11 notice under this Act is to be given by the resigning registered agent rather than the Secretary of
12 State.
13

14 **SECTION 12. APPOINTMENT OF AGENT BY NONFILING OR** 15 **NONQUALIFIED FOREIGN ENTITY.**

16 (a) A domestic entity that is not a filing entity or a nonqualified foreign entity may file
17 with the [Secretary of State] a statement appointing an agent for service of process signed on
18 behalf of the entity which states:

19 (1) the name, type, and jurisdiction of organization of the entity; and

20 (2) the information required by Section 5(a).

21 (b) A statement appointing an agent for service of process takes effect on filing.

22 (c) The appointment of a registered agent under this section does not qualify a
23 nonqualified foreign entity to do business in this state and is not sufficient alone to create
24 personal jurisdiction over the nonqualified foreign entity in this state.

25 (d) A statement appointing an agent for service of process may not be rejected for filing
26 because the name of the entity filing the statement is not distinguishable on the records of the
27 [Secretary of State] from the name of another entity appearing in those records. The filing of a
28 statement appointing an agent for service of process does not make the name of the entity filing
29 the statement unavailable for use by another entity.

1 (e) An entity that has filed a statement appointing an agent for service of process may
2 cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and
3 must state the name of the entity and that the entity is canceling its appointment of an agent for
4 service of process in this state. A statement appointing an agent for service of process, which
5 has not been cancelled earlier, is effective for a period of five years after the date of filing.

6 (f) A statement appointing an agent for service of process for a nonqualified foreign
7 entity terminates automatically on the date the entity becomes a qualified foreign entity.

8 **Comment**

9
10 Filing under this section is elective, and no inference should be drawn from the failure of
11 an entity to make such a filing.

12
13 Subsection (a) is patterned after Section 10 of the Uniform Unincorporated Nonprofit
14 Association Act.

15
16 Subsection (e) is patterned after Section 9-515(a) of the Uniform Commercial Code.
17

18 **SECTION 13. SERVICE OF PROCESS ON ENTITIES.**

19 (a) A registered agent is an agent of the represented entity authorized to receive service
20 of any process, notice, or demand required or permitted by law to be served on the entity.

21 (b) If an entity that previously filed a registered agent filing with the [Secretary of State]
22 no longer has a registered agent, or if its registered agent cannot with reasonable diligence be
23 served, the entity may be served by registered or certified mail, return receipt requested,
24 addressed to the governors of the entity by name at its principal office in accordance with any
25 applicable judicial rules and procedures. The names of the governors and the address of the
26 principal office may be as shown in the most recent annual report filed with the [Secretary of
27 State]. Service is perfected under this subsection at the earliest of:

28 (1) the date the entity receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the entity; or
(3) five days after its deposit with the United States Postal Service, if correctly addressed and with sufficient postage.

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

(d) Service of process, notice, or demand on a registered agent must be in the form of a written document, except that service may be made on a commercial registered agent in such other forms of a record, and subject to such requirements, as the agent has stated from time to time in its listing under Section 6 that it will accept.

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

Comment

Subsection (c) provides a means for serving process on an entity that cannot be served under subsection (a) or (b). Some entity organic laws require that service of process in that circumstance be made on the Secretary of State, but that leaves unanswered the question of what the Secretary of State should do with the process. Subsection (c) is patterned after Pa. R.Civ.Proc. 423(3) and 424(2). A similar approach is taken by Fed. R.Civ.Proc. 4(h)(1).

Subsections (a) and (d) are a generalization of Section 5.04(a) and (c) of the Model Business Corporation Act, Section 117(a) and (f) of the Uniform Limited Partnership Act, and Section 111(a) and (e) of the Uniform Limited Liability Company Act. Subsection (b) is a generalization of Section 5.04(b) of the Model Business Corporation Act.

SECTION 14. DUTIES OF REGISTERED AGENT. The only duties under this [act] of a registered agent who has complied with this [act] are:

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

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

5 (3) if the agent is a noncommercial registered agent, to keep current the information
6 required by Section 5(a) in the most recent registered agent filing for the entity; and

7 (4) if the agent is a commercial registered agent, to keep current the information listed
8 for it under Section 6(a).

9 **Comment**

10
11 This section is limited to prescribing the duties of a registered agent under this Act. An
12 agent may undertake other responsibilities to a represented entity, such as by contract or course
13 of dealing, but those duties will be determined under other law.
14

15 **SECTION 15. JURISDICTION AND VENUE.** The appointment or maintenance in
16 this state of a registered agent does not by itself create the basis for personal jurisdiction over the
17 represented entity in this state. The address of the agent does not determine venue in an action or
18 proceeding involving the entity.

19 **Comment**

20
21 As discussed in the Introduction to the Act, one of the purposes of the Act is to eliminate
22 the registered office address as a means of determining where venue is to be laid in an action
23 involving a represented entity. Consistent with that purpose, this section makes clear that the
24 address of a registered agent does not determine venue. This section may be inconsistent with
25 other law or procedural rules in a state, and thus existing law on venue should be reviewed when
26 this Act is considered for adoption in a state. *Compare Cooper v. Chevron U.S.A., Inc.*, 132
27 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New Mexico statute permitting venue “in the
28 county where the statutory agent designated by the foreign corporation resides”).
29

SECTION 16. CONSISTENCY OF APPLICATION. In applying and construing this [act], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

Comment

A provision similar to this section is included in each uniform act promulgated by the Conference. Because this Act is not a uniform act, however, the usual formulation of this section has been changed from “uniformity” of application to “consistency” of application to promote the same policy while recognizing the different nature of this Act.

SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 18. SAVINGS CLAUSE. This [act] does not affect an action or proceeding commenced or right accrued before the effective date of this [act].

SECTION 19. EFFECTIVE DATE. This [act] takes effect _____.

1 **APPENDIX**

2 **CONFORMING AMENDMENTS AND REPEALS**

3
4
5 **SECTION A1. MODEL BUSINESS CORPORATION ACT**

6 (a) Sections 1.22, 1.25, 1.26, 1.41, and 2.02 of the Model Business Corporation Act
7 are amended to read:

8 § 1.22. Filing, service, and copying fees.

9 (a) The secretary of state shall collect the following fees when the documents
10 described in this subsection are delivered to him for filing:

11 * * *

12 ~~(7) Corporation's statement of change of registered agent or~~
13 ~~registered office or both~~ \$__

14 ~~(8) Agent's statement of change of registered office for~~
15 ~~each affected corporation not to exceed a total of~~ \$__

16 ~~(9) Agent's statement of resignation~~ no fee

17 * * *

18 § 1.25. Filing duty of Secretary of State.

19 * * *

20 (b) The secretary of state files a document by recording it as filed on the date and
21 time of receipt. After filing a document, except as provided in ~~sections 5.03 and~~ section 15.10,
22 the secretary of state shall deliver to the domestic or foreign corporation or its representative a
23 copy of the document with an acknowledgement of the date and time of filing.

24 * * *

25 § 1.26. Appeal from Secretary of State's refusal to file document.

26 (a) If the secretary of state refuses to file a document delivered to his office for filing,
27 the domestic or foreign corporation may appeal the refusal within 30 days after the return of the
28 document to the [name or describe] court [of the county where the corporation's principal office
29 is or will be located (or, if none in this state, ~~its registered office~~) ~~is or will be located~~] [of
30 _____ county}]. The appeal is commenced by petitioning the court to compel filing the
31 document and by attaching to the petition the document and the secretary of state's explanation
32 of his refusal to file.

33 * * *

34 § 1.41. Notice.

35 * * *

36 (d) Written notice to a domestic or foreign corporation (authorized to transact
37 business in this state) may be addressed to its registered agent ~~at its registered office~~ or to the
38 corporation or its secretary at its principal office shown in its most recent annual report or, in the
39 case of a foreign corporation that has not yet delivered an annual report, in its application for a
40 certificate of authority.

41 * * *

1 § 2.02. Articles of incorporation.

2 (a) The articles of incorporation must set forth:

3 * * *

4 (3) ~~the street address of the corporation's initial registered office and the name~~
5 ~~of its initial registered agent at that office~~ the information required by [Section 5(a) of the
6 Model Registered Agents Act]; and

7 * * *

8
9 (b) Chapter 5 of the Model Business Corporation Act is repealed.

10 (c) Sections 7.03, 7.20, 8.09, 10.05, 11.07, 13.30, 14.07, 14.08, 14.20, 14.21, 14.22,
11 14.23, 14.31, 15.03 and 15.04 of the Model Business Corporation Act are amended to read:

12 § 7.03. Court-ordered meeting.

13 (a) The [name or describe] court of the county where a corporation's principal office
14 is located (or, if none in this state, ~~its registered office~~) is located of _____ county may
15 summarily order a meeting to be held:

16 * * *

17 § 7.20. Shareholders' list for meeting.

18 * * *

19 (d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect
20 the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)),
21 the [name or describe] court of the county where a corporation's principal office is located (or, if
22 none in this state, ~~its registered office~~) is located of _____ county, on application of the
23 shareholder, may summarily order the inspection or copying at the corporation's expense and
24 may postpone the meeting for which the list was prepared until the inspection or copying is
25 complete.

26 * * *

27 § 8.09. Removal of directors by judicial proceeding.

28 (a) The [name or describe] court of the county where a corporation's principal office
29 is located (or, if none in this state, ~~its registered office~~) is located of _____ county may
30 remove a director of the corporation from office in a proceeding commenced by or in the right of
31 the corporation if the court finds that (1) the director engaged in fraudulent conduct with respect
32 to the corporation or its shareholders, grossly abused the position of director, or intentionally
33 inflicted harm on the corporation; and (2) considering the director's course of conduct and the
34 inadequacy of other available remedies, removal would be in the best interest of the corporation.

35 * * *

36 § 10.05. Amendment by board of directors.

37 Unless the articles of incorporation provide otherwise, a corporation's board of directors
38 may adopt amendments to the corporation's articles of incorporation without shareholder
39 approval:

40 * * *

41 (3) ~~to delete the name and address of the initial registered agent or registered~~
42 ~~office, if a statement of change is on file with the secretary of state; to change the~~
43 information required by [section 5(a) of the Model Registered Agents Act];

1 * * *
2 § 11.07. Effect of merger or share exchange.
3

4 (d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible
5 entity, that is the survivor of the merger is deemed to:

6 (1) ~~appoint the secretary of state as its agent for~~ agree that service of process
7 in a proceeding to enforce the rights of shareholders of each domestic corporation that is
8 a party to the merger who exercise appraisal rights may be made in the manner provided
9 in [Section 13 of the Model Registered Agents Act], and

10 * * *
11 § 13.30. Court action.

12 * * *
13 (b) The corporation shall commence the proceeding in the appropriate court of the
14 county where the corporation's principal office is located (or, if none, ~~its registered office~~) ~~in this~~
15 ~~state is located in this state, of~~ county). If the corporation is a foreign corporation
16 ~~without a registered office in this state,~~ it shall commence the proceeding in the county in this
17 state where the principal office ~~or registered office~~ of the domestic corporation merged with the
18 foreign corporation was located or, if the domestic corporation did not have its principal office in
19 this state at the time of the transaction, in county.

20 * * *
21 § 14.07. Other claims against dissolved corporation.

22 * * *
23 (b) The notice must:
24 (1) be published one time in a newspaper of general circulation in the county
25 where the dissolved corporation's principal office is or was last located (or, if none in this
26 state, ~~its registered office~~) ~~is or was last located~~ of county).
27 * * *

28 § 14.08. Court proceedings.

29 (a) A dissolved corporation that has published a notice under section 14.07 may file
30 an application with the [name or describe] court of the county where the dissolved corporation's
31 principal office is located (or, if none in this state, ~~its registered office~~) ~~is located of~~ county)
32 for a determination of the amount and form of security to be provided for payment of claims that
33 are contingent or have not been made known to the dissolved corporation or that are based on an
34 event occurring after the effective date of dissolution but that, based on the facts known to the
35 dissolved corporation, are reasonably estimated to arise after the effective date of dissolution.
36 Provision need not be made for any claim that is or is reasonably anticipated to be barred under
37 section 14.07(c).

38 * * *
39 § 14.20. Grounds for administrative dissolution.

40 The secretary of state may commence a proceeding under section 14.21 to
41 administratively dissolve a corporation if:

42 * * *
43 (3) the corporation is without a registered agent ~~or registered office~~ in this
44 state for 60 days or more;
45 (4) the corporation does not notify the secretary of state within 60 days that its
46 registered agent ~~or registered office~~ has been changed, or that its registered agent has

1 resigned, ~~or that its registered office has been discontinued~~; or

2 * * *

3 § 14.21. Procedure for and effect of administrative dissolution.

4 (a) If the secretary of state determines that one or more grounds exist under section
5 14.20 for dissolving a corporation, he shall serve the corporation with written notice of his
6 determination ~~under section 5.04~~.

7 (b) If the corporation does not correct each ground for dissolution or demonstrate to
8 the reasonable satisfaction of the secretary of state that each ground determined by the secretary
9 of state does not exist within 60 days after service of the notice is perfected ~~under section 5.04~~,
10 the secretary of state shall administratively dissolve the corporation by signing a certificate of
11 dissolution that recites the ground or grounds for dissolution and its effective date. The secretary
12 of state shall file the original of the certificate and serve a copy on the corporation ~~under section~~
13 ~~5.04~~.

14 * * *

15 § 14.22. Reinstatement following administrative dissolution.

16 * * *

17 (b) If the secretary of state determines that the application contains the information
18 required by subsection (a) and that the information is correct, he shall cancel the certificate of
19 dissolution and prepare a certificate of reinstatement that recites his determination and the
20 effective date of reinstatement, file the original of the certificate, and serve a copy on the
21 corporation ~~under section 5.04~~.

22 * * *

23 § 14.23. Appeal from denial of reinstatement.

24 (a) If the secretary of state denies a corporation's application for reinstatement
25 following administrative dissolution, he shall serve the corporation ~~under section 5.04~~ with a
26 written notice that explains the reason or reasons for denial.

27 * * *

28 § 14.31. Procedure for judicial dissolution.

29 (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in
30 [name the county or counties]. Venue for a proceeding brought by any other party named in
31 section 14.30 lies in the county where a corporation's principal office is or was last located (or, if
32 none in this state, ~~its registered office~~) ~~is or was last located~~ of _____ county).

33 * * *

34 § 15.03. Application for certificate of authority.

35 (a) A foreign corporation may apply for a certificate of authority to transact business
36 in this state by delivering an application to the secretary of state for filing. The application must
37 set forth:

38 * * *

39 (5) ~~the address of its registered office in this state and the name of its~~
40 ~~registered agent at that office~~ the information required by [Section 5(a) of the Model
41 Registered Agents Act]; and

42 * * *

43 § 15.04. Amended certificate of authority.

44 (a) A foreign corporation authorized to transact business in this state must obtain an
45 amended certificate of authority from the secretary of state if it changes:

46 (1) its corporate name;

- 1 (2) the period of its duration; ~~or~~
2 (3) any of the information required by [Section 5(a) of the Model Registered
3 Agents Act]; or
4 (4) the state or country of its incorporation.

5 * * *

6
7 (d) Sections 15.07, 15.08, and 15.09 of the Model Business Corporation Act are
8 repealed.

9 (e) Sections 15.30, 16.04, 16.05, and 16.21 of the Model Business Corporation Act
10 are amended to read:

11 § 15.30. Grounds for revocation.

12 The secretary of state may commence a proceeding under section 15.31 to revoke the
13 certificate of authority of a foreign corporation authorized to transact business in this state if:

14 * * *

15 (3) the foreign corporation is without a registered agent ~~or registered office~~ in
16 this state for 60 days or more;

17 (4) the foreign corporation does not inform the secretary of state ~~under section~~
18 ~~15.08 or 15.09~~ by an appropriate filing that its registered agent ~~or registered office~~ has
19 changed; or that its registered agent has resigned, ~~or that its registered office has been~~
20 ~~discontinued~~ within 60 days of the change; or resignation, ~~or discontinuance~~;

21 * * *

22 § 16.04. Court-ordered inspection.

23 (a) If a corporation does not allow a shareholder who complies with section 16.02(a)
24 to inspect and copy any records required by that subsection to be available for inspection, the
25 [name or describe court] of the county where the corporation's principal office is located (or, if
26 none in this state, ~~its registered office~~) is located of _____ county) may summarily order
27 inspection and copying of the records demanded at the corporation's expense upon application of
28 the shareholder.

29 (b) If a corporation does not within a reasonable time allow a shareholder to inspect
30 and copy any other record, the shareholder who complies with sections 16.02(b) and (c) may
31 apply to the [name or describe court] in the county where the corporation's principal office is
32 located (or, if none in this state, ~~its registered office~~) is located of _____ county) for an
33 order to permit inspection and copying of the records demanded. The court shall dispose of an
34 application under this subsection on an expedited basis.

35 * * *

36 § 16.05. Inspection of records by directors.

37 * * *

38 (b) The [name or describe the court] of the county where the corporation's principal
39 office is located (or, if none in this state, ~~its registered office~~) is located of _____ county)
40 may order inspection and copying of the books, records and documents at the corporation's
41 expense, upon application of a director who has been refused such inspection rights, unless the

1 corporation establishes that the director is not entitled to such inspection rights. The court shall
2 dispose of an application under this subsection on an expedited basis.

3 * * *

4 § 16.21. Annual report for Secretary of State.

5 (a) Each domestic corporation, and each foreign corporation authorized to transact
6 business in this state, shall deliver to the secretary of state for filing an annual report that sets
7 forth:

8 (1) the name of the corporation;

9 (2) ~~and the state or country~~ the jurisdiction under whose law it is incorporated;

10 ~~(2) (3) the address of its registered office and the name of its registered agent at~~
11 ~~that office in this state~~ the information required by [section 5(a) of the Model Registered
12 Agents Act];

13 ~~(3) (4)~~ the address of its principal office, wherever located;

14 ~~(4) (5)~~ the names ~~and business addresses~~ of its ~~directors and~~ principal officers;

15 and

16 ~~(6)~~ the names of its directors, except that in the case of a corporation that has
17 eliminated its board of directors pursuant to section 7.32 the annual report shall set forth
18 the names of the shareholders instead.

19 ~~(5)~~ a brief description of the nature of its business;

20 ~~(6)~~ the total number of authorized shares, itemized by class and series, if any,
21 within each class; and

22 ~~(7)~~ the total number of issued and outstanding shares, itemized by class and
23 series, if any, within each class.

24 * * *

25 26 27 **SECTION A2. MODEL NONPROFIT CORPORATION ACT**

28
29 (a) Sections 1.22, 1.25, 1.26, and 2.02 of the Model Nonprofit Corporation Act are
30 amended to read:

31 § 1.22. Filing, service, and copying fees.

32 (a) The secretary of state shall collect the following fees when the documents
33 described in this subsection are delivered ~~to him~~ for filing:

34 * * *

35 ~~(7) Corporation's statement of change of registered agent or~~
36 ~~registered office or both~~ _____ \$__

37 ~~(8) Agent's statement of change of registered office for~~
38 ~~each affected corporation not to exceed a total of~~ _____ \$__

39 ~~(9) Agent's statement of resignation~~ _____ no fee

40 * * *

41 § 1.25. Filing duty of Secretary of State.

42 * * *

43 (b) The secretary of state files a document by stamping or otherwise endorsing
44 "Filed," together with the secretary of state's name and official title and the date and time of

1 receipt, on both the original and copy of the document and on the receipt for the filing fee. After
2 filing a document, except as provided in ~~sections 5.03 and~~ section 15.10, the secretary of state
3 shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no
4 fee is required) attached, to the domestic or foreign corporation or its representative.

5 * * *

6 § 1.26. Appeal from Secretary of State's refusal to file document.

7 (a) If the secretary of state refuses to file a document delivered for filing to the
8 secretary of state's office, the domestic or foreign corporation may appeal the refusal to the
9 [name or describe] court in the county where the corporation's principal office is or will be
10 located, or if there is none in this state, ~~its registered office, is or will be located of~~
11 county. The appeal is commenced by petitioning the court to compel filing the document and by
12 attaching to the petition the document and the secretary of state's explanation of ~~his~~ the refusal to
13 file.

14 * * *

15 § 2.02. Articles of incorporation.

16 (a) The articles of incorporation must set forth:

17 * * *

18 (3) ~~the street address of the corporation's initial registered office and the name~~
19 ~~of its initial registered agent at that office~~ the information required by [Section 5(a) of the
20 Model Registered Agents Act];

21 * * *

22
23 (b) Chapter 5 of the Model Nonprofit Corporation Act is repealed.

24 (c) Sections 7.03, 7.20, 10.02, 11.06, 14.08, 14.20, 14.21, 14.22, 14.23, 14.31, 15.03

25 and 15.04 of the Model Nonprofit Corporation Act are amended to read:

26 § 7.03. Court-ordered meeting.

27 (a) The [name or describe] court of the county where a corporation's principal office
28 is located (or, if none in this state, ~~its registered office~~) is located of _____ county) may
29 summarily order a meeting to be held:

30 * * *

31 § 7.20. Members' list for meeting.

32 * * *

33 (d) If the corporation refuses to allow a member, a member's agent, or attorney to
34 inspect the list of members before or at the meeting (or copy the list as permitted by subsection
35 (b)), the [name or describe] court of the county where a corporation's principal office is located
36 (or, if none in this state, ~~its registered office~~) is located of _____ county), on application
37 of the member, may summarily order the inspection or copying at the corporation's expense and
38 may postpone the meeting for which the list was prepared until the inspection or copying is
39 complete and may order the corporation to pay the member's costs (including reasonable counsel
40 fees) incurred to obtain the order.

41 * * *

42 § 10.02. Amendment by directors.

1 (a) Unless the articles provide otherwise, a corporation's board of directors may
2 adopt one or more amendments to the corporation's articles without member approval:

3 * * *

4 (3) ~~to delete the name and address of the initial registered agent or registered~~
5 ~~office, if a statement of change is on file with the secretary of state; to change the~~
6 information required by [Section 5(a) of the Model Registered Agents Act];

7 * * *

8 § 11.06. Merger with foreign corporation.

9 * * *

10 (b) Upon the merger taking effect, the surviving foreign business or nonprofit
11 corporation ~~is deemed to have irrevocably appointed the secretary of state as its agent for service~~
12 ~~of process~~ may be served with process in any proceeding brought against it as provided in
13 [Section 13 of the Model Registered Agents Act].

14 § 14.08. Unknown claims against dissolved corporation.

15 * * *

16 (b) The notice must:

17 (1) be published one time in a newspaper of general circulation in the county
18 where the dissolved corporation's principal office is or was last located (or, if none in this
19 state, ~~its registered office~~) is or was last located of _____ county).

20 * * *

21 § 14.20. Grounds for administrative dissolution.

22 The secretary of state may commence a proceeding under section 14.21 to
23 administratively dissolve a corporation if:

24 * * *

25 (3) the corporation is without a registered agent ~~or registered office~~ in this
26 state for 60 days or more;

27 (4) the corporation does not notify the secretary of state within 120 days that
28 its registered agent ~~or registered office~~ has been changed; or that its registered agent has
29 resigned; ~~or that its registered office has been discontinued;~~ or

30 * * *

31 § 14.21. Procedure for and effect of administrative dissolution.

32 (a) Upon determining that one or more grounds exist under section 14.20 for
33 dissolving a corporation, the secretary of state shall serve the corporation with written notice of
34 that determination ~~under section 5.04~~, and in the case of a public benefit corporation shall notify
35 the attorney general in writing..

36 (b) If the corporation does not correct each ground for dissolution or demonstrate to
37 the reasonable satisfaction of the secretary of state that each ground determined by the secretary
38 of state does not exist within at least 60 days after service of the notice is perfected ~~under section~~
39 ~~5.04~~, the secretary of state may administratively dissolve the corporation by signing a certificate
40 of dissolution that recites the ground or grounds for dissolution and its effective date. The
41 secretary of state shall file the original of the certificate and serve a copy on the corporation
42 ~~under section 5.04~~, and in the case of a public benefit corporation shall notify the attorney
43 general in writing.

44 * * *

45 § 14.22. Reinstatement following administrative dissolution.

46 * * *

1 (b) If the secretary of state determines that the application contains the information
2 required by subsection (a) and that the information is correct, the secretary of state shall cancel
3 the certificate of dissolution and prepare a certificate of reinstatement reciting that determination
4 and the effective date of reinstatement, file the original of the certificate, and serve a copy on the
5 corporation ~~under section 5.04~~.

6 * * *

7 § 14.23. Appeal from denial of reinstatement.

8 (a) The secretary of state, upon denying a corporation's application for reinstatement
9 following administrative dissolution, shall serve the corporation ~~under section 5.04~~ with a written
10 notice that explains the reason or reasons for denial.

11 * * *

12 § 14.31. Procedure for judicial dissolution.

13 (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in
14 [name the county or court]. Venue for a proceeding brought by any other party named in section
15 14.30 lies in the county where a corporation's principal office is or was last located (or, if none
16 in this state, ~~its registered office~~) ~~is or was last located of~~ _____ county).

17 * * *

18 § 15.03. Application for certificate of authority.

19 (a) A foreign corporation may apply for a certificate of authority to transact business
20 in this state by delivering an application to the secretary of state. The application must set forth:

21 * * *

22 (5) ~~the address of its registered office in this state and the name of its~~
23 ~~registered agent at that office~~ the information required by [Section 5(a) of the Model
24 Registered Agents Act]; and

25 * * *

26 § 15.04. Amended certificate of authority.

27 (a) A foreign corporation authorized to transact business in this state must obtain an
28 amended certificate of authority from the secretary of state if it changes:

29 (1) its corporate name;

30 (2) the period of its duration; ~~or~~

31 (3) any of the information required by [Section 5(a) of the Model Registered
32 Agents Act]; or

33 (4) the state or country of its incorporation.

34 * * *

35
36 (d) Sections 15.07, 15.08, and 15.09 of the Model Nonprofit Corporation Act are
37 repealed.

38 (e) Sections 15.30, 16.04 and 16.22 of the Model Nonprofit Corporation Act are
39 amended to read:

40 § 15.30. Grounds for revocation.

41 (a) The secretary of state may commence a proceeding under section 15.31 to revoke
42 the certificate of authority of a foreign corporation authorized to transact business in this state if:

1 * * *

2 (3) the foreign corporation is without a registered agent ~~or registered office~~ in
3 this state for 60 days or more;

4 (4) the foreign corporation does not inform the secretary of state ~~under section~~
5 ~~15.08 or 15.09~~ by an appropriate filing that its registered agent ~~or registered office~~ has
6 changed; or that its registered agent has resigned; ~~or that its registered office has been~~
7 ~~discontinued~~ within 90 days of the change; or resignation; ~~or discontinuance~~;

8 * * *

9 § 16.04. Court-ordered inspection.

10 (a) If a corporation does not allow a member who complies with section 16.02(a) to
11 inspect and copy any records required by that subsection to be available for inspection, the [name
12 or describe court] of the county where the corporation's principal office is located (or, if none in
13 this state, ~~its registered office~~) is located of _____ county may summarily order
14 inspection and copying of the records demanded at the corporation's expense upon application of
15 the member.

16 (b) If a corporation does not within a reasonable time allow a member to inspect and
17 copy any other record, the member who complies with subsections 16.02(b) and (c) may apply to
18 the [name or describe court] in the county where the corporation's principal office is located (or,
19 if none in this state, ~~its registered office~~) is located of _____ county for an order to
20 permit inspection and copying of the records demanded. The court shall dispose of an
21 application under this subsection on an expedited basis.

22 * * *

23 § 16.22. Annual report for Secretary of State.

24 (a) Each domestic corporation, and each foreign corporation authorized to transact
25 business in this state, shall deliver to the secretary of state an annual report on a form prescribed
26 and furnished by the secretary of state that sets forth:

27 (1) the name of the corporation;

28 (2) ~~and the state or country~~ the jurisdiction under whose law it is incorporated;

29 (2) (3) ~~the address of its registered office and the name of its registered agent at~~
30 ~~the office in this state~~ the information required by [Section 5(a) of the Model Registered
31 Agents Act];

32 (3) (4) the address of its principal office, wherever located;

33 (4) (5) ~~the names and business or residence addresses of its directors and~~
34 principal officers; and

35 (6) the names of its directors.

36 (5) — ~~a brief description of the nature of its activities;~~

37 (6) — ~~whether or not it has members;~~

38 (7) — ~~if it is a domestic corporation, whether it is a public benefit, mutual benefit~~
39 ~~or religious corporation; and~~

40 (8) — ~~if it is a foreign corporation, whether it would be a public benefit, mutual~~
41 ~~benefit or religious corporation had it been incorporated in this state.~~

42 * * *

1 **SECTION A3. UNIFORM PARTNERSHIP ACT (1997)**

2
3 Sections 1001, 1003, and 1102 of the Uniform Partnership Act (1997) are amended to
4 read:

5 § 1001. Statement of qualification.

6 * * *

7 (c) After the approval required by subsection (b), a partnership may become a limited
8 liability partnership by filing a statement of qualification. The statement must contain:

9 * * *

10 (3) if the partnership does not have an office in this State, ~~the name and street~~
11 ~~address of the partnership's agent for service of process~~ the information required by
12 [Section 5(a) of the Model Registered Agents Act];

13 * * *

14 (d) ~~The agent of a limited liability partnership for service of process must be an~~
15 ~~individual who is a resident of this State or other person authorized to do business in this State.~~
16 (Repealed.)

17 * * *

18 § 1003. Annual report.

19 (a) A limited liability partnership, and a foreign limited liability partnership
20 authorized to transact business in this State, shall file an annual report in the office of the
21 [Secretary of State] which contains:

22 (1) the name of the limited liability partnership and the State or other
23 jurisdiction under whose laws the foreign limited liability partnership is formed;

24 (2) the street address of the partnership's chief executive office and, if
25 different, the street address of an office of the partnership in this State, if any; and

26 (3) if the partnership does not have an office in this State, ~~the name and street~~
27 ~~address of the partnership's current agent for service of process~~ information required by
28 [Section 5(a) of the Model Registered Agents Act].

29 * * *

30 § 1102. Statement of foreign qualification.

31 (a) Before transacting business in this State, a foreign limited liability partnership
32 must file a statement of foreign qualification. The statement must contain:

33 * * *

34 (2) the street address of the partnership's chief executive office ~~and, if~~
35 ~~different, the street address of an office of the partnership in this State, if any;~~

36 (3) ~~if there is no office of the partnership in this State, the name and street~~
37 ~~address of the partnership's agent for service of process~~ the information required by
38 [Section 5(a) of the Model Registered Agents Act]; and

39 * * *

40 (b) ~~The agent of a foreign limited liability partnership for service of process must be~~
41 ~~an individual who is a resident of this State or other person authorized to do business in this~~
42 State. (Repealed.)

43 * * *

1
2 **SECTION A4. UNIFORM LIMITED PARTNERSHIP ACT (2001)**
3

4 (a) Section 102(4) (“designated office”) of the Uniform Limited Partnership Act
5 (2001) is repealed.

6 (b) Sections 114, 115, 116, and 117 of the Uniform Limited Partnership Act (2001)
7 are repealed.

8 (c) Sections 201, 202, 206, 208, and 210 of the Uniform Limited Partnership Act
9 (2001) are amended to read:

10 § 201. Formation of limited partnership; certificate of limited partnership.

11 (a) In order for a limited partnership to be formed, a certificate of limited partnership
12 must be delivered to the [Secretary of State] for filing. The certificate must state:

13 * * *

14 (2) ~~the street and mailing address of the initial designated office and the name~~
15 ~~and street and mailing address of the initial agent for service of process~~ the information
16 required by [Section 5(a) of the Model Registered Agents Act];

17 * * *

18 § 202. Amendment or restatement of certificate.

19 * * *

20 (c) A general partner that knows that any information in a filed certificate of limited
21 partnership was false when the certificate was filed or has become false due to changed
22 circumstances shall promptly:

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

24 (2) if appropriate, deliver to the [Secretary of State] for filing ~~a statement of~~
25 ~~change pursuant to Section 115 or~~ a statement of correction pursuant to Section 207 or
26 [Section 8 of the Model Registered Agents Act].

27 * * *

28 § 206. Delivery to and filing of records by [Secretary of State]; effective time and date.

29 * * *

30 (c) Except as otherwise provided in ~~Sections 116 and~~ Section 207, a record delivered
31 to the [Secretary of State] for filing under this [Act] may specify an effective time and a delayed
32 effective date. Except as otherwise provided in this [Act], a record filed by the [Secretary of
33 State] is effective:

34 * * *

35 § 208. Liability for false information in filed record.

36 (a) If a record delivered to the [Secretary of State] for filing under this [Act] and filed
37 by the [Secretary of State] contains false information, a person that suffers loss by reliance on the
38 information may recover damages for the loss from:

39 * * *

(2) a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 202, file a petition pursuant to Section 205, or deliver to the [Secretary of State] for filing a statement of change pursuant to [Section 115] [Section 8 of the Model Registered Agents Act] or a statement of correction pursuant to Section 207.

* * *

§ 210. Annual report for [Secretary of State].

(a) A limited partnership or a foreign limited partnership authorized to transact business in this State shall deliver to the [Secretary of State] for filing an annual report that states:

(1) the name of the limited partnership or foreign limited partnership;

(2) ~~the street and mailing address of its designated office and the name and street and mailing address of its agent for service of process in this State~~ the information required by [Section 5(a) of the Model Registered Agents Act];

(3) in the case of a limited partnership, the street and mailing address of its principal office; and

(4) in the case of a foreign limited partnership, the State or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under Section 905(a).

* * *

(e) If a filed annual report contains ~~an address of a designated office or the name or address of an agent for service of process~~ information provided under subsection (a)(2) which differs from the information shown in the records of the [Secretary of State] immediately before the filing, the differing information in the annual report is considered a statement of change under Section 115 [Section 8 of the Model Registered Agents Act].

(d) Sections 304, 407, 807, 902, 906, 1104, 1105, 1108, and 1109 of the Uniform

Limited Partnership Act (2001) are amended to read:

§ 304. Right of limited partner and former limited partner to information.

(a) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's ~~designated~~ principal office. The limited partner need not have any particular purpose for seeking the information.

* * *

(d) Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's ~~designated~~ principal office if:

* * *

§ 407. Right of general partner and former general partner to information.

(a) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

1 (1) in the limited partnership's ~~designated~~ principal office, required
 2 information; and
 3 * * *

4 § 807. Other claims against dissolved limited partnership.
 5 * * *

6 (b) The notice must:
 7 (1) be published at least once in a newspaper of general circulation in the
 8 [county] in which the dissolved limited partnership's principal office is located or, if it
 9 has none in this State, in the county in which the limited partnership's designated office is
 10 ~~or was last located~~ _____ county;
 11 * * *

12 § 902. Application for certificate of authority.

13 (a) A foreign limited partnership may apply for a certificate of authority to transact
 14 business in this State by delivering an application to the [Secretary of State] for filing. The
 15 application must state:
 16 * * *

17 (4) ~~the name and street and mailing address of the foreign limited~~
 18 ~~partnership's initial agent for service of process in this State~~ the information required by
 19 [Section 5(a) of the Model Registered Agents Act];
 20 * * *

21 § 906. Revocation of certificate of authority.

22 (a) A certificate of authority of a foreign limited partnership to transact business in
 23 this State may be revoked by the [Secretary of State] in the manner provided in subsections (b)
 24 and (c) if the foreign limited partnership does not:
 25 * * *

26 (3) appoint and maintain an agent for service of process as required by
 27 ~~Section 114(b)~~ [Section 5(a) of the Model Registered Agents Act]; or
 28 (4) deliver for filing a statement of change under ~~Section 115~~ [Section 8 of the
 29 Model Registered Agents Act] within 30 days after a change has occurred in the name or
 30 address of the agent.

31 (b) In order to revoke a certificate of authority, the [Secretary of State] must prepare,
 32 sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for
 33 service of process in this State, or if the foreign limited partnership does not appoint and
 34 maintain a proper agent in this State, to the foreign limited partnership's **[designated]** principal
 35 office. The notice must state:
 36 * * *

37 § 1104. Filings required for conversion; effective date.

38 (a) After a plan of conversion is approved:

39 (1) a converting limited partnership shall deliver to the [Secretary of State] for
 40 filing articles of conversion, which must include:
 41 * * *

42 (F) if the converted organization is a foreign organization not
 43 authorized to transact business in this State, the street and mailing address of an
 44 office which ~~the Secretary of State may use for the purposes of~~ may be used for
 45 service of process under Section 1105(c); and
 46 * * *

1 § 1105. Effect of conversion.

2 * * *

3 (c) A converted organization that is a foreign organization consents to the jurisdiction
4 of the courts of this State to enforce any obligation owed by the converting limited partnership, if
5 before the conversion the converting limited partnership was subject to suit in this State on the
6 obligation. A converted organization that is a foreign organization and not authorized to transact
7 business in this State ~~appoints the Secretary of State as its agent for service of process for~~
8 ~~purposes of enforcing an obligation under this subsection. Service on the Secretary of State~~
9 ~~under this subsection is made in the same manner and with the same consequences as in Section~~
10 ~~117(e) and (d) may be served with process at the address required in the articles of conversion~~
11 under Section 1104(a)(1)(F).

12 § 1108. Filings required for merger; effective date.

13 * * *

14 (b) The articles of merger must include:

15 * * *

16 (7) if the surviving organization is a foreign organization not authorized to
17 transact business in this State, the street and mailing address of an office which ~~the~~
18 ~~Secretary of State may use for the purposes of~~ may be used for service of process under
19 Section 1109(b); and

20 * * *

21 § 1109. Effect of merger

22 * * *

23 (b) A surviving organization that is a foreign organization consents to the jurisdiction
24 of the courts of this State to enforce any obligation owed by a constituent organization, if before
25 the merger the constituent organization was subject to suit in this State on the obligation. A
26 surviving organization that is a foreign organization and not authorized to transact business in
27 this State ~~appoints the Secretary of State as its agent for service of process for the purposes of~~
28 ~~enforcing an obligation under this subsection. Service on the Secretary of State under this~~
29 ~~subsection is made in the same manner and with the same consequences as in Section 117(e) and~~
30 ~~(d) may be served with process at the address required in the articles of merger under Section~~
31 1108(b)(7).

34 **SECTION A5. UNIFORM LIMITED LIABILITY COMPANY ACT**

35 (a) Sections 108, 109, 110, and 111 of the Uniform Limited Liability Company Act
36 are repealed.

37 (b) Sections 203 and 211 of the Uniform Limited Liability Company Act are
38 amended to read:

39 § 203. Articles of organization.

40 (a) Articles of organization of a limited liability company must set forth:

41 * * *

(2) ~~the address of the initial designated office; (Repealed.)~~
(3) ~~the name and street address of the initial agent for service of process the~~
~~information required by [Section 5(a) of the Model Registered Agents Act];~~
* * *
§ 211. Annual report for [Secretary of State].
(a) A limited liability company, and a foreign limited liability company authorized to
transact business in this State, shall deliver to the [Secretary of State] for filing an annual report
that sets forth:
(1) the name of the company;
(2) ~~and the State or country~~ the jurisdiction under whose law it is organized;
(2)-(3) ~~the address of its designated office and the name and address of its agent~~
~~for service or process in this State~~ the information required by [Section 5(a) of the Model
Registered Agents Act];
(3)-(4) ~~the address of its principal office, wherever located; and~~
(4)-(5) ~~the names and business addresses of any managers.~~
* * *
(c) Sections 808, 906, 1002, and 1006 of the Uniform Limited Liability Company

Act are amended to read:

§ 808. Other claims against dissolved limited liability company.

* * *

(b) The notice must:

(1) be published at least once in a newspaper of general circulation in the
[county] in which the dissolved limited liability company's principal office is or was
located or, if none in this State, ~~in which its designated office is or was last located in~~
_____ county;

* * *

§ 906. Effect of merger.

* * *

(b) ~~The Secretary of State is an agent for service of process in an action or proceeding~~
~~against the surviving foreign entity to enforce an obligation of any party to a merger if~~ If the
surviving foreign entity fails to appoint or maintain an agent designated for service or process in
this State or the agent for service of process cannot with reasonable diligence be found ~~at the~~
~~designated office. Upon receipt of process, the Secretary of State shall send a copy of the process~~
~~by registered or certified mail, return receipt requested, to the surviving entity at the address set~~
~~forth in the articles of merger, service of process may be made on the foreign entity as provided~~
in [Section 13(b) of the Model Registered Agents Act]. Service is effected under this subsection
at the earliest of:

* * *

§ 1002. Application for certificate of authority.

(a) A foreign limited liability company may apply for a certificate of authority to
transact business in this State by delivering an application to the [Secretary of State] for filing.
The application must set forth:

* * *

- 1 (4) ~~the address of its initial designated office in this State (Repealed.);~~
2 (5) ~~the name and street address of its initial agent for service of process in this~~
3 State the information required by [Section 5(a) of the Model Registered Agents Act];
4 * * *

5 § 1006. Revocation of certificate of authority.

6 (a) A certificate of authority of a foreign limited liability company to transact
7 business in this State may be revoked by the [Secretary of State] in the manner provided in
8 subsection (b) if:

- 9 (1) the company fails to:

10 * * *

11 (iii) appoint and maintain an agent for service of process as required by
12 ~~this article~~ [Section 5(a) of the Model Registered Agents Act]; or

13 (iv) file a statement of change in the name or business address of the
14 agent as required by ~~this article~~ [Section 8 of the Model Registered Agents Act]; or

15 * * *

16 (b) The [Secretary of State] may not revoke a certificate of authority of a foreign
17 limited liability company unless the [Secretary of State] sends the company notice of the
18 revocation, at least 60 days before its effective date, by a record ~~addressed to its agent for service~~
19 ~~of process in this State, or if the company fails to appoint and maintain a proper agent in this~~
20 ~~State, addressed to the office required to be maintained by Section 108 served in accordance with~~
21 [Section 13 of the Model Registered Agents Act]. The notice must specify the cause for the
22 revocation of the certificate of authority. The authority of the company to transact business in
23 this State ceases on the effective date of the revocation unless the foreign limited liability
24 company cures the failure before that date.

27 **SECTION A6. PROTOTYPE LIMITED LIABILITY COMPANY ACT**

28 (a) Section 105 of the Prototype Limited Liability Company Act is repealed.

29 (b) Sections 202, 908, and 1002 of the Prototype Limited Liability Company Act are
30 amended to read:

31 § 202. Articles of organization.

32 The articles of organization shall set forth:

33 * * *

34 (B) ~~The address of the registered office and the name and business, residence,~~
35 ~~or mailing address of the registered agent required to be maintain by § 105. The~~
36 information required by [Section 5(a) of the Model Registered Agents Act].

37 * * *

38 § 908. Unknown claims against dissolved limited liability company.

39 * * *

40 (B) The notice must:

(1) Be published once in a newspaper of general circulation in the county where the limited liability company's principal office ~~(or, if none in this state, its registered office)~~ is located or, if none in this state, in _____ county;

* * *

§ 1002. Registration.

Before transacting business in this state, a foreign limited liability company shall register with the Secretary of State by submitting to the Secretary of State an original signed copy of an application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall set forth:

* * *

(C) ~~The name and address of a registered agent for service of process required to be maintained by § 105~~ the information required by [Section 5(a) of the Model Registered Agents Act];

(D) ~~A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to appoint or maintain a registered agent in satisfaction of the requirements of § 105 (Repealed.);~~

* * *

SECTION A7. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

Section 10 of the Uniform Unincorporated Nonprofit Association Act is amended to read:

§ 10. Appointment of agent to receive service of process.

* * *

(b) A statement appointing an agent must set forth:

* * *

(4) ~~the name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State~~ the information required by [Section 5(a) of the Model Registered Agents Act].

(c) A statement appointing an agent, and an amendment or cancellation thereof, must be signed ~~and acknowledged sworn to~~ by a person authorized to manage the affairs of the nonprofit association. ~~The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.~~

(d) ~~A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents. (Repealed.)~~

(e) ~~An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement. (Repealed.)~~