

DRAFT
FOR DISCUSSION ONLY

**HARMONIZED REVISED
UNIFORM LIMITED LIABILITY COMPANY ACT**
*(Amendments to Revised Uniform Limited Liability
Company Act)*

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For January 28-30, 2011 Drafting Committee Meeting
on Harmonization of Business Entity Acts

Without Prefatory Note and with Reporters' Notes

Strike and Score Version

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ON UNIFORM STATE LAWS

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January 7, 2011

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HARMONIZED REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

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Introductory Reporters' Notes

The proposed revisions to the text of the act set forth in this document have been prepared as part of a project that has two purposes: (i) to harmonize the language of all of the unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that permits their integration into a single code of entity laws.

The Reporters' Notes in this document are limited to explaining the source of certain of the proposed changes. Following the approval of the changes in this document by the Conference, the Reporters' Notes will be replaced with more usual comments that explain the provisions of the act.

The harmonization process has involved the revision of the following acts, some of which are referred to in the Reporters' Notes by the abbreviations listed below:

HUB	Business Organizations Act
META	Model Entity Transactions Act
MORAA	Model Registered Agents Act
UPA	Uniform Partnership Act (1997)
ULPA	Uniform Limited Partnership Act (2001)
ULLCA	Uniform Limited Liability Company Act (2006)
USTEA	Uniform Statutory Trust Entity Act
Coop Act	Uniform Limited Cooperative Association Act
UUNAA	Uniform Unincorporated Nonprofit Association Act (2008)

Changes to the currently effective text of the act are shown by ~~striking through text to be deleted~~ and underlining text to be added. Black type is used to show changes that adopt language from the HUB, META, or MORAA, or are merely relocations of current language or corrections to cross references. Changes that adopt language from other unincorporated entity laws are shown in blue type. Changes that do not have a source in one of the existing unincorporated entity laws are shown in red type.

1 **HARMONIZED REVISED UNIFORM LIMITED LIABILITY COMPANY ACT**

2
3
4 **[ARTICLE] 1**

5 **GENERAL PROVISIONS**

6
7 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform
8 Limited Liability Company Act.

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

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

12 (2) “Contribution”, except in the phrase “right of contribution”, means any benefit
13 provided by a person to a limited liability company:

14 ~~(A) in order~~ to become a member ~~upon formation of the company and in~~
15 ~~accordance with an agreement between or among the persons that have agreed to become the~~
16 ~~initial members of the company;~~

17 ~~(B) in order to become a member after formation of the company and in~~
18 ~~accordance with an agreement between the person and the company;~~ or

19 ~~(C)~~ in the person’s capacity as a member ~~and in accordance with the operating~~
20 ~~agreement or an agreement between the member and the company.~~

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

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

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

25 ~~(4) “Designated office” means:~~

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

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

~~(5)~~ (4) “Distribution”, except as otherwise provided in ~~Section 405(g)~~, 405(a), means a transfer of money or other property from a limited liability company to ~~another~~ a person on account of a transferable interest or in the person’s capacity as a member. The term includes:

(A) a redemption or other purchase by a limited liability company of a transferable interest; and

(B) a transfer to a member in return for the member’s relinquishment of any right to:

(i) participate as a member in the management or conduct of the company’s activities; or

(ii) have access to records or other information concerning the company’s activities.

~~(6) “Effective”, with respect to a record required or permitted to be delivered to the [Secretary of State] for filing under this [act], means effective under Section 205(c).~~

~~(7)~~ (5) “Foreign limited liability company” means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

~~(8)~~ (6) “Limited liability company”, except in the phrase “foreign limited liability company”, means an entity formed under this [act] and having at least one member upon formation.

~~(9)~~ (7) “Manager” means a person that under the operating agreement of a manager-

1 managed limited liability company is responsible, alone or in concert with others, for performing
2 the management functions stated in Section 407(c).

3 ~~(40)~~ (8) “Manager-managed limited liability company” means a limited liability company
4 that qualifies under Section 407(a).

5 ~~(44)~~ (9) “Member” means a person that has become a member of a limited liability
6 company under Section 401 and has not dissociated under Section 602.

7 ~~(42)~~ (10) “Member-managed limited liability company” means a limited liability
8 company that is not a manager-managed limited liability company.

9 ~~(43)~~ (11) “Operating agreement” means the agreement, whether or not referred to as an
10 operating agreement and whether oral, in a record, implied, or in any combination thereof, of all
11 the members of a limited liability company, including a sole member, concerning the matters
12 described in Section 110(a). The term includes the agreement as amended or restated.

13 ~~(44)~~ (12) “Organizer” means a person that acts under Section 201 to form a limited
14 liability company.

15 ~~(15)~~ (13) ~~“Person” means an individual, corporation, business trust, estate, trust,~~
16 ~~partnership, limited liability company, association, joint venture, public corporation, government~~
17 ~~or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.~~

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

23 ~~(46)~~ (14) “Principal office” means the principal executive office of a limited liability

1 company or foreign limited liability company, whether or not the office is located in this state.

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

4 ~~(17)~~ (16) “Record”, used as a noun, means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

6 ~~(18)~~ (17) “Sign” means, with the present intent to authenticate or adopt a record:

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

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

10 ~~(19)~~ (18) “State” means a state of the United States, the District of Columbia, Puerto
11 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
12 jurisdiction of the United States.

13 ~~(20)~~ (19) “Transfer” includes an assignment, conveyance, ~~sale, deed, bill of sale, lease,~~
14 ~~encumbrance, including by mortgage or security interest, mortgage, security interest,~~
15 ~~encumbrance,~~ gift, and transfer or vesting by operation of law.

16 ~~(24)~~ (20) “Transferable interest” means the right, as ~~originally~~ initially owned by
17 ~~associated with a person in the~~ person’s capacity as a member, to receive distributions from a
18 limited liability company in accordance with the operating agreement, whether or not the person
19 remains a member or continues to own any part of the right. The term applies to any fraction of
20 the interest, by whomever owned.

21 ~~(22)~~ (21) “Transferee” means a person to which all or part of a transferable interest has
22 been transferred, whether or not the transferor is a member. The term includes a person that
23 owns a transferable interest under Section 603(a)(3).

Reporters' Notes

Contribution – conformed to ULPA.

Debtor in bankruptcy – conformed to harmonized HUB § 1-102.

Designated office – Deleted in recognition that it is no longer appropriate to require a domestic entity to have an office, in addition to a registered agent, within the state.

Distribution – The new language is to make explicit that redemptions constitute distributions. The phrase “participate in the management or conduct of the company’s activities or have access to records or other information concerning the company’s activities” is taken from Section 502(a)(3) (describing the realm of governance rights not available to a transferee).

Effective – Deleted as unnecessary.

Limited liability company – language added to conform with the “semi-shelf” being implemented in Section 201. Strictly speaking, the added language is redundant because Section 201 provides that a limited liability company is not formed until, upon formation, the company will have at least one member. Thus an LLC “formed under this act” will always have at least one member upon formation.

Person – conformed to harmonized HUB § 1-102.

Property – patterned after harmonized HUB § 1-102.

Transfer – Changes inspired by HUB § 1-102, with the language further refined by use of gerunds and the express inclusion of both of the two most common types of encumbrances (i.e., security interests as well as mortgages). The word “vesting” is added to the January 2011 draft to help make clear that a merger involves a transfer by operation of law. This point is necessary to protect the act’s transfer restrictions from being evaded when a member that is an entity transfers its interest via a merger.

Transferable interest – The second sentence is new and intended to make clear that fractional interest in a transferable interest are themselves transferable interests.

Transferee – The referenced provision states that a person dissociated as a member is treated as a transferee of the person’s own transferable interest. The general definition of transferee does not capture that situation, because in that situation the ownership of the transferable interest does not shift. Instead, all governance rights disappear.

SECTION 103. KNOWLEDGE; NOTICE.

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

1 (1) has actual knowledge of it; or

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

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

4 (1) has reason to know the fact from all of the facts known to the person at the

5 time in question; or

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

7 (c) ~~A~~ Subject to Section 209(f), a person notifies another of a fact by taking steps

8 reasonably required to inform the other person in ordinary course, whether or not the other

9 person knows the fact.

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

11 (1) to know of a limitation on authority to transfer real property as provided in

12 Section 302(g); and

13 (2) to have notice of a limited liability company's:

14 (A) dissolution, 90 days after a statement of dissolution under Section

15 702(b)(2)(A) becomes effective;

16 (B) termination, 90 days after a statement of termination Section

17 702(b)(2)(F) becomes effective; and

18 (C) merger, conversion, or domestication, 90 days after articles of merger,

19 conversion, or domestication under [Article] 10 become effective.

20 **Reporters' Notes**

21

22 *Subsection (c)* – The cross-referenced provision provides a more specific rule for

23 information delivered by the Secretary of State.

24

25

1 and (d), the name of a limited liability company must be distinguishable ~~in~~ on the records of the
2 [Secretary of State] from any:

3 (1) ~~the name of each~~ a person that is not an individual and that is incorporated,
4 organized, or authorized to transact business in this state;

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

7 ~~(3) each~~ name reserved under Section 109; and

8 ~~(4) (3)~~ assumed name registered under [this state's assumed name statute]. [eite
9 ~~other state laws allowing the reservation or registration of business names, including fictitious or~~
10 ~~assumed name statutes].~~

11 ~~(c) A limited liability company may apply to the [Secretary of State] for authorization to~~
12 ~~use a name that does not comply with subsection (b). The [Secretary of State] shall authorize use~~
13 ~~of the name applied for if, as to each noncomplying name:~~

14 ~~(1) the present user, registrant, or owner of the noncomplying name consents in a~~
15 ~~signed record to the use and submits an undertaking in a form satisfactory to the [Secretary of~~
16 ~~State] to change the noncomplying name to a name that complies with subsection (b) and is~~
17 ~~distinguishable in the records of the [Secretary of State] from the name applied for; or~~

18 ~~(2) the applicant delivers to the [Secretary of State] a certified copy of the final~~
19 ~~judgment of a court establishing the applicant's right to use in this state the name applied for.~~

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

1 (a).

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

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

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

16 ~~(d)~~ (g) Subject to Section 805, this section applies to a foreign limited liability company
17 transacting business in this state which has a certificate of authority to transact business in this
18 state or which has applied for a certificate of authority or has applied for a foreign registration
19 statement.

20 **Reporters’ Notes**

21
22 *Subsection (a)* – A comment will state that the Act permits any additional designators
23 required by any “professional firms” statute – e.g., “Professional Limited Liability Company”.
24 Query whether statutory language (perhaps bracketed) is necessary to permit the addition of a
25 letter to a permitted abbreviation – e.g. or PLLC.

26
27 *Subsection (b)* – Conformed, with exceptions noted infra, to HUB § 1-301(a).

Subsection (b)(1) – Roughly comparable to HUB § 1-301(a)(1) (which uses the defined term of “domestic filing entity”).

Subsection (b)(2) – Conforming to the “semi-shelf” changes in Section 201, the red change deletes reference to the first document filed under the now discarded double filing requirement.

Subsection (b)(e) – Re-ULLCA allows foreign LLCs to “reserve” a name, while the HUB separately addresses “registration” of a name by a foreign entity. Thus, complete harmonization with the HUB would require inserting another section into this Article.

Subsection (g) – Language change to conform to the HUB’s nomenclature

SECTION 109. RESERVATION OF NAME.

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

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

Reporters' Notes

Conformed to HUB § 1-303.

Subsection (a) – At the 2010 annual meeting, a commissioner raised a question about the starting date of the 120-day period. The current text certainly implies that the period runs from the date the filing officer gives effect to the reservation. At the December 2010 meeting of the “Plumbing Subcommittee” it was decided to retain this approach, which corresponds to the HUB.

1 **SECTION 110. OPERATING AGREEMENT; SCOPE, FUNCTION, AND**
2 **LIMITATIONS.**

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

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

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

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

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

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

12 (c) An operating agreement may not:

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

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

16 (3) vary the power of the court under Section 204;

17 (4) ~~subject to subsections (d) through (g), eliminate the duty of loyalty, the duty of~~
18 ~~care, or any other fiduciary duty; eliminate all fiduciary duties, but, if not manifestly~~
19 unreasonable may:

20 (A) restrict or eliminate the aspects of the duty of loyalty stated in Section
21 409 (b) and (h)(1);

22 (B) identify specific types or categories of activities that do not violate the
23 duty of loyalty;

1 (C) alter the duty of care, except to authorize intentional misconduct or
2 knowing violation of law; and

3 (D) alter any other fiduciary duty, including eliminating particular aspects
4 of that duty;

5 (5) ~~subject to subsections (d) through (g)~~, eliminate the contractual obligation of
6 good faith and fair dealing under Section 409(d), but if not manifestly unreasonable may
7 prescribe the standards by which to measure the performance of that obligation;

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

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

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

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

19 (10) ~~restrict the right to approve a merger, conversion, or domestication~~ vary the
20 rights of a member under Sections ~~1014 to a member that will have personal liability with~~
21 ~~respect to a surviving, converted, or domesticated organization~~ 1023(a)(2), 1033(a)(2),
22 1043(a)(2), or 1053(a)(2); or

23 (11) except as otherwise provided in ~~Section~~ Sections 111 and 112(b), restrict the

rights under this [act] of a person other than a member or manager.

~~(d) If not manifestly unreasonable, the operating agreement may:~~

~~(1) restrict or eliminate the duty:~~

~~(A) as required in Section 409(b)(1) and (g), to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;~~

~~(B) as required in Section 409(b)(2) and (g), to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and~~

~~(C) as required by Section 409(b)(3) and (g), to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;~~

~~(2) identify specific types or categories of activities that do not violate the duty of loyalty;~~

~~(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;~~

~~(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and~~

~~(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under Section 409(d).~~

~~(e) (d)~~ Subject to subsection (c), without limiting the terms that may be included in an operating agreement:

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

4 ~~(f)~~(2) To the extent the operating agreement of a member-managed limited
5 liability company expressly relieves a member of a responsibility that the member would
6 otherwise have under this [act] and imposes the responsibility on one or more other members, the
7 operating agreement may, to the benefit of the member that the operating agreement relieves of
8 the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the
9 responsibility.

10 ~~(g)~~(3) The operating agreement ~~may alter or eliminate the indemnification for a~~
11 ~~member or manager provided by Section 408(a) and~~ may eliminate or limit a member or
12 manager's liability to the limited liability company and members for money damages, whether
13 directly or by providing indemnification therefor, except for:

14 ~~(1)~~ (A) breach of the duty of loyalty;

15 ~~(2)~~ (B) a financial benefit received by the member or manager to which
16 the member or manager is not entitled;

17 ~~(3)~~ (C) a breach of a duty under Section 406;

18 ~~(4)~~ (D) intentional infliction of harm on the company or a member; or

19 ~~(5)~~ (E) an intentional violation of criminal law.

20 ~~(h)~~ (e) The court shall decide any claim under subsection ~~(d)~~ (c)(4) or (5) that a term of
21 an operating agreement is manifestly unreasonable. The court:

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

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

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

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

Reporters' Notes

Most changes in this section are intended to improve readability, taking advantage of an approach first approved for USTEA, § 103(e) ("without limiting the terms that may be included in a governing instrument, the governing instrument may").

Subsection (c)(4) – The new, introductory language is intended to indicate that the operating agreement cannot eliminate the fiduciary nature of the management function. The rest of the subsection is essentially relocated from later in the Section.

Subsection (c)(6) – Source: ULPA § 110(b)(4). Query – why should the operating agreement's power in this area be subject to greater restriction than the agreement's power over fiduciary duty? I.e., reasonable vs. not manifestly unreasonable?

Subsection (c)(10) – Changes are to conform with the new, META-derived provisions on organic transactions.

Former subsection (d) - This deletion is the result of the relocation described in the Notes to subsection (c)(4).

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

(a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

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

(c) Two or more persons intending to become the initial members of a limited liability

1 company may make an agreement providing that upon the formation of the company the
2 agreement will become the operating agreement. One person intending to become the initial
3 member of a limited liability company may assent to terms providing that upon the formation of
4 the company the terms will become the operating agreement.

5 **SECTION 112. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES**
6 **AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED**
7 **LIABILITY COMPANY.**

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

12 (b) The obligations of a limited liability company and its members to a person in the
13 person's capacity as a transferee or dissociated member are governed by the operating
14 agreement. Subject only to any court order issued under Section 503(b)(2) to effectuate a
15 charging order, an amendment to the operating agreement made after a person becomes a
16 transferee or dissociated member is:

17 (1) effective with regard to any debt, obligation, or other liability of the limited
18 liability company or its members to the person in the person's capacity as a transferee or
19 dissociated member; and

20 (2) not effective to the extent the amendment imposes a new debt, obligation, or
21 other liability on the transferee or dissociated member.

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

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

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

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

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

10 **Reporters' Notes**

11
12 *Subsection (b)(2)* – The new language addresses an issue raised at the “Plumbing
13 Subcommittee” meeting in December 2010. (The issue arose in the context of an extended
14 discussion of “interest holder liability” under META.)
15

16 **SECTION 113. ~~OFFICE AND~~ REGISTERED AGENT FOR SERVICE OF** 17 **~~PROCESS.~~**

18 (a) ~~A~~ Each limited liability company and each foreign limited liability company that is
19 registered under Section 803 to do business in this state shall designate and ~~continuously~~
20 maintain a registered agent in this state:

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

22 (2) ~~an agent for service of process.~~

23 (b) ~~A foreign limited liability company that has a certificate of authority under Section~~
24 ~~802 shall designate and continuously maintain in this state an agent for service of process. The~~
25 designation of a registered agent pursuant to this subsection is an affirmation of fact by the
26 limited liability company or foreign limited liability company that the agent has consented to
27

1 serve.

2 ~~(e) (b) An agent for service of process of~~ A registered agent for a limited liability
3 company or foreign limited liability company must be an individual who is a resident of this state
4 ~~or other person with authority to transact~~ have a place of business in this state.

5 (c) The duties of a registered agent are:

6 (1) to forward to the limited liability company or foreign limited liability
7 company at the address most recently supplied to the agent by the company any process, notice,
8 or demand pertaining to the company which is served on or received by the agent; and

9 (2) if the registered agent resigns, to provide the notice required by Section 115(c)
10 to the company at the address most recently supplied to the agent by the company.

11 **Reporters' Notes**

12
13 To fully conform sections 113-116 to the HUB would require including the concept of a
14 commercial registered agent, which hardly makes sense for a state unless the state plans to
15 extend the concept to other forms of entity. Therefore, sections 113-116 are conformed to the
16 extent possible with those provisions of the HUB Article 4 that pertain to ordinary registered
17 agents.

18
19 *Subsection (a)* – The initial designation is in the certificate of organization [§ 201(b)(2)]
20 or foreign registration statement [§ 803(4)].

21
22 *Subsection (c)(2)* – This subsection is derived from HUB § 1-413. Unlike the HUB, this
23 Act does not empower a registered agent to file a statement of change for itself and thereby
24 effect the filings of the entities for which it serves as an agent. That power makes no sense
25 unless a state adopts comparable provisions in all its entity acts. Therefore, this subsection omits
26 HUB § 1-413(3).

27 28 29 **SECTION 114. CHANGE OF ~~DESIGNATED OFFICE OR~~ REGISTERED** 30 **AGENT FOR SERVICE OF PROCESS OR ADDRESS FOR REGISTERED AGENT.**

31 (a) A limited liability company or foreign limited liability company may change ~~its~~
32 ~~designated office, its~~ registered agent for service of process, or the address of its registered agent

1 ~~for service of process~~ by delivering to the [Secretary of State] for filing a statement of change
2 ~~containing which states:~~

3 (1) the name of the company; and

4 (2) ~~the street and mailing addresses of its current designated office; the~~
5 information that is to be in effect as a result of the filing of the statement of change.

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

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

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

12 (b) The designation of a new registered agent pursuant to this section is an affirmation of
13 fact by the limited liability company or foreign limited liability company that the agent has
14 consented to serve.

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

17 **Reporters' Notes**

18
19 Changes reflect harmonization with HUB § 1-407, except subsection (d) (formerly
20 subsection (e)) which was omitted as unnecessary in a "spoke." HUB, § 1-407(d) provides: "As
21 an alternative to using the procedure in this section, a represented entity may change the
22 information on file under Section 1-404(a) by amending its most recent registered agent filing in
23 a manner provided by law of this state other than this [act] for amending the filing."
24

25 *Subsection (a)* – HUB § 1-407(a) includes "signed by the entity" but here that language
26 would be redundant of Section 203 (signing requirements).
27
28

1 **SECTION 115. RESIGNATION OF REGISTERED AGENT FOR SERVICE OF**
2 **PROCESS.**

3 ~~(a) To resign as an agent for service of process of~~ A registered agent may resign as agent
4 for a limited liability company or foreign limited liability company, the agent must deliver by
5 delivering to the [Secretary of State] for filing a statement of resignation containing the company
6 name and stating that the agent is resigning, that states:

7 (1) the name of the company;

8 (2) the name of the agent;

9 (3) that the agent resigns from serving as registered agent for the company; and

10 (4) the address of the company to which the agent will send the notice required by
11 subsection (c).

12 (b) A statement of resignation takes effect on the earlier of the 31st day after the day on
13 which it is filed by the [Secretary of State] or the designation of a new registered agent for the
14 limited liability company or foreign limited liability company.

15 (c) A registered agent promptly shall furnish the limited liability company or foreign
16 limited liability company notice in a record of the date on which a statement of resignation was
17 filed.

18 (d) When a statement of resignation takes effect, the registered agent ceases to have
19 responsibility for any matter tendered to it as agent for the limited liability company or foreign
20 limited liability company. The resignation does not affect any contractual rights the company
21 has against the agent or that the agent has against the company.

22 (e) A registered agent may resign with respect to a limited liability company or foreign
23 limited liability company whether or not the company is in good standing.

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

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

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

~~(2) when a record designating a new agent for service of process is delivered to the [Secretary of State] for filing on behalf of the limited liability company and becomes effective.~~

Reporters' Notes

Patterned after harmonized HUB § 1-410.

SECTION 116. SERVICE OF PROCESS, NOTICE, OR DEMAND.

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

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

~~(c) Service of any process, notice, or demand on the [Secretary of State] as agent for a limited liability company or foreign limited liability company may be made by delivering to the [Secretary of State] duplicate copies of the process, notice, or demand. If a process, notice, or~~

1 demand is served on the [Secretary of State], the [Secretary of State] shall forward one of the
2 copies by registered or certified mail, return receipt requested, to the company at its designated
3 office.

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

5 ~~(1) the date the limited liability company or foreign limited liability company~~
6 ~~receives the process, notice, or demand;~~

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

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

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

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

14 (a) A limited liability company or foreign limited liability company may be served with
15 any process, notice, or demand required or permitted by law by serving its registered agent.

16 (b) If a limited liability company or foreign limited liability company no longer has a
17 registered agent, or if its registered agent cannot with reasonable diligence be served, the
18 company may be served by registered or certified mail, return receipt requested, or by similar
19 commercial delivery service, addressed to the company at its principal office in accordance with
20 any applicable judicial rules and procedures. Service is effected under this subsection on the
21 earliest of:

22 (1) the date the company receives the mail or delivery by a similar commercial
23 delivery service;

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

(3) five days after its deposit with the United States Postal Service, or similar

commercial delivery service, if correctly addressed and with sufficient postage or payment.

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

(d) Service of process, notice, or demand on a registered agent must be in a written
record.

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

Reporters' Notes

Patterned after harmonized HUB § 1-412.

Subsection (b) – A possible inconsistency exists between the phrase “in accordance with any applicable judicial rules and procedures” and the subsequent list of effective times. Suppose that the “applicable rules and procedures” do not permit service by mail?

SECTION 117. DELIVERY OF RECORD.

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

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

Reporters' Notes

Patterned after HUB § 1-104.

1 [ARTICLE] 2

2 FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

3
4 SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY;

5 CERTIFICATE OF ORGANIZATION.

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

8 (b) A certificate of organization must state:

9 (1) the name of the limited liability company, which must comply with Section
10 108; and

11 (2) ~~the street and mailing addresses of the initial designated office and the street~~
12 and mailing address of the company's principal office and the name and street and mailing
13 addresses within this state of the initial registered agent for service of process of the company;
14 ~~and~~

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

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

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

22 (1) A limited liability company is formed when ~~the [Secretary of State] has filed~~
23 the certificate of organization has become effective and ~~the company has at least one member,~~
24 ~~unless the certificate states a delayed effective date pursuant to Section 205(c)206 at least one~~

1 person has become a member.

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

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

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

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

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

15 ~~(B) the date on which a person or persons became the company's initial~~
16 ~~member or members.~~

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

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

23 ***Legislative Note:*** ~~Enacting jurisdictions should consider revising their "name statutes"~~
24 ~~generally, to protect "the limited liability company name stated in each certificate of~~

~~organization that contains the statement as provided in Section 201(b)(3)". Section 108(b)(2).~~

Reporters' Notes

Subsection (b)(2) – The reference of the company's principal office is added in response to a suggestion at the 2010 Annual Meeting. The phrase "within this state" is likewise.

The Question of the "Semi-Shelf" – Reflecting discussion at the September 2010 meeting, the revisions in red replace the dual filing requirement with what might be called a "semi-shelf." Note that the filing of a certificate of organization does not suffice to indicate that an LLC has been formed.

Conforming amendments have been made to the following sections: 108, 203, 209, 211, and 401.

SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.

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

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

(1) the name of the company;

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

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

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

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

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

(3) the changes the restatement makes to the certificate as most recently amended

or restated.

(d) Subject to Sections 112(c) and ~~205(e)~~206, an amendment to or restatement of a certificate of organization is effective when filed by the [Secretary of State].

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

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the [Secretary of State] for filing a statement of change under Section 114 or a statement of correction under Section ~~206~~208.

SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO [SECRETARY OF STATE].

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

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

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

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

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

~~(5)~~ (4) A statement of cancellation under Section 201(d)~~(2)~~ must be signed by

1 each organizer that signed the initial certificate of organization, but a personal representative of a
2 deceased or incompetent organizer may sign in the place of the decedent or incompetent.

3 ~~(6)~~ (5) A statement of denial by a person under Section 303 must be signed by
4 that person.

5 ~~(7)~~ (6) Any other record must be signed by the person on whose behalf the record
6 is delivered to the [Secretary of State].

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

8 **Reporters' Notes**

9
10 This provision cannot be harmonized with the Hub, because the Hub presupposes such
11 provisions existing in the entity spokes. See HUB § 1-201(4): "The entity filing must be signed
12 by a person authorized to sign the filing under this [act]."

13
14 *Former paragraph (a)(3)* – The "notice under Section 201(e)(1)" no longer exists, due to
15 the implementation of the "semi-shelf" in Section 201.

16
17 *Paragraph (a)(4)* – Due to the "semi-shelf," former subsection 201(d)(2) is now the
18 second sentence of subsection 201(d).

19 20 21 **SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

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

25 (1) the person to sign the record;

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

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

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

1 **~~SECTION 205. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY~~**
2 **~~OF STATE]; EFFECTIVE TIME AND DATE.~~**

3 ~~(a) A record authorized or required to be delivered to the [Secretary of State] for filing~~
4 ~~under this [act] must be captioned to describe the record's purpose, be in a medium permitted by~~
5 ~~the [Secretary of State], and be delivered to the [Secretary of State]. If the filing fees have been~~
6 ~~paid, unless the [Secretary of State] determines that a record does not comply with the filing~~
7 ~~requirements of this [act], the [Secretary of State] shall file the record and:~~

8 ~~(1) for a statement of denial under Section 303, send a copy of the filed statement~~
9 ~~and a receipt for the fees to the person on whose behalf the statement was delivered for filing~~
10 ~~and to the limited liability company; and~~

11 ~~(2) for all other records, send a copy of the filed record and a receipt for the fees~~
12 ~~to the person on whose behalf the record was filed.~~

13 ~~(b) Upon request and payment of the requisite fee, the [Secretary of State] shall send to~~
14 ~~the requester a certified copy of a requested record.~~

15 ~~(c) Except as otherwise provided in Sections 115 and 206 and except for a certificate of~~
16 ~~organization that contains a statement as provided in Section 201(b)(3), a record delivered to the~~
17 ~~[Secretary of State] for filing under this [act] may specify an effective time and a delayed~~
18 ~~effective date. Subject to Sections 115, 201(d)(1), and 206, a record filed by the [Secretary of~~
19 ~~State] is effective:~~

20 ~~(1) if the record does not specify either an effective time or a delayed effective~~
21 ~~date, on the date and at the time the record is filed as evidenced by the [Secretary of State's]~~
22 ~~endorsement of the date and time on the record;~~

23 ~~(2) if the record specifies an effective time but not a delayed effective date, on the~~

~~date the record is filed at the time specified in the record;~~

~~(3) if the record specifies a delayed effective date but not an effective time, at~~

~~12:01 a.m. on the earlier of:~~

~~s(A) the specified date; or~~

~~(B) the 90th day after the record is filed; or~~

~~(4) if the record specifies an effective time and a delayed effective date, at the
specified time on the earlier of:~~

~~(A) the specified date; or~~

~~(B) the 90th day after the record is filed.~~

SECTION 205. FILING REQUIREMENTS.

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

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

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

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

(4) The record must be signed by a person authorized to sign the filing under
Section 203.

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

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

1 information contained in a record filed by the [Secretary of State], the [Secretary of State] shall
2 accept the filing if the filing otherwise complies with this section but the [Secretary of State] may
3 redact the information.

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

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

9 **Reporters' Notes**

10
11 Conformed, as much as possible, to HUB § 1-201.
12
13

14 **SECTION 206. EFFECTIVE TIME AND DATE.** Except as otherwise provided in
15 Section 207 and subject to Section 208(c), an entity filing is effective:

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

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

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

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

23 **Reporters' Notes**

24
25 Patterned after HUB § 1-203.
26

1 **SECTION 207. WITHDRAWAL OF FILED RECORD BEFORE**
2 **EFFECTIVENESS.**

3 (a) Except as otherwise provided in Chapter 10, a filed record may be withdrawn before it
4 takes effect by delivering to the [Secretary of State] for filing a statement of withdrawal.

5 (b) A statement of withdrawal must:

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

8 (2) identify the filed record to be withdrawn and the date of its filing; and

9 (3) if not signed on behalf of each person that signed the record being withdrawn,
10 state that the record is withdrawn in accordance with the agreement of all the persons who signed
11 the record.

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

14 **Reporters' Notes**

15
16 Patterned after a prior version of HUB § 1-204, but modified. Harmonized HUB § 1-204
17 has been conformed to this text.

18
19
20 **~~SECTION 206~~ 208. CORRECTING FILED RECORD.**

21 ~~(a) A limited liability company or foreign limited liability company may deliver to the~~
22 ~~[Secretary of State] for filing a statement of correction to correct a record previously delivered~~
23 ~~by the company to the [Secretary of State] and filed by the [Secretary of State], if at the time of~~
24 ~~filing the record contained inaccurate information or was defectively signed.~~

25 ~~(b) A statement of correction under subsection (a) may not state a delayed effective date~~
26 ~~and must:~~

1 ~~(1) describe the record to be corrected, including its filing date, or attach a copy of~~
2 ~~the record as filed;~~

3 ~~(2) specify the inaccurate information and the reason it is inaccurate or the~~
4 ~~manner in which the signing was defective; and~~

5 ~~(3) correct the defective signature or inaccurate information.~~

6 ~~(c) When filed by the [Secretary of State], a statement of correction under subsection (a)~~
7 ~~is effective retroactively as of the effective date of the record the statement corrects, but the~~
8 ~~statement is effective when filed:~~

9 ~~(1) for the purposes of Section 103(d); and~~

10 ~~(2) as to persons that previously relied on the uncorrected record and would be~~
11 ~~adversely affected by the retroactive effect.~~

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

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

15 (2) the record was defectively signed; or

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

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

20 (c) A statement of correction:

21 (1) may not state a delayed effective date;

22 (2) must be signed on behalf of the person correcting the filed record;

23 (3) must identify the filed record to be corrected or have attached a copy and state

1 the date of its filing;

2 (4) must specify the inaccuracy or defect to be corrected; and

3 (5) must correct the inaccuracy or defect.

4 (d) A statement of correction is effective as of the effective date of the filed record that it
5 corrects except for purposes of Section 103(d) and persons relying on the uncorrected filed
6 record and adversely affected by the correction. For those purposes and persons, the statement
7 of correction is effective when filed.

8 **Reporters' Notes**

9
10 Replacement language comes essentially verbatim from HUB § 1-205, except for the
11 reference in subsection (d) to Section 103(d).
12
13

14 **SECTION 209. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF** 15 **REFUSAL TO FILE; TRANSMISSION OF INFORMATION BY THE [SECRETARY OF** 16 **STATE].**

17 (a) The [Secretary of State] shall file a record delivered to the [Secretary of State] for
18 filing which satisfies this [act]. The duty of the [Secretary of State] under this section is
19 ministerial.

20 (b) When the [Secretary of State] files a record pursuant to this [act], the [Secretary of
21 State] shall record it as filed on the date and time of its delivery. After filing a record, the
22 [Secretary of State] shall deliver a copy of the filing with an acknowledgment of the date and
23 time of filing to the person on whose behalf the record was delivered for filing and, in the case of
24 a statement of denial, also to the limited liability company to which the statement pertains.

25 (c) If the [Secretary of State] refuses to file a record pursuant to this [act], the [Secretary
26 of State] shall return the record or notify the person that submitted the record not later than [15]

business days after the record is delivered, together with a brief explanation in a record of the reason for the refusal.

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

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

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

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

(e) ~~Except as stated in Section 201(d)(3) and (e)(3), the~~ The filing of or refusal to file a record pursuant to this [act] does not:

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

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

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

(f) Except as provided by Section 116 or by law other than this [act], the [Secretary of State] may deliver any record to a person by delivering it to the person that submitted it, to the address of the person's registered agent, to the principal office of the person, or to another address the person provides to the [Secretary of State] for delivery.

Reporters' Notes

Subsections (a) – (e) derived essentially verbatim from HUB §1-206. The deletions in red reflect the elimination of the cross referenced provisions (as part of the “semi-shelf”

1 approach). Those provisions stated that the filing of the certificate (or second notice) was
2 conclusive prove that the organizers had met all the preconditions of formation.

3
4 Subsection (f) patterned after HUB § 1-210.

5
6
7 **SECTION ~~207~~ 210. LIABILITY FOR INACCURATE INFORMATION IN FILED**
8 **RECORD.**

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

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

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

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

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

20 (i) effected an amendment under Section 202;

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

22 (iii) delivered to the [Secretary of State] for filing a statement of
23 change under Section 114 or a statement of correction under Section ~~206~~ 208.

24 (b) To the extent that the operating agreement of a member-managed limited liability
25 company expressly relieves a member of responsibility for maintaining the accuracy of
26 information contained in records delivered on behalf of the company to the [Secretary of State]

1 for filing under this [act] and imposes that responsibility on one or more other members, the
2 liability stated in subsection (a)(2) applies to those other members and not to the member that the
3 operating agreement relieves of the responsibility.

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

6 **Reporters' Notes**

7 *Subsection (c)* – Query the effect of this subsection when an individual signs on behalf of
8 an entity. Query whether to add language at the end of the subsection: “An individual who
9 signs a record authorized or required to be filed under this [act] affirms under penalty of perjury
10 that the information stated in the record is accurate, including information concerning the
11 individual’s representative capacity if any”.

12 **~~SECTION 208. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.~~**

13
14
15 ~~(a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish~~
16 ~~to any person a certificate of existence for a limited liability company if the records filed in the~~
17 ~~[office of the Secretary of State] show that the company has been formed under Section 201 and~~
18 ~~the [Secretary of State] has not filed a statement of termination pertaining to the company. A~~
19 ~~certificate of existence must state:~~

20 ~~(1) the company’s name;~~

21 ~~(2) that the company was duly formed under the laws of this state and the date of~~
22 ~~formation;~~

23 ~~(3) whether all fees, taxes, and penalties due under this [act] or other law to the~~
24 ~~[Secretary of State] have been paid;~~

25 ~~(4) whether the company’s most recent annual report required by Section 209 has~~
26 ~~been filed by the [Secretary of State];~~

27 ~~(5) whether the [Secretary of State] has administratively dissolved the company;~~

1 ~~(6) whether the company has delivered to the [Secretary of State] for filing a~~
2 ~~statement of dissolution;~~

3 ~~(7) that a statement of termination has not been filed by the [Secretary of State];~~
4 ~~and~~

5 ~~(8) other facts of record in the [office of the Secretary of State] which are~~
6 ~~specified by the person requesting the certificate.~~

7 (b) ~~The [Secretary of State], upon request and payment of the requisite fee, shall furnish~~
8 ~~to any person a certificate of authorization for a foreign limited liability company if the records~~
9 ~~filed in the [office of the Secretary of State] show that the [Secretary of State] has filed a~~
10 ~~certificate of authority, has not revoked the certificate of authority, and has not filed a notice of~~
11 ~~cancellation. A certificate of authorization must state:~~

12 ~~(1) the company's name and any alternate name adopted under Section 805(a) for~~
13 ~~use in this state;~~

14 ~~(2) that the company is authorized to transact business in this state;~~

15 ~~(3) whether all fees, taxes, and penalties due under this [act] or other law to the~~
16 ~~[Secretary of State] have been paid;~~

17 ~~(4) whether the company's most recent annual report required by Section 209 has~~
18 ~~been filed by the [Secretary of State];~~

19 ~~(5) that the [Secretary of State] has not revoked the company's certificate of~~
20 ~~authority and has not filed a notice of cancellation; and~~

21 ~~(6) other facts of record in the [office of the Secretary of State] which are~~
22 ~~specified by the person requesting the certificate.~~

23 (c) ~~Subject to any qualification stated in the certificate, a certificate of existence or~~

1 ~~certificate of authorization issued by the [Secretary of State] is conclusive evidence that the~~
2 ~~limited liability company is in existence or the foreign limited liability company is authorized to~~
3 ~~transact business in this state.~~

4 **SECTION 211. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

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

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

9 (1) the limited liability company's name or the qualified foreign limited liability
10 company's name used in this state;

11 (2) that ~~a certificate of formation pertaining to~~ the limited liability company is
12 ~~formed effective~~ under the law of this state and the ~~effective~~ date of ~~its formation that certificate,~~
13 or that the qualified foreign limited liability company is registered to do business in this state;

14 (3) that all fees, taxes, interest, and penalties owed to this state by the limited
15 liability company or the qualified foreign limited liability company and collected through the
16 [Secretary of State] have been paid, if:

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

18 (B) nonpayment affects the good standing or registration of the limited
19 liability company or foreign limited liability company;

20 (4) that the most recent annual report required by Section 212 has been delivered
21 for filing to the [Secretary of State]; and

22 (5) that, with respect to a limited liability company, no statement of dissolution,
23 statement of termination, or declaration of dissolution has been filed and no proceeding is

1 pending under Section 707.

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

5 **Reporters' Notes**

6
7 Derived essentially verbatim from HUB §1-208. Query whether HULLCA should define
8 "qualified"?

9
10 *Subsection (b)(2)* – The further revisions in red are to conform to the "semi-shelf"
11 changes in Section 201. As noted in the Reporters' Notes to that Section, the mere filing of the
12 certificate of formation by the Secretary of State is not by itself sufficient to trigger formation.
13

14 **~~SECTION 209~~ 212. ANNUAL [ANNUAL] [BIENNIAL] REPORT FOR**

16 **[SECRETARY OF STATE].**

17 (a) Each ~~year, a~~ limited liability company ~~or a~~ and foreign limited liability company
18 ~~authorized to transact~~ registered to do business in this state shall deliver to the [Secretary of
19 State] for filing a [an annual] [biennial] report that states:

20 (1) the name of the company;

21 (2) ~~the street and mailing addresses of the company's designated office and the~~
22 name and street and mailing addresses of its registered agent ~~for service of process~~ in this state;

23 (3) the street and mailing addresses of its principal office; and

24 (4) the name of at least one of its members or managers;

25 ~~(4)(5)~~ in the case of a foreign limited liability company, the state or other
26 jurisdiction under whose law the company is formed and any alternate name adopted under
27 Section ~~805806~~ (a).

28 (b) Information in ~~an annual report under this section~~ the [annual] [biennial] report must

1 be current as of the date the report is signed by the limited liability company or foreign limited
2 liability company delivered to the [Secretary of State] for filing.

3 (c) The first ~~annual report under this section~~[annual] [biennial] report must be delivered
4 to the [Secretary of State] ~~between~~after [January 1] and before [April 1] of the year following the
5 calendar year in which a limited liability company was formed or a foreign limited liability
6 company ~~was authorized to transact business~~ registered to do business in this state. ~~A report~~
7 Subsequent [annual][biennial] reports must be delivered to the [Secretary of State] ~~between~~ after
8 [January 1] and before [April 1] of each ~~subsequent~~[second] calendar year thereafter

9 (d) If an annual report under this section does not contain the information required ~~in~~ by
10 subsection (a), the [Secretary of State] shall promptly notify the reporting limited liability
11 company or foreign limited liability company in a record and return the report to ~~it~~ the company
12 for correction. ~~If the report is corrected to contain the information required in subsection (a) and~~
13 ~~delivered to the [Secretary of State] within 30 days after the effective date of the notice, it is~~
14 ~~timely delivered.~~

15 (e) If an annual report under this section contains ~~an address of a designated office or the~~
16 name or address of ~~an~~ a registered agent ~~for service of process~~ which differs from the
17 information shown in the records of the [Secretary of State] immediately before the
18 ~~annual~~[annual] [biennial] report becomes effective, the differing information in the
19 ~~annual~~[annual] [biennial] report is considered a statement of change under Section 114.

20 **Reporters' Notes**

21
22 Revisions made to harmonize, to the extent possible, with HUB § 1-211.

23
24 *Subsection (a)(2)* – Harmonized to HUB’s approach – no designated office; i.e., no
25 requirement that a domestic organization maintain an office in the state of formation.

26
27 In response to a comment at the 2010 Annual Meeting, “annual” has been changed to

1 “[annual][biennial]” throughout the section. The HUB has been changed accordingly.
2

3 *Subsection (a)(4)* – Added at the December 2010 “Plumbing Subcommittee” meeting,
4 this provision reflects a compromise between ULLCA’s approach (bare bones certificate) and the
5 HUB’s requirement that filing entities disclose all the governors (which in the case of a member-
6 managed LLC would be all the members). The discussion at the Subcommittee was influenced
7 by concern about pending federal legislation requiring disclosure of beneficial owners.
8

1 [ARTICLE] 3

2 RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH
3 LIMITED LIABILITY COMPANY

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

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

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

10 SECTION 302. STATEMENT OF AUTHORITY.

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

13 (1) must include the name of the company and the street and mailing addresses of
14 its ~~designated office~~ registered agent;

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

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

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

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

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

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

1 the company.

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

5 (1) the name of the company;

6 (2) the street and mailing addresses of the company's ~~designated office~~ registered
7 agent;

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

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

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

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

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

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

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

23 or

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

3 (f) Subject to subsection (c), an effective statement of authority that grants authority to
4 transfer real property held in the name of the limited liability company and that is recorded by
5 certified copy in the office for recording transfers of the real property is conclusive in favor of a
6 person that gives value in reliance on the grant without knowledge to the contrary, except to the
7 extent that when the person gives value:

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

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

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

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

21 (i) After a statement of dissolution becomes effective, a limited liability company may
22 deliver to the [Secretary of State] for filing and, if appropriate, may record a statement of
23 authority that is designated as a post-dissolution statement of authority. The statement operates

as provided in subsections (f) and (g).

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

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

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

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

(2) denies the grant of authority.

SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.

(a) ~~The debts, obligations, or other liabilities~~ A debt, obligation, or other liability of a limited liability company ~~is, whether arising in contract, tort, or otherwise:~~

~~(1) are solely the debts, obligations or other liabilities~~ debt, obligation, or other liability of the company; ~~and. A member, manager, agent of the company, or agent of a manager or member is not personally liable, directly or indirectly, by way of contribution or otherwise, for~~ a debt, obligation, or other liability of the company.

~~(2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager being or acting as a member, manager, agent of the company, or agent of a manager or member.~~

(b) The failure of a limited liability company to observe any particular formalities

1 relating to the exercise of its powers or management of its activities is not a ground for imposing
2 liability on ~~the members or managers for the debts, obligations, or other liabilities of the~~
3 ~~company~~ any member, manager, agent of the company, or agent of a manager, for any debt,
4 obligation, or other liability of the company.

5 **Reporters' Notes**

6
7 *Subsection (a)* – Conformed to Trust Act, § 304(a) and the HUB.

8
9 *Subsection (b)* – No comparable provision in the Trust Act, but conformed to the style
10 and substance of Trust Act, § 304(a).

1 [ARTICLE] 4

2 RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY
3 COMPANY

4
5 SECTION 401. BECOMING MEMBER.

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

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

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

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

19 (1) as provided in the operating agreement;

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

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

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

23 (A) consent to admit at least one specified person as a member is given by
24 transferees owning the rights to receive a majority of distributions as transferees at the time the

1 consent is to be effective; and

2 (B) at least one person becomes a member in accordance with the
3 consent. ~~the last person to have been a member, or the legal representative of that person,~~
4 ~~designates a person to become a member; and~~

5 ~~(B) the designated person consents to become a member.~~

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

8 **Reporters' Notes**

9
10 *Former subsection (c)* – deleted as inapposite due to the “semi-shelf” approach of Section
11 201.

12
13 *Subsection (c)(4)* – Decision to change the rule was made at the October, 2009 meeting.
14 The revision language is derived from ULPA, § 801(3)(B) (permitting a limited partnership to
15 avoid dissolution following the dissociation of a sole general partner). That language should be
16 conformed to this provision, which relocates the phrase “a majority of”.
17

18
19 **SECTION 402. FORM OF CONTRIBUTION.** A contribution may consist of
20 tangible or intangible property or other benefit to a limited liability company, including money,
21 services performed, promissory notes, other agreements to contribute money or property, and
22 contracts for services to be performed.

23 **SECTION 403. LIABILITY FOR CONTRIBUTIONS.**

24 (a) A person’s obligation to make a contribution to a limited liability company is not
25 excused by the person’s death, disability, or other inability to perform personally. If a person
26 does not make a required contribution, the person or the person’s estate is obligated to contribute
27 money equal to the value of the part of the contribution which has not been made, at the option
28 of the company.

29 (b) The obligation of a person to make a contribution may be compromised only by

1 [consent of all members](#). A creditor of a limited liability company which extends credit or
2 otherwise acts in reliance on an obligation described in subsection (a) [without notice of any](#)
3 [compromise under this subsection](#) may enforce the obligation.

4 **Reporters' Notes**

5
6 *Subsection (b)* – Per a decision made at the October, 2009 meeting. Source: ULPA, §
7 502(c).
8
9

10 **SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE** 11 **DISSOLUTION.**

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

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

19 (c) A person does not have a right to demand or receive a distribution from a limited
20 liability company in any form other than money. Except as otherwise provided in Section
21 ~~708~~710(c), a limited liability company may distribute an asset in kind if each part of the asset is
22 fungible with each other part and each person receives a percentage of the asset equal in value to
23 the person's share of distributions.

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

1 **SECTION 405. LIMITATIONS ON DISTRIBUTION.**

2 (a) In this section, “distribution” does not include amounts constituting reasonable
3 compensation for present or past services or reasonable payments made in the ordinary course of
4 business under a bona fide retirement plan or other benefits program.

5 ~~(a)~~ (b) A limited liability company may not make a distribution if after the distribution:

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

8 (2) the company’s total assets would be less than the sum of its total liabilities
9 plus the amount that would be needed, if the company were to be dissolved, wound up, and
10 terminated at the time of the distribution, to satisfy the preferential rights upon dissolution,
11 winding up, and termination of members whose preferential rights are superior to those of
12 persons receiving the distribution.

13 ~~(b)~~ (c) A limited liability company may base a determination that a distribution is not
14 prohibited under subsection (a) on financial statements prepared on the basis of accounting
15 practices and principles that are reasonable in the circumstances or on a fair valuation or other
16 method that is reasonable under the circumstances

17 ~~(c)~~ (d) ~~Except as otherwise provided in subsection (f), the~~ The effect of a distribution
18 under subsection ~~(a)~~ (b) is measured:

19 (1) ~~in the case of a distribution by purchase, redemption, or other acquisition of a~~
20 ~~transferable interest in the company, as of the date money or other property is transferred or debt~~
21 ~~incurred by the company~~ in the case of a distribution of indebtedness:

22 (A) as of the date the indebtedness is distributed; and again

23 (B) as of the date each payment of principal or interest is made (with each

payment treated as a distribution); and

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

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

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

~~(d) (c) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors. A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (b) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made under this section.~~

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

~~(f) (g) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made. This section does not apply to distributions under Section 710.~~

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

Reporters' Notes

Subsection (a) – This sentence was previously subsection (g) and is relocated here to improve the conceptual flow of the section.

1 *Subsection (d)*– Revised per a decision at the March, 2010 meeting of the Drafting
2 Committee. (Per the same decision, subsection (f) is subsumed into this provision.)
3
4

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

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

12 (b) To the extent the operating agreement of a member-managed limited liability
13 company expressly relieves a member of the authority and responsibility to consent to
14 distributions and imposes that authority and responsibility on one or more other members, the
15 liability stated in subsection (a) applies to the other members and not the member that the
16 operating agreement relieves of authority and responsibility.

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

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

23 (1) implead any other person that is subject to liability under subsection (a) and
24 seek to ~~compel~~ enforce a right of contribution from the person; and

25 (2) implead any person that received a distribution in violation of subsection (c)

1 and seek to ~~compel~~ enforce a right of contribution from the person in the amount the person
2 received in violation of subsection (c).

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

5 **Reporters' Notes**

6
7 *Subsection (d)* – Changes are stylistic.
8
9

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

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

13 (1) expressly provides that:

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

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

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

17 (2) includes words of similar import.

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

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

20 (2) Each member has equal rights in the management and conduct of the
21 company’s activities.

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

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

26 (5) The consent of all members is required to approve a merger, interest

exchange, conversion, or domestication under [Article] 10.

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

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

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

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

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

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

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

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

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

(D) amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members

1 without notice or cause.

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

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

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

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

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

18 **SECTION 408. INDEMNIFICATION, ADVANCEMENT, AND INSURANCE.**

19 (a) A limited liability company shall reimburse a member of a member-managed
20 company or the manager of a manager-managed company for any payment made ~~and indemnify~~
21 ~~for any debt, obligation, or other liability incurred by a the member of a member-managed~~
22 ~~company or the manager of a manager-managed company~~ in the course of the member's or
23 manager's activities on behalf of the company, if, ~~in making the payment or incurring the debt,~~

1 ~~obligation, or other liability,~~ the member or manager complied with ~~the duties stated in~~ Sections
2 405, 407, and 409 in making the payment.

3 (b) A limited liability company shall indemnify and hold harmless a member or manager
4 with respect to any claim or demand against the person and any debt, obligation, or other liability
5 incurred by the person by reason of the person's former or present capacity as member or
6 manager, if the claim, demand, debt, obligation, or other liability does not arise from the person's
7 breach of Section 405, 407, or 409.

8 (c) As an activity in the ordinary course of its activities, a limited liability company may
9 advance reasonable expenses, including attorney's fees and costs, incurred by a member or
10 manager in connection with a claim or demand against the person by reason of the person's
11 former or present capacity as a member or manager, if the person promises to repay the limited
12 liability company if the person ultimately is determined not to be entitled to be indemnified
13 under subsection (b).

14 ~~(b)~~ (d) A limited liability company may purchase and maintain insurance on behalf of a
15 member or manager of the company against liability asserted against or incurred by the member
16 or manager in that capacity or arising from that status even if, under ~~Section 110(g)~~ Section
17 110(d)(3), the operating agreement could not eliminate or limit the person's liability to the
18 company for the conduct giving rise to the liability.

19 **Reporters' Notes**

20
21 *Subsections (a) and (b)* – The language approved at the September 2010 meeting created
22 an overlap between these subsections; both dealt with indemnification. Indemnification has
23 therefore been stripped from subsection (a), and subsection (b) has been expanded beyond
24 “claims and demands” to include” any debt, obligation, or other liability”.

25
26 Note the added disqualifying circumstance – breach of Section 407 (allocation of authority).
27 Query whether to retain. Query whether to add “the operating agreement”.
28

1 *Subsection (a)* – The phrase “the duties stated in” has been deleted as surplus and because
2 arguably section 405 states restrictions rather than duties and section 407 details actual authority.

3 *Subsection (c)* – Per a decision of the Drafting Committee at its March, 2010 meeting,
4 this new subsection authorizes (but not require) advancement of expenses. It was not possible
5 to harmonize with USTEA, § 509(b), because in HULLCA the scope of indemnification is
6 narrower (and required, unless the operating agreement provides otherwise). The introductory
7 phrase tracks Section 407(b)(3) and c(3), so that the decision to make advancements requires
8 only majority consent.

9
10 *Subsection (c)* – Note location of “reasonable” – query whether sufficient to indicate that
11 the requirements is applicable to all expenses and therefore controls the amounts of attorney
12 fees?

13 14 15 **SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND**

16 **MANAGERS.**

17 (a) A member of a member-managed limited liability company owes to the company and,
18 subject to Section 901(b), the other members the ~~fiduciary~~ duties of loyalty and care stated in
19 subsections (b) and (c).

20 (b) The ~~fiduciary~~ duty of loyalty of a member in a member-managed limited liability
21 company includes the duties:

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

24 (A) in the conduct or winding up of the company’s activities;

25 (B) from a use by the member of the company’s property; or

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

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

29 (3) to refrain from competing with the company in the conduct of the company’s
30 activities before the dissolution of the company.

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

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

12 ~~(e) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity~~
13 ~~or at common law that the transaction was fair to the limited liability company~~

14 All of the members of a member-managed limited liability company or a manager-
15 managed limited liability company may authorize or ratify, after full disclosure of all material
16 facts, a specific act or transaction that otherwise would violate the duty of loyalty.

17 (f) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity
18 or at common law that the transaction was fair to the limited liability company.

19 (g) If, as permitted by subsection (e), subsection (h)(5), or the operating agreement, a
20 member enters into a transaction with a limited liability company that otherwise would be
21 prohibited by subsection (b)(2), the member's rights and obligations arising from the transaction
22 are the same as those of a person not a member.

23 ~~(g)~~ (h) In a manager-managed limited liability company, the following rules apply:

1 (1) Subsections (a), (b), (c), and ~~(e)~~ (f) apply to the manager or managers and not
2 the members.

3 (2) The duty stated under subsection (b)(3) continues until winding up is
4 completed.

5 (3) Subsection (d) applies to the members and managers.

6 (4) ~~Subsection (f) applies~~ The power to ratify stated in subsection (e) pertains
7 only to the members.

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

10 **Reporters' Notes**

11
12 At its September 2010 meeting, the Committee reversed an earlier decision to delete
13 subsection (a) and further decided to move the word “fiduciary” from (restored) subsection (a) to
14 subsection (b).

15
16 *Subsection (g)* – This provision is an improved version of the old “same rights” language
17 that RULLCA (and ULP) had discarded as unnecessary and misleading.

18
19 *Subsection (h)(4)* – The new language is added for clarity.
20
21

22 **SECTION 410. RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED** 23 **MEMBERS TO INFORMATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) On 10 days' demand made in a record received by a limited liability company, a
13 dissociated member may have access to information to which the person was entitled while a
14 member if the information pertains to the period during which the person was a member, the
15 person seeks the information in good faith, and the person satisfies the requirements imposed on
16 a member by subsection (b)(2). The company shall respond to a demand made pursuant to this
17 subsection in the manner provided in subsection (b)(3).

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

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

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

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

1 [ARTICLE] 5

2 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

3
4 SECTION 501. NATURE OF TRANSFERABLE INTEREST. Except as otherwise

5 provided in Section 503(f), the only part of a membership that is transferable is the transferable
6 interest. A transferable interest is personal property.

7 Reporters' Notes

8 In the new sentence, the independent clause reflects discussion at the September 2010
9 meeting (spearheaded by ABA Business Law Section Advisor Bill Callison). This language will
10 answer a question left open by the current Act – namely, whether governance rights are
11 transferable from member to member. (In the default mode, the question is moot, because voting
12 power is allocated per capita. However, once the operating agreement delineates a different
13 allocation, the question of member-to-member transfers becomes “live” and sometimes crucial.)

14
15 The introductory phrase (“Except as”) refers the “Olmstead fix” made in the charging order
16 provision, Section 503.

17
18
19 SECTION 502. TRANSFER OF TRANSFERABLE INTEREST.

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

21 (1) is permissible;

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

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

25 (A) participate in the management or conduct of the company’s activities;

26 or

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

29 (b) A transferee has the right to receive, in accordance with the transfer, distributions to

1 which the transferor would otherwise be entitled.

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

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

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

9 (f) A transfer of a transferable interest in violation of a restriction on transfer contained in
10 the operating agreement is ineffective as to a person having notice of the restriction at the time of
11 transfer.

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

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

18 **SECTION 503. CHARGING ORDER.**

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

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

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

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

6 (c) Upon a showing that distributions under a charging order will not pay the judgment
7 debt within a reasonable time, the court may foreclose the lien and order the sale of the
8 transferable interest. ~~The~~ Except as other provided in section (f), the purchaser at the foreclosure
9 sale only obtains the transferable interest, does not thereby become a member, and is subject to
10 Section 502.

11 (d) At any time before foreclosure under subsection (c), the member or transferee whose
12 transferable interest is subject to a charging order under subsection (a) may extinguish the
13 charging order by satisfying the judgment and filing a certified copy of the satisfaction with the
14 court that issued the charging order.

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

19 (f) If a court forecloses a charging order lien against the sole member of a limited liability
20 company:

21 (1) the purchaser at the court ordered sale obtains the member's entire interest, not
22 merely the member's transferable interest;

23 (2) the purchaser thereby becomes a member; and

(3) the person whose interest was subject to the foreclosed charging order is
dissociated as a member.

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

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

Reporters' Notes

Changes made in red are to implement the “Olmstead fix” adopted at the September 2010 meeting. A conforming change has been made to the new first sentence of Section 501.

Subsection (f) – This section embodies the so-called “Olmstead fix.” Because this type of foreclosure sale will necessarily dissociate the member whose interest is subject to the foreclosed lien, Section 602 has been revised accordingly.

SECTION 504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED

MEMBER. If a member dies, the deceased member's personal representative or other legal representative may exercise:

(1) the rights of a transferee provided in Section 502(c); and,

(2) for the purposes of settling the estate, the rights ~~of a current~~ the deceased member had under Section 410.

Reporters' Notes

The revised language states a better policy. The proper reference is not to the rights of current members generally but rather particularly to whatever rights the deceased member had.

1 [ARTICLE] 6

2 MEMBER'S DISSOCIATION

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

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

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

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

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

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

13 (B) the person is expelled as a member by judicial order under Section
14 602(5);

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

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

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

1 **Reporters' Notes**

2
3 *Subsection (a)* – The operating agreement can negate the power as well as the right. See
4 HULLCA, § 110(c) (omitting any reference to this provision in the “operating may not” list).
5
6

7 **SECTION 602. EVENTS CAUSING DISSOCIATION.** A person is dissociated as a
8 member from a limited liability company when:

9 (1) the company has notice of the person’s express will to withdraw as a member, but, if
10 the person specified a withdrawal date later than the date the company had notice, on that later
11 date;

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

13 (3) the person’s entire interest is transferred in a foreclosure sale under Section 503(f);

14 (4) the person is expelled as a member pursuant to the operating agreement;

15 ~~(4)~~ (5) the person is expelled as a member by the unanimous consent of the other
16 members if:

17 (A) it is unlawful to carry on the company’s activities with the person as a
18 member;

19 (B) there has been a transfer of all of the person’s transferable interest in the
20 company, other than:

21 (i) a transfer for security purposes; or

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

24 (C) the person is a corporation and, within 90 days after the company notifies the
25 person that it will be expelled as a member because the person has filed a certificate of
26 dissolution or the equivalent, its charter has been revoked, or its right to conduct business has

1 been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been
2 revoked or its charter or right to conduct business has not been reinstated; or

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

5 ~~(5)~~ (6) on application by the company, the person is expelled as a member by judicial
6 order because the person:

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

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

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

14 ~~(6)~~ (7) in the case of a person who is an individual:

15 (A) the person dies; or

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

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

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

20 ~~(7)~~ (8) in a member-managed limited liability company, the person:

21 (A) becomes a debtor in bankruptcy;

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

23 (C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or

liquidator of the person or of all or substantially all of the person's property;

~~(8)~~ (9) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

~~(9)~~ (10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

~~(10)~~ (11) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

~~(11)~~ (12) the company participates in a merger under [Article] 10, if:

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

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

~~(12)~~ (13) the company participates in an interest exchange under [Article] 10, if, as a result of the interest exchange, the person ceases to be a member;

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

~~(13)~~ (15) the company participates in a domestication under [Article] 10, if, as a result of the domestication, the person ceases to be a member; or

~~(14)~~ (16) the company terminates.

Reporters' Notes

Section 602(3) – This additional cause of dissociation dovetails with the “Olmstead fix” for charging orders and single member LLCs.

Section 602(13) – This addition cause of dissociation reflects the additional type of organic transaction now available (due to the infusion of META in HULLCA).

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

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

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

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

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

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

11

1 [ARTICLE] 7

2 DISSOLUTION AND WINDING UP

3 SECTION 701. EVENTS CAUSING DISSOLUTION.

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

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

8 (2) the consent of all the members;

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

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

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

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

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

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

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

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

SECTION 702. WINDING UP.

(a) A dissolved limited liability company shall wind up its activities, and except as provided in Section 703 the company continues after dissolution only for the purpose of winding up.

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

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

(2) may:

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

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

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

(D) transfer the company's property;

(E) settle disputes by mediation or arbitration;

(F) deliver to the [Secretary of State] for filing a statement of termination stating the name of the company and that the company is terminated;

and

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

(c) If a dissolved limited liability company has no members, the legal representative of

1 the last person to have been a member may wind up the activities of the company. If the person
2 does so, the person has the powers of a sole manager under Section 407(c) and is deemed to be a
3 manager for the purposes of Section 304(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

Reporters' Notes

Subsection (a) – The added language takes into account a new section, which authorizes rescinding dissolution.

Subsection (b)(2)(F)– At earlier draft included a provision authorizing the LLC in its termination filing to include “any other information the limited liability company determines”. A commissioner at the 2010 Annual Meeting submitted a note suggesting that this authorization is overbroad and should be limited to information “related to the termination”. The co-reporters sent an inquiry to the IACA representative to the Drafting Committee. At its September 2010 meeting, the Committee decided to delete the previously added language.

SECTION 703. RESCINDING DISSOLUTION.

(a) A limited liability company may rescind its dissolution under subsection (b), unless a statement of termination pertaining to the company has been delivered to the [Secretary of State] for filing, the [appropriate court] has entered an order under Section 701(a)(4) or (5) dissolving the company, or the [secretary of state] has dissolved the company under Section 705. If a limited liability company rescinds its dissolution, the company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company after the dissolution and before the rescission is determined as if dissolution had never occurred. However, the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the rescission may not be adversely affected.

(b) Rescinding dissolution under this section requires:

(1) the consent of each member;

(2) if a statement of dissolution pertaining to the limited liability company has been delivered for filing to the [Secretary of State] but has not become effective, the filing on

behalf of the company under Section 207 of a statement of withdrawal pertaining to the
statement of dissolution; and
(3) if a statement of dissolution pertaining to the limited liability company is
effective, the filing on behalf of the company of a statement of correction under Section 208
stating that dissolution has been rescinded under this section.

Reporters' Notes

This section was inspired by RUPA § 802(b). The language here is the same as in previous drafts, except that in subsection (a) the “unless” category has been expanded to include administrative dissolution.

SECTION ~~703~~ 704. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

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

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

- (1) specify the information required to be included in a claim;
- (2) provide a mailing address to which the claim is to be sent;
- (3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
- (4) state that the claim will be barred if not received by the deadline.

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

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

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

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

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

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

SECTION ~~704~~ 705. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

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

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

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

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

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within ~~five~~ three years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with

subsection (b), unless the claimant commences an action to enforce the claim against the company within ~~five~~ three years after the publication date of the notice, the claim of each of the following claimants is barred:

(1) a claimant that did not receive notice in a record under Section ~~703~~704;

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

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

(d) A claim not barred under this section or Section 704 may be enforced:

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

(2) except as provided in Section 706, if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

Reporters' Notes

Subsection (b)(1) – At the 2010 Annual Meeting, a commissioner suggested including language to address publication by electronic newspapers or through a website maintained by the filing officer. No doubt that the latter approach, if publicized, would create more actual notice than through “legal newspapers.” The enactment difficulties are likewise indubitable.

Subsection (b)(3) – MBCA § 14.07(c) states “three years”.

Subsection (c)(1) – MBCA § 14.07(c)(1) refers to “given written notice” rather than “received”.

SECTION 706. COURT PROCEEDINGS.

(a) A dissolved limited liability company that has published a notice under section 705

1 may file an application with the [appropriate court] in the county where the dissolved company's
2 principal office, or, if none in this state, the office of its registered agent, is located for a
3 determination of the amount and form of security to be provided for payment of claims that are
4 contingent or have not been made known to the dissolved company or that are based on an event
5 occurring after the effective date of dissolution but which, based on the facts known to the
6 dissolved company, are reasonably estimated to arise after the effective date of dissolution.
7 Provision need not be made for any claim that is or is reasonably anticipated to be barred under
8 section 705.

9 (b) Not later than 10 days after the filing of the application, notice of the proceeding must
10 be given by the dissolved limited liability company to each claimant holding a contingent claim
11 whose contingent claim is shown on the records of the dissolved company.

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

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

21 **Reporters' Notes**

22 Source: MBCA, § 14.08.
23

1 **SECTION ~~705~~ 707. ADMINISTRATIVE DISSOLUTION.**

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

4 (1) ~~pay, within 60 days after the due date,~~ any fee, tax, or penalty ~~due~~ required to
5 be paid to the [Secretary of State] ~~under this [act] or law other than this [act]~~ not later than [six
6 months] after it is due; or

7 (2) ~~deliver, within 60 days after the due date, its an~~ annual report to the [Secretary
8 of State] not later than [six months] after it is due; or

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

10 (b) If the [Secretary of State] determines that ~~a ground exists~~ one or more grounds exist
11 for ~~administratively~~ dissolving a limited liability company, the [Secretary of State] shall ~~file a~~
12 ~~record of the determination and~~ serve the company ~~with a copy of the filed~~ pursuant to Section
13 116 with notice in a record of the [Secretary of State's] determination.

14 (c) If ~~within 60~~ a limited liability company, not later than [60] days after service of the
15 ~~copy~~ notice is effected pursuant to subsection (b), ~~a limited liability company~~ does not correct
16 each ground for dissolution or demonstrate to the ~~reasonable~~ satisfaction of the [Secretary of
17 State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of
18 State] shall dissolve the company administratively by ~~preparing, signing, and filing~~ a declaration
19 of dissolution that ~~states~~ recites the ground or grounds for dissolution and its effective date. The
20 [Secretary of State] shall file the original of the declaration and serve a copy on the company
21 ~~with a copy of the filed declaration~~ pursuant to Section 116.

22 (d) A limited liability company that ~~has been~~ is dissolved administratively ~~dissolved~~
23 continues in existence as an entity but, ~~subject to Section 706,~~ may not carry on ~~only any~~

activities except as necessary to wind up its activities and liquidate its assets under Sections 702 and 708~~710, and~~ to notify claimants under Sections ~~703 and~~ 704 and 705, or to apply for reinstatement under Section 708.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its ~~agent for service of process~~ registered agent.

Reporters' Notes

Conformed to the HUB §§ 1-601 and 1-602, but kept in one section to preserve numbering.

Subsection (a)(3) – The Reporters' Notes to the 2010 Annual Meeting Draft queried “consecutive” and at that meeting a commissioner submitted a note on the same point. A conforming change has been made to the HUB.

Subsection (d) – “Business” has been changed to “activities” in HUB § 1-602(c) to conform to this subsection.

SECTION ~~706~~ 708. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

(a) A limited liability company that ~~has been~~ is dissolved administratively under Section 707 ~~dissolved~~ may apply to the [Secretary of State] for reinstatement [~~within two years~~] [not later than two years after the effective date of dissolution]. The application must ~~be delivered to the [Secretary of State] for filing and state:~~

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

(2) the address of the principal office of the limited liability company and the name and address of its registered agent;

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

~~(2)~~ (4) that the grounds for dissolution either did not exist or have been

1 eliminated; and

2 (3) that the company's name satisfies the requirements of Section 108.

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

7 ~~(b)~~ (c) If the [Secretary of State] determines that an application ~~under subsection (a)~~
8 contains the ~~required~~ information required by subsection (a), and is satisfied that the information
9 is correct, and determines that all payments required to be made to the [Secretary of State] by
10 subsection (b) have been made, the [Secretary of State] shall cancel the declaration of dissolution
11 and prepare a statement, the [Secretary of State] shall prepare a declaration of reinstatement that
12 states ~~this~~ the [Secretary of State's] determination and the effective date of reinstatement, sign
13 ~~and file the original of the declaration of reinstatement~~ statement, and serve a copy on the limited
14 liability company ~~with a copy.~~

15 ~~(c)~~ (d) When a reinstatement ~~becomes~~ under this section is effective, it relates back to and
16 takes effect as of the effective date of the administrative dissolution and the limited liability
17 company ~~may resume its activities~~ resumes carrying on its activities as if the administrative
18 dissolution had not never occurred, except for the rights of a person arising out of an act or
19 omission in reliance on the dissolution before the person knew or had reason to know of the
20 reinstatement.

21 Reporters' Notes

22 This section has been conformed to the HUB.

23 USTEA makes this provision non-waivable. See USTEA, § 807, cmt. ("Under Section
24 104(14), the governing instrument may not override this section.") Query why persons should

1 not be able to agree that they will not attempt reinstatement.

2
3
4 **SECTION ~~707~~ 709. ~~APPEAL FROM REJECTION~~ JUDICIAL REVIEW OF**
5 **DENIAL OF REINSTATEMENT.**

6 (a) If the [Secretary of State] ~~rejects~~ denies a limited liability company's application for
7 reinstatement following administrative dissolution, the [Secretary of State] shall serve the limited
8 liability company with ~~prepare, sign, and file a notice in a record~~ that explains the reason or
9 reasons ~~for rejection and serve the company with a copy of the notice~~ the denial.

10 (b) ~~Within 30 days after service of a notice of rejection of reinstatement under subsection~~
11 ~~(a), a limited liability company may appeal from the rejection by petitioning the [appropriate~~
12 ~~court] to set aside the dissolution. The petition must be served on the [Secretary of State] and~~
13 ~~contain a copy of the [Secretary of State's] declaration of dissolution, the company's application~~
14 ~~for reinstatement, and the [Secretary of State's] notice of rejection.~~

15 (c) ~~(b) The court may order the [Secretary of State] to reinstate a dissolved limited~~
16 ~~liability company or take other action the court considers appropriate. A limited liability~~
17 ~~company may seek judicial review of denial of reinstatement in the [appropriate court] not later~~
18 ~~than [30] days after service of the notice of denial.~~

19 **Reporters' Notes**

20
21 Conformed to HUB § 1-604.

22
23 *Subsection (a)* – HUB § 1-602(a) includes “pursuant to Section 1-412”.

24
25
26 **SECTION ~~708~~ 710. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED**
27 **LIABILITY COMPANY'S ACTIVITIES.**

28 (a) In winding up its activities, a limited liability company must apply its assets to

1 discharge its obligations to creditors, including members that are creditors.

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

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

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

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

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

13 **Reporters' Notes**

14 *Section 710(b)(1)* – query whether to make explicit that contributions are valued as of the
15 date of the contribution. For example: “(1) to each person owning a transferable interest that
16 reflects contributions made by a member and not previously returned, an amount equal to the
17 value of the unreturned contributions, with contributions valued as of the date the contribution
18 was made; [A participant at the September 2010 meeting raised this concern.]
19

1 [ARTICLE] 8

2 FOREIGN LIMITED LIABILITY COMPANIES

3
4 SECTION 801. GOVERNING LAW.

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

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

8 (2) the liability of a member as member and a manager as manager for ~~the debts,~~
9 ~~obligations or other liabilities~~ a debt, obligation, or other liability of the company.

10 (b) A foreign limited liability company ~~may~~is not ~~be denied a certificate of authority by~~
11 ~~reason precluded from registering to do business in this state because~~ of any difference between
12 the law of the limited liability company's jurisdiction of formation ~~under which the company is~~
13 ~~formed~~ and the law of this state.

14 (c) ~~A certificate of authority~~Registration of a foreign limited liability company to do
15 business in this state does not authorize a ~~foreign limited liability company~~it to engage in any
16 ~~business activity~~ or exercise any power that a limited liability company may not engage in or
17 exercise in this state.

18 Reporters' Notes

19
20 Conformed to HUB § 1-501.

21
22
23 ~~SECTION 802. APPLICATION FOR CERTIFICATE OF AUTHORITY.~~

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

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

3 ~~(2) the name of the state or other jurisdiction under whose law the company is~~
4 ~~formed;~~

5 ~~(3) the street and mailing addresses of the company's principal office and, if the~~
6 ~~law of the jurisdiction under which the company is formed requires the company to maintain an~~
7 ~~office in that jurisdiction, the street and mailing addresses of the required office; and~~

8 ~~(4) the name and street and mailing addresses of the company's initial agent for~~
9 ~~service of process in this state.~~

10 ~~(b) A foreign limited liability company shall deliver with a completed application under~~
11 ~~subsection (a) a certificate of existence or a record of similar import signed by the [Secretary of~~
12 ~~State] or other official having custody of the company's publicly filed records in the state or~~
13 ~~other jurisdiction under whose law the company is formed.~~

14 **SECTION 802. REGISTRATION TO DO BUSINESS IN THIS STATE.**

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

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

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

22 (d) A member or manager of a foreign limited liability company is not liable for a debt,
23 obligation, or other liability of the company solely because the company did business in this state

1 without registering to do business in this state.

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

4 **Reporters' Notes**

5
6 Derived essentially verbatim from HUB § 1-502 and replacing Re-ULLCA § 808.

7
8 *Subsection (d) – Source: Re-ULLCA, § 808(c), which is substituted (although revised to*
9 *use the singular form) because HUB § 105(d) overlaps and does not fit with Re-ULLCA, § 801*
10 *(whose prominence and content are important). HUB § 105(d) (post Style) provides: “The*
11 *liability of an interest holder or governor of a foreign filing entity or of a partner of a foreign*
12 *limited liability partnership is governed by the laws of its jurisdiction of formation. Any*
13 *limitation on that liability is not waived solely because the foreign filing entity or foreign limited*
14 *liability partnership does business in this state without registering.”*

15 16 17 **SECTION 802 803. ~~APPLICATION FOR CERTIFICATE OF AUTHORITY~~**

18 **FOREIGN REGISTRATION STATEMENT.** ~~(a) A foreign limited liability company may~~
19 ~~apply for a certificate of authority to transact~~ To register to do business in this state, a foreign
20 limited liability company must by delivering an application deliver a foreign registration
21 statement to the [Secretary of State] for filing. ~~The application~~ statement must state:

22 (1) the name of the company and, if the name does not comply with Section 108, an
23 alternate name adopted pursuant to Section ~~805~~806(a);

24 (2) the name of the ~~state or other~~ jurisdiction under whose law the company is formed;

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

28 (4) the name and street and mailing addresses of the company's ~~initial~~ registered agent
29 ~~for service of process~~ in this state.

30 ~~(b) A foreign limited liability company shall deliver with a completed application under~~

1 ~~subsection (a) a certificate of existence or a record of similar import signed by the [Secretary of~~
2 ~~State] or other official having custody of the company's publicly filed records in the state or~~
3 ~~other jurisdiction under whose law the company is formed.~~

4 **Reporters' Notes**

5
6 Conformed to HUB § 1-503 (with HUB conformed by using "statement" instead
7 "application" in the second sentence).

8
9 *Section 803(2)* – HUB § 1-503(3) refers to "jurisdiction of formation," which is a defined
10 term. HUB § 1-102(19) ("Jurisdiction of formation" means the jurisdiction whose law includes
11 the organic law of an entity."). The Re-ULLCA language is revised here by deleting "state or
12 other" as superfluous.

13
14 *Section 803(4)* – HUB § 1-504(5) refers simply to "the information required by Section
15 1-404(a)." HUB Article 4 is the registered agent article, and § 1-404(a) states:

- 16
17 (a) A registered agent filing must state:
18 (1) the name of the represented entity's commercial registered agent; or
19 (2) if the entity does not have a commercial registered agent:
20 (A) the name and address of the entity's noncommercial registered
21 agent; or
22 (B) if the entity designates an officer or employee to accept service
23 of process, the title of the office or other position and the address of the business office of
24 that person.

25 26 27 **SECTION 804. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.**

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

- 31 (1) the name of the entity;
32 (2) the name of the jurisdiction under whose law the company is formed;
33 (3) the address or addresses required by Section 802(3); or
34 (4) the name or street or mailing addresses of the company's registered agent in
35 this state.

(b) The requirements of Section 803 for an original foreign registration statement apply to an amendment of a foreign registration statement under this section.

Reporters' Notes

Source: HUB § 1-504.

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

Subsection (a)(2) – HUB § 1-504(a)(3) provides: “the jurisdiction of formation”. See the notes under Section 803 of this draft for an explanation of this draft’s use of different language.

Subsection (a)(4) – HUB § 1-504(a)(5) provides: “the information required by Section 1-404(a)”.

Query whether “the name of” is the correct language. It is unlikely that the name of the original jurisdiction will change. What is more likely is that the jurisdiction of formation will change.

**SECTION 803 805. ACTIVITIES NOT CONSTITUTING TRANSACTING
DOING BUSINESS.**

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

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

(2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, ~~whether by mail or electronic means or through employees or agents or otherwise~~ by any means; if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in ~~real or personal~~ property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property ~~so acquired~~;

(9) conducting an isolated transaction that is ~~completed within 30 days and is not~~ in the course of similar transactions; ~~and~~

(10) owning, without more, real or personal property;

(11) transacting doing business in interstate commerce.

~~(b) For purposes of this [article], the ownership in this state of income producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.~~

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

Reporters' Notes

Subsection (a)(4) – HUB previously referred to “interests,” a term defined by HUB § 1-102(16)(E) to mean “a membership interest in a limited liability company.” HUB has been conformed to this language – i.e., “securities”.

Subsection (a)(8) – At the 2010 Annual Meeting, a commissioner noted that this provision should not apply to debt collection operations. The same issue pertains to subsection (a)(7). See Notes to subsection (a)(10), below.

Subsection (a)(10) – Source: MBCA, §§ 15.01(b)(9). The Drafting Committee had anticipated returning to this provision, after the 2010 Annual Meeting, to consider how better to

1 indicate when mere passive ownership of land ends and transacting business begins. At its
2 September 2010 meeting, the Committee decided that such an inquiry (i) went far beyond
3 harmonization; (ii) would take far more time than the Committee had available; and (iii) was not
4 justified given the limited consequences at issue.

5
6
7 **~~SECTION 804. FILING OF CERTIFICATE OF AUTHORITY.~~** Unless the
8 ~~[Secretary of State] determines that an application for a certificate of authority does not comply~~
9 ~~with the filing requirements of this [act], the [Secretary of State], upon payment of all filing fees,~~
10 ~~shall file the application of a foreign limited liability company, prepare, sign, and file a~~
11 ~~certificate of authority to transact business in this state, and send a copy of the filed certificate,~~
12 ~~together with a receipt for the fees, to the company or its representative.~~

13 **Reporters' Notes**

14
15 This provision is no longer necessary, given new Section 209, which is derived from
16 HUB § 1-206.

17 18 19 **~~SECTION 805~~ 806. NONCOMPLYING NAME OF FOREIGN LIMITED** 20 **LIABILITY COMPANY.**

21 (a) A foreign limited liability company whose name does not comply with Section 108
22 may not ~~obtain a certificate of authority~~ register to do business in this state until it adopts, for the
23 purpose of ~~transacting~~ doing business in this state, an alternate name that complies with Section
24 108. A foreign limited liability company that ~~adopts~~ registers under an alternate name under this
25 subsection ~~and obtains a certificate of authority with the alternate name~~ need not comply with
26 [this state's fictitious or assumed name statute]. After ~~obtaining a certificate of authority~~
27 registering to do business in this state with an alternate name, a foreign limited liability company
28 ~~shall~~ may do ~~transact~~ business in this state under:

29 (1) the alternate name;

1 registered to do business in this state is deemed to have withdrawn its registration if the company
2 converts to a domestic limited liability partnership or to a domestic entity that is organized,
3 incorporated, or otherwise formed through the delivery of a record to the [Secretary of State] for
4 filing. The deemed withdrawal occurs when the conversion becomes effective.” At its
5 December 2010 meeting, the “Plumbing Subcommittee” declined to change the HUB.
6
7

8 **SECTION 808. WITHDRAWAL ON CONVERSION TO NONFILING ENTITY**

9 **OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

10 (a) ~~A~~ When a foreign limited liability company registered to do business in this state ~~shall~~
11 ~~deliver a statement of withdrawal to the [Secretary of State] for filing if the company~~ converts to
12 a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the
13 public filing of a record, other than a limited liability partnership, ~~the domestic or foreign entity~~
14 ~~shall deliver a statement of withdrawal to the [Secretary of State] for filing.~~ The statement must
15 state:

16 (1) the name of the foreign limited liability company and the name of the
17 jurisdiction under whose law it was formed before the conversion;

18 (2) the type of entity to which it has converted and the jurisdiction whose laws
19 govern the entity’s internal affairs;

20 (3) that the foreign ~~company~~ or domestic entity surrenders ~~its~~ the foreign limited
21 liability company’s registration to do business in this state;

22 (4) that the ~~foreign company~~ domestic or foreign entity revokes the authority of
23 ~~it’s the~~ registered agent of the foreign limited liability company to accept service on ~~its the~~
24 ~~company’s~~ behalf; and

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

27 (b) After a withdrawal is effective under this section, service of process in any action or

proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Section 811(b).

Reporters' Notes

From HUB § 1-509, which also includes dissolution. However, a dissolved foreign LLC might continue doing business for quite some time during winding up. Perhaps substitute notion of “termination.” Whatever decision is made, suggest conforming HUB.

Red font indicates changes made to HUB language to make clear that the resulting entity makes the filing, because the converted entity no longer exists as such. Suggest conforming HUB.

Subsection (a) – Usage problem exists here and in the HUB – specifically, “statement of withdrawal” is used here and for statement used to withdraw a filed record before the record becomes final. HUB § 1-204, HULLCA, § 207. Suggest using “cancellation” here. [Suggestion not discussed at the “Plumbing Subcommittee” meeting in December 2010.]

Subsection (a)(2) – Sequence of items (2) and (3) reversed to improve conceptual flow.

SECTION 809. TRANSFER OF REGISTRATION.

(a) When a foreign limited liability company registered to do business in this state has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the [Secretary of State] to do business in this state, the foreign ~~limited liability company~~ entity shall deliver to the [Secretary of State] for filing an application for transfer of registration. The application must state:

(1) the name of the ~~applicant entity~~ registered foreign limited liability company before the merger or conversion;

(2) that before the merger or conversion the registration pertained to a foreign limited liability company;

(3) the name of the ~~applicant foreign~~ entity into which the foreign limited liability company has merged or to which it has been converted, and, if the name does not comply with

Section 108, an alternate name adopted pursuant to Section 806(a);

(4) the type of entity ~~into which it has merged or to which it has been converted~~
~~and of the applicant foreign entity~~ and the jurisdiction whose law governs ~~the surviving or~~
~~converted entity's~~ its internal affairs; ~~and~~

(5) ~~the following information regarding the entity into which it has merged or to~~
~~which it has been converted, if different than the information for the applicant entity:~~

~~(A)~~ the street and mailing address of the principal office of the ~~surviving~~
~~or converted~~ applicant foreign entity and, if the law of the entity's jurisdiction of formation
requires the entity to maintain an office in that jurisdiction, the street and mailing address of that
office; and

~~(B)~~ (7) the name and street and mailing address of the applicant foreign
entity's registered agent in this state.

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

Reporters' Notes

Patterned after HUB § 1-510(a) and (b). The changes indicated in red are to make clear
that (i) the applicant is to be delivered for filing by the surviving or converted entity ("the
applicant foreign" entity), because the foreign limited liability company no longer exists; and
(ii) which information pertains to the predecessor foreign LLC and which to the surviving or
converted foreign entity. Suggest conforming the HUB.

Perhaps a comment should note that this section is at odds with the general principle governing
mergers and domestications – namely that all rights either vest (merger) or continue (conversion)
by operation of law. Note that with domestication, the registration appears to transfer without
need for a transfer application.

1 **SECTION ~~806~~ 810. REVOCATION OF CERTIFICATE OF AUTHORITY**
2 **TERMINATION OF REGISTRATION.**

3 (a) ~~A certificate of authority~~ The [Secretary of State] may terminate the registration of a
4 foreign limited liability company to ~~transact~~ do business in this state ~~may be revoked by the~~
5 ~~[Secretary of State]~~ in the manner provided in subsections (b) and (c) if the company does not:

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

8 (2) deliver to the [Secretary of State] for filing, not later than ~~within~~ 60 days after
9 the due date, its annual report required under Section ~~209~~ 212;

10 (3) appoint and maintain ~~an~~ a registered agent ~~for service of process~~ as required
11 by Section 113(b); or

12 (4) deliver to the [Secretary of State] for filing a statement of a change under
13 Section 114 within 30 days after a change has occurred in the name or address of the registered
14 agent.

15 (b) ~~To revoke a certificate of authority of a foreign limited liability company, the~~ The
16 [Secretary of State] may terminate the registration of a foreign limited liability company by filing
17 a notice of termination or noting the termination in the record of the [Secretary of State] and by
18 sending ~~must prepare, sign, and file a notice of revocation and send a copy of the notice or the~~
19 information in the notation to the company's registered agent ~~for service of process~~ in this state,
20 or if the company does not ~~appoint and~~ maintain a proper registered agent in this state, to the
21 company's ~~designated~~ principal office. The notice or notated information must state:

22 (1) the ~~revocation's~~ effective date of the termination, which must be at least ~~60~~ 60
23 days after the date the [Secretary of State] sends the copy; and

1 (2) the grounds for ~~revocation~~ termination under subsection (a).

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

7 **Reporters' Notes**

8
9 Conformed to HUB § 1-511.

10
11 *Subsection (a)(4)* – HUB § 1-511 has no parallel to Section 806(a)(4) and HUB § 1-
12 511(3) refers to HUB § 1-402.

13
14 *Subsection (b)* – The Committee should consider recommending that the HUB not use
15 “notice” in this provision, because “notice” is a term of art under agency law, under Section
16 103(b), and under parallel provisions of ULPA and perhaps other “spoke” statutes. In general,
17 suggest conforming HUB to this subsection. [Not adopted by the “Plumbing Subcommittee.
18 Perhaps not considered.]

19
20 *Subsection (c)* – The awkward repeated parallel construction could be avoided by
21 referring to making “a declaration of termination, either by filing a separate record or noting the
22 information”[Not adopted by the “Plumbing Subcommittee. Perhaps not considered.]

23
24 *Subsection (c)* – Query why require a separate record if the filing office has previously
25 only noted the termination in existing records? [Not adopted by the “Plumbing Subcommittee.
26 Perhaps not considered.]

27 28 29 **SECTION ~~807~~ 811. CANCELLATION OF CERTIFICATE OF AUTHORITY**

30 **WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN LIMITED**

31 **LIABILITY COMPANY.** ~~To cancel its certificate of authority to transact business in this state,~~
32 ~~a foreign limited liability company must deliver to the [Secretary of State] for filing a notice of~~
33 ~~cancellation stating the name of the company and that the company desires to cancel its~~
34 ~~certificate of authority. The certificate is canceled when the notice becomes effective.~~

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

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

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

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

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

(b) After the withdrawal of the registration of a foreign limited liability company, service of process in any action or proceeding based on a cause of action arising during the time the company was registered to do business in this state may be made pursuant to Section 116.

Reporters' Notes

Conformed to HUB § 1-507.

~~SECTION 808. EFFECT OF FAILURE TO HAVE CERTIFICATE OF AUTHORITY.~~

~~(a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.~~

~~(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.~~

~~(c) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.~~

~~(d) If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the [Secretary of State] as its agent for service of process for rights of action arising out of the transaction of business in this state.~~

Reporters' Notes

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

SECTION 809 812. ACTION BY [ATTORNEY GENERAL]. The [Attorney General] may maintain an action to enjoin a foreign limited liability company from ~~transacting~~ doing business in this state in violation of this ~~article~~ [act].

Reporters' Notes

Conformed to HUB § 1-512.

1 [ARTICLE] 9

2 ACTIONS BY MEMBERS

3
4 SECTION 901. DIRECT ACTION BY MEMBER.

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

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

12 Reporters' Notes

13
14 USTEA, § 609 allows a direct action "to redress an injury sustained by, or to enforce a
15 duty owed to, the beneficial owner if the beneficial owner can prevail without showing an injury
16 or breach of duty to the trust." For reasons discussed at length in "Direct Versus Derivative and
17 the Law of Limited Liability Companies," 58 BAYLOR L. REV. 63, 106-110 (2006) ("In sum,
18 the duty owed or rights infringed approach cannot be the proper test for making the
19 direct/derivative distinction, because the test would create only confusion."), at least one of the
20 co-reporters believes that USTEA should be conformed back to ULPA and Re-ULLCA.

21
22
23 SECTION 902. DERIVATIVE ACTION. A member may maintain a derivative action
24 to enforce a right of a limited liability company if:

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

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

1 **SECTION 903. PROPER PLAINTIFF.**

~~(a) Except as otherwise provided in subsection (b), a derivative action under Section 902 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.~~

~~(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.~~

7 A derivative action may be maintained only by a person that is a member at the time the action is
8 commenced and:

9 (1) that was a member when the conduct giving rise to the action occurred; or
10 (2) whose status as a member devolved upon the person by operation of law or pursuant
11 to the terms of the operating agreement from a person that was a member at the time of the
12 conduct.

13 **Reporters' Notes**

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

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

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

(2) ~~if a demand has not been made, the reasons a demand under Section 902(1) would be~~
~~futile~~ why the demand should be excused as futile.

23 **Reporters' Notes**

25 *Section 904(2) – Conformed to ULP, § 1004(2).*

1 **SECTION 905. SPECIAL LITIGATION COMMITTEE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (4) be dismissed.

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

17 **SECTION 906. PROCEEDS AND EXPENSES.**

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

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

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

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

4

1 **[ARTICLE] 10**

2 **MERGER, CONVERSION, AND DOMESTICATION**

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

5 (1) ~~“Constituent limited liability company” means a constituent organization that is a~~
6 ~~limited liability company.~~

7 (2) ~~“Constituent organization” means an organization that is party to a merger.~~

8 (3) ~~“Converted organization” means the organization into which a converting~~
9 ~~organization converts pursuant to Sections 1006 through 1009.~~

10 (4) ~~“Converting limited liability company” means a converting organization that is a~~
11 ~~limited liability company.~~

12 (5) ~~“Converting organization” means an organization that converts into another~~
13 ~~organization pursuant to Section 1006.~~

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

17 (7) ~~“Domesticating company” means the company that effects a domestication pursuant~~
18 ~~to Sections 1010 through 1013.~~

19 (8) ~~“Governing statute” means the statute that governs an organization’s internal affairs.~~

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

24 (10) ~~“Organizational documents” means:~~

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

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

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

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

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

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

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

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

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

23 (12) “Surviving organization” means an organization into which one or more other

1 organizations are merged whether the organization preexisted the merger or was created by the
2 merger.

3 **~~SECTION 1002. MERGER.~~**

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

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

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

9 ~~(3) each of the other organizations complies with its governing statute in effecting~~
10 ~~the merger.~~

11 ~~(b) A plan of merger must be in a record and must include:~~

12 ~~(1) the name and form of each constituent organization;~~

13 ~~(2) the name and form of the surviving organization and, if the surviving~~
14 ~~organization is to be created by the merger, a statement to that effect;~~

15 ~~(3) the terms and conditions of the merger, including the manner and basis for~~
16 ~~converting the interests in each constituent organization into any combination of money, interests~~
17 ~~in the surviving organization, and other consideration;~~

18 ~~(4) if the surviving organization is to be created by the merger, the surviving~~
19 ~~organization's organizational documents that are proposed to be in a record; and~~

20 ~~(5) if the surviving organization is not to be created by the merger, any~~
21 ~~amendments to be made by the merger to the surviving organization's organizational documents~~
22 ~~that are, or are proposed to be, in a record.~~

1 **~~SECTION 1003. ACTION ON PLAN OF MERGER BY CONSTITUENT~~**
2 **~~LIMITED LIABILITY COMPANY.~~**

3 ~~(a) Subject to Section 1014, a plan of merger must be consented to by all the members of~~
4 ~~a constituent limited liability company.~~

5 ~~(b) Subject to Section 1014 and any contractual rights, after a merger is approved, and at~~
6 ~~any time before articles of merger are delivered to the [Secretary of State] for filing under~~
7 ~~Section 1004, a constituent limited liability company may amend the plan or abandon the~~
8 ~~merger:~~

- 9 ~~(1) as provided in the plan; or~~
10 ~~(2) except as otherwise prohibited in the plan, with the same consent as was~~
11 ~~required to approve the plan.~~

12 **~~SECTION 1004. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.~~**

13 ~~(a) After each constituent organization has approved a merger, articles of merger must be~~
14 ~~signed on behalf of:~~

- 15 ~~(1) each constituent limited liability company, as provided in Section 203(a); and~~
16 ~~(2) each other constituent organization, as provided in its governing statute.~~

17 ~~(b) Articles of merger under this section must include:~~

18 ~~(1) the name and form of each constituent organization and the jurisdiction of its~~
19 ~~governing statute;~~

20 ~~(2) the name and form of the surviving organization, the jurisdiction of its~~
21 ~~governing statute, and, if the surviving organization is created by the merger, a statement to that~~
22 ~~effect;~~

23 ~~(3) the date the merger is effective under the governing statute of the surviving~~

1 organization;

2 (4) if the surviving organization is to be created by the merger:

3 (A) if it will be a limited liability company, the company's certificate of
4 organization; or

5 (B) if it will be an organization other than a limited liability company, the
6 organizational document that creates the organization that is in a public record;

7 (5) if the surviving organization preexists the merger, any amendments provided
8 for in the plan of merger for the organizational document that created the organization that are in
9 a public record;

10 (6) a statement as to each constituent organization that the merger was approved
11 as required by the organization's governing statute;

12 (7) if the surviving organization is a foreign organization not authorized to
13 transact business in this state, the street and mailing addresses of an office that the [Secretary of
14 State] may use for the purposes of Section 1005(b); and

15 (8) any additional information required by the governing statute of any constituent
16 organization.

17 (e) Each constituent limited liability company shall deliver the articles of merger for
18 filing in the [office of the Secretary of State].

19 (d) A merger becomes effective under this [article]:

20 (1) if the surviving organization is a limited liability company, upon the later of:

21 (A) compliance with subsection (c); or

22 (B) subject to Section 205(c), as specified in the articles of merger; or

23 (2) if the surviving organization is not a limited liability company, as provided by

1 ~~the governing statute of the surviving organization.~~

2 **~~SECTION 1005. EFFECT OF MERGER.~~**

3 ~~(a) When a merger becomes effective:~~

4 ~~(1) the surviving organization continues or comes into existence;~~

5 ~~(2) each constituent organization that merges into the surviving organization~~
6 ~~ceases to exist as a separate entity;~~

7 ~~(3) all property owned by each constituent organization that ceases to exist vests~~
8 ~~in the surviving organization;~~

9 ~~(4) all debts, obligations, or other liabilities of each constituent organization that~~
10 ~~ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;~~

11 ~~(5) an action or proceeding pending by or against any constituent organization~~
12 ~~that ceases to exist may be continued as if the merger had not occurred;~~

13 ~~(6) except as prohibited by other law, all of the rights, privileges, immunities,~~
14 ~~powers, and purposes of each constituent organization that ceases to exist vest in the surviving~~
15 ~~organization;~~

16 ~~(7) except as otherwise provided in the plan of merger, the terms and conditions~~
17 ~~of the plan of merger take effect; and~~

18 ~~(8) except as otherwise agreed, if a constituent limited liability company ceases to~~
19 ~~exist, the merger does not dissolve the limited liability company for the purposes of [Article] 7;~~

20 ~~(9) if the surviving organization is created by the merger:~~

21 ~~(A) if it is a limited liability company, the certificate of organization~~
22 ~~becomes effective; or~~

23 ~~(B) if it is an organization other than a limited liability company, the~~

1 ~~organizational document that creates the organization becomes effective; and~~

2 ~~(10) if the surviving organization preexisted the merger, any amendments~~
3 ~~provided for in the articles of merger for the organizational document that created the~~
4 ~~organization become effective.~~

5 ~~(b) A surviving organization that is a foreign organization consents to the jurisdiction of~~
6 ~~the courts of this state to enforce any debt, obligation, or other liability owed by a constituent~~
7 ~~organization, if before the merger the constituent organization was subject to suit in this state on~~
8 ~~the debt, obligation, or other liability. A surviving organization that is a foreign organization and~~
9 ~~not authorized to transact business in this state appoints the [Secretary of State] as its agent for~~
10 ~~service of process for the purposes of enforcing a debt, obligation, or other liability under this~~
11 ~~subsection. Service on the [Secretary of State] under this subsection must be made in the same~~
12 ~~manner and has the same consequences as in Section 116(c) and (d).~~

13 **~~SECTION 1006. CONVERSION.~~**

14 ~~(a) An organization other than a limited liability company or a foreign limited liability~~
15 ~~company may convert to a limited liability company, and a limited liability company may~~
16 ~~convert to an organization other than a foreign limited liability company pursuant to this section,~~
17 ~~Sections 1007 through 1009, and a plan of conversion, if:~~

18 ~~(1) the other organization's governing statute authorizes the conversion;~~
19 ~~(2) the conversion is not prohibited by the law of the jurisdiction that enacted the~~
20 ~~other organization's governing statute; and~~
21 ~~(3) the other organization complies with its governing statute in effecting the~~
22 ~~conversion.~~

23 ~~(b) A plan of conversion must be in a record and must include:~~

1 ~~(1) the name and form of the organization before conversion;~~

2 ~~(2) the name and form of the organization after conversion;~~

3 ~~(3) the terms and conditions of the conversion, including the manner and basis for~~
4 ~~converting interests in the converting organization into any combination of money, interests in~~
5 ~~the converted organization, and other consideration; and~~

6 ~~(4) the organizational documents of the converted organization that are, or are~~
7 ~~proposed to be, in a record.~~

8 ~~**SECTION 1007. ACTION ON PLAN OF CONVERSION BY CONVERTING**~~
9 ~~**LIMITED LIABILITY COMPANY.**~~

10 ~~(a) Subject to Section 1014, a plan of conversion must be consented to by all the~~
11 ~~members of a converting limited liability company.~~

12 ~~(b) Subject to Section 1014 and any contractual rights, after a conversion is approved,~~
13 ~~and at any time before articles of conversion are delivered to the [Secretary of State] for filing~~
14 ~~under Section 1008, a converting limited liability company may amend the plan or abandon the~~
15 ~~conversion:~~

16 ~~(1) as provided in the plan; or~~

17 ~~(2) except as otherwise prohibited in the plan, by the same consent as was~~
18 ~~required to approve the plan.~~

19 ~~**SECTION 1008. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE**~~
20 ~~**DATE.**~~

21 ~~(a) After a plan of conversion is approved:~~

22 ~~(1) a converting limited liability company shall deliver to the [Secretary of State]~~
23 ~~for filing articles of conversion, which must be signed as provided in Section 203(a) and must~~

1 include;

2 (A) a statement that the limited liability company has been converted into
3 another organization;

4 (B) the name and form of the organization and the jurisdiction of its
5 governing statute;

6 (C) the date the conversion is effective under the governing statute of the
7 converted organization;

8 (D) a statement that the conversion was approved as required by this [act];

9 (E) a statement that the conversion was approved as required by the
10 governing statute of the converted organization; and

11 (F) if the converted organization is a foreign organization not authorized
12 to transact business in this state, the street and mailing addresses of an office which the
13 [Secretary of State] may use for the purposes of Section 1009(c); and

14 (2) if the converting organization is not a converting limited liability company,
15 the converting organization shall deliver to the [Secretary of State] for filing a certificate of
16 organization, which must include, in addition to the information required by Section 201(b):

17 (A) a statement that the converted organization was converted from
18 another organization;

19 (B) the name and form of that converting organization and the jurisdiction
20 of its governing statute; and

21 (C) a statement that the conversion was approved in a manner that
22 complied with the converting organization's governing statute.

23 (b) A conversion becomes effective:

1 ~~(1) if the converted organization is a limited liability company, when the~~
2 ~~certificate of organization takes effect; and~~

3 ~~(2) if the converted organization is not a limited liability company, as provided by~~
4 ~~the governing statute of the converted organization.~~

5 **~~SECTION 1009. EFFECT OF CONVERSION.~~**

6 ~~(a) An organization that has been converted pursuant to this [article] is for all purposes~~
7 ~~the same entity that existed before the conversion.~~

8 ~~(b) When a conversion takes effect:~~

9 ~~(1) all property owned by the converting organization remains vested in the~~
10 ~~converted organization;~~

11 ~~(2) all debts, obligations, or other liabilities of the converting organization~~
12 ~~continue as debts, obligations, or other liabilities of the converted organization;~~

13 ~~(3) an action or proceeding pending by or against the converting organization may~~
14 ~~be continued as if the conversion had not occurred;~~

15 ~~(4) except as prohibited by law other than this [act], all of the rights, privileges,~~
16 ~~immunities, powers, and purposes of the converting organization remain vested in the converted~~
17 ~~organization;~~

18 ~~(5) except as otherwise provided in the plan of conversion, the terms and~~
19 ~~conditions of the plan of conversion take effect; and~~

20 ~~(6) except as otherwise agreed, the conversion does not dissolve a converting~~
21 ~~limited liability company for the purposes of [Article] 7.~~

22 ~~(c) A converted organization that is a foreign organization consents to the jurisdiction of~~
23 ~~the courts of this state to enforce any debt, obligation, or other liability for which the converting~~

1 ~~limited liability company is liable if, before the conversion, the converting limited liability~~
2 ~~company was subject to suit in this state on the debt, obligation, or other liability. A converted~~
3 ~~organization that is a foreign organization and not authorized to transact business in this state~~
4 ~~appoints the [Secretary of State] as its agent for service of process for purposes of enforcing a~~
5 ~~debt, obligation, or other liability under this subsection. Service on the [Secretary of State] under~~
6 ~~this subsection must be made in the same manner and has the same consequences as in Section~~
7 ~~116(c) and (d).~~

8 **~~SECTION 1010. DOMESTICATION.~~**

9 ~~(a) A foreign limited liability company may become a limited liability company pursuant~~
10 ~~to this section, Sections 1011 through 1013, and a plan of domestication, if:~~

11 ~~(1) the foreign limited liability company's governing statute authorizes the~~
12 ~~domestication;~~

13 ~~(2) the domestication is not prohibited by the law of the jurisdiction that enacted~~
14 ~~the governing statute; and~~

15 ~~(3) the foreign limited liability company complies with its governing statute in~~
16 ~~effecting the domestication.~~

17 ~~(b) A limited liability company may become a foreign limited liability company pursuant~~
18 ~~to this section, Sections 1011 through 1013, and a plan of domestication, if:~~

19 ~~(1) the foreign limited liability company's governing statute authorizes the~~
20 ~~domestication;~~

21 ~~(2) the domestication is not prohibited by the law of the jurisdiction that enacted~~
22 ~~the governing statute; and~~

23 ~~(3) the foreign limited liability company complies with its governing statute in~~

1 ~~effecting the domestication.~~

2 ~~(c) A plan of domestication must be in a record and must include:~~

3 ~~(1) the name of the domesticating company before domestication and the~~
4 ~~jurisdiction of its governing statute;~~

5 ~~(2) the name of the domesticated company after domestication and the jurisdiction~~
6 ~~of its governing statute;~~

7 ~~(3) the terms and conditions of the domestication, including the manner and basis~~
8 ~~for converting interests in the domesticating company into any combination of money, interests~~
9 ~~in the domesticated company, and other consideration; and~~

10 ~~(4) the organizational documents of the domesticated company that are, or are~~
11 ~~proposed to be, in a record.~~

12 **~~SECTION 1011. ACTION ON PLAN OF DOMESTICATION BY~~**
13 **~~DOMESTICATING LIMITED LIABILITY COMPANY.~~**

14 ~~(a) A plan of domestication must be consented to:~~

15 ~~(1) by all the members, subject to Section 1014, if the domesticating company is a~~
16 ~~limited liability company; and~~

17 ~~(2) as provided in the domesticating company's governing statute, if the company~~
18 ~~is a foreign limited liability company.~~

19 ~~(b) Subject to any contractual rights, after a domestication is approved, and at any time~~
20 ~~before articles of domestication are delivered to the [Secretary of State] for filing under Section~~
21 ~~1012, a domesticating limited liability company may amend the plan or abandon the~~
22 ~~domestication:~~

23 ~~(1) as provided in the plan; or~~

1 ~~(2) except as otherwise prohibited in the plan, by the same consent as was~~
2 ~~required to approve the plan.~~

3 ~~**SECTION 1012. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE**~~
4 ~~**DATE.**~~

5 ~~(a) After a plan of domestication is approved, a domesticating company shall deliver to~~
6 ~~the [Secretary of State] for filing articles of domestication, which must include:~~

7 ~~(1) a statement, as the case may be, that the company has been domesticated from~~
8 ~~or into another jurisdiction;~~

9 ~~(2) the name of the domesticating company and the jurisdiction of its governing~~
10 ~~statute;~~

11 ~~(3) the name of the domesticated company and the jurisdiction of its governing~~
12 ~~statute;~~

13 ~~(4) the date the domestication is effective under the governing statute of the~~
14 ~~domesticated company;~~

15 ~~(5) if the domesticating company was a limited liability company, a statement that~~
16 ~~the domestication was approved as required by this [act];~~

17 ~~(6) if the domesticating company was a foreign limited liability company, a~~
18 ~~statement that the domestication was approved as required by the governing statute of the other~~
19 ~~jurisdiction; and~~

20 ~~(7) if the domesticated company was a foreign limited liability company not~~
21 ~~authorized to transact business in this state, the street and mailing addresses of an office that the~~
22 ~~[Secretary of State] may use for the purposes of Section 1013(b).~~

23 ~~(b) A domestication becomes effective:~~

1 ~~(1) when the certificate of organization takes effect, if the domesticated company~~
2 ~~is a limited liability company; and~~

3 ~~(2) according to the governing statute of the domesticated company, if the~~
4 ~~domesticated organization is a foreign limited liability company.~~

5 **~~SECTION 1013. EFFECT OF DOMESTICATION.~~**

6 ~~(a) When a domestication takes effect:~~

7 ~~(1) the domesticated company is for all purposes the company that existed before~~
8 ~~the domestication;~~

9 ~~(2) all property owned by the domesticating company remains vested in the~~
10 ~~domesticated company;~~

11 ~~(3) all debts, obligations, or other liabilities of the domesticating company~~
12 ~~continue as debts, obligations, or other liabilities of the domesticated company;~~

13 ~~(4) an action or proceeding pending by or against a domesticating company may~~
14 ~~be continued as if the domestication had not occurred;~~

15 ~~(5) except as prohibited by other law, all of the rights, privileges, immunities,~~
16 ~~powers, and purposes of the domesticating company remain vested in the domesticated~~
17 ~~company;~~

18 ~~(6) except as otherwise provided in the plan of domestication, the terms and~~
19 ~~conditions of the plan of domestication take effect; and~~

20 ~~(7) except as otherwise agreed, the domestication does not dissolve a~~
21 ~~domesticating limited liability company for the purposes of [Article] 7.~~

22 ~~(b) A domesticated company that is a foreign limited liability company consents to the~~
23 ~~jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by~~

1 the domesticating company, if, before the domestication, the domesticating company was subject
2 to suit in this state on the debt, obligation, or other liability. A domesticated company that is a
3 foreign limited liability company and not authorized to transact business in this state appoints the
4 [Secretary of State] as its agent for service of process for purposes of enforcing a debt,
5 obligation, or other liability under this subsection. Service on the [Secretary of State] under this
6 subsection must be made in the same manner and has the same consequences as in Section
7 116(c) and (d).

8 (e) If a limited liability company has adopted and approved a plan of domestication under
9 Section 1010 providing for the company to be domesticated in a foreign jurisdiction, a statement
10 surrendering the company's certificate of organization must be delivered to the [Secretary of
11 State] for filing setting forth:

- 12 (1) the name of the company;
- 13 (2) a statement that the certificate of organization is being surrendered in
14 connection with the domestication of the company in a foreign jurisdiction;
- 15 (3) a statement the domestication was approved as required by this [act]; and
- 16 (4) the jurisdiction of formation of the domesticated foreign limited liability
17 company.

18 **~~SECTION 1014. RESTRICTIONS ON APPROVAL OF MERGERS,~~**
19 **~~CONVERSIONS, AND DOMESTICATIONS.~~**

20 (a) If a member of a constituent, converting, or domesticating limited liability company
21 will have personal liability with respect to a surviving, converted, or domesticated organization,
22 approval or amendment of a plan of merger, conversion, or domestication are ineffective without
23 the consent of the member, unless:

1 **[PART] 1**

2 **GENERAL PROVISIONS**

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

5 (1) “Acquired entity” means the entity, all of one or more classes or series of interests in
6 which are acquired in an interest exchange.

7 (2) “Acquiring entity” means the entity that acquires all of one or more classes or series
8 of interests of the acquired entity in an interest exchange.

9 (3) “Conversion” means a transaction authorized by [part] 4.

10 (4) “Converted entity” means the converting entity as it continues in existence after a
11 conversion.

12 (5) “Converting entity” means the domestic entity that approves a plan of conversion
13 pursuant to Section 1043 or the foreign entity that approves a conversion pursuant to the law of
14 its jurisdiction of formation.

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

17 (7) “Domestic”, with respect to a limited liability company, means governed as to its
18 internal affairs by the law of this state.

19 (8) “Domesticated limited liability company” means the domesticating limited liability
20 company as it continues in existence after a domestication.

21 (9) “Domesticating limited liability company” means the domestic limited liability
22 company that approves a plan of domestication pursuant to [Section 1053] or the foreign limited
23 liability company that approves a domestication pursuant to the law of its jurisdiction of
24 formation.

1 (10) “Domestication” means a transaction authorized by [part] 5.

2 (11) “Entity”:

3 (A) means:

4 (i) a business corporation;

5 (ii) a nonprofit corporation;

6 (iii) a general partnership;

7 (iv) a limited partnership;

8 (v) a limited liability company;

9 [(vi) a general cooperative association;]

10 (vii) a limited cooperative association;

11 (viii) an unincorporated nonprofit association;

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

13 (x) any other person that has a legal existence separate from any interest

14 holder of that person or that has the power to acquire an interest in real property in its own name;

15 and

16 (B) does not include:

17 (i) an individual;

18 (ii) a testamentary, inter vivos, or charitable trust, except a statutory trust,

19 business trust, or common-law business trust;

20 (iii) an association or relationship that is not a partnership solely by reason

21 of [Section 202(c) of the Revised Uniform Partnership Act] [Section 7 of the Uniform

22 Partnership Act] or a similar provision of the law of another jurisdiction;

23 (iv) a decedent’s estate; [or]

1 (v) a government or a governmental subdivision, agency, or
2 instrumentality [; or] [.]

3 [(vi) a person excluded under Section 1005.]

4 (12) “Filing entity” means an entity that is formed by the filing of a public organic
5 record.

6 (13) “Foreign” with respect to an entity, means an entity governed as to its internal
7 affairs by the laws of a jurisdiction other than this state.

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

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

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

13 (C) receive notice of or vote on any issue involving the internal affairs of the
14 entity.

15 (15) “Governor” means:

16 (A) a director of a business corporation;

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

18 (C) a general partner of a general partnership;

19 (D) a general partner of a limited partnership;

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

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

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

23 (H) a director of a limited cooperative association;

1 (I) a manager of an unincorporated nonprofit association;
2 (J) a trustee of a statutory trust, business trust, or common-law business trust; or
3 (K) any other person under whose authority the powers of an entity are exercised
4 and under whose direction the activities and affairs of the entity are managed pursuant to the
5 organic law and organic rules of the entity.

6 (16) “Interest” means:

7 (A) a share in a business corporation;
8 (B) a membership in a nonprofit corporation;
9 (C) a partnership interest in a general partnership;
10 (D) a partnership interest in a limited partnership;
11 (E) a membership interest in a limited liability company;
12 [(F) a share in a general cooperative association;]
13 (G) a member’s interest in a limited cooperative association;
14 (H) a membership in an unincorporated nonprofit association;
15 (I) a beneficial interest in a statutory trust, business trust, or common-law business
16 trust;
17 (J) a governance interest in any other type of unincorporated entity; or
18 (K) a distributional interest in an unincorporated entity.

19 (17) “Interest holder” means:

20 (A) a shareholder of a business corporation;
21 (B) a member of a nonprofit corporation;
22 (C) a general partner of a general partnership;
23 (D) a general partner of a limited partnership;

1 (E) a limited partner of a limited partnership;

2 (F) a member of a limited liability company;

3 [(G) a shareholder of a general cooperative association;]

4 (H) a member of a limited cooperative association;

5 (I) a member of an unincorporated nonprofit association;

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

7 or

8 (K) any other direct holder of an interest.

9 (18) “Interest holder liability” means:

10 (A) personal liability for a liability of an entity that is imposed on a person:

11 (i) solely by reason of the status of the person as an interest holder; or

12 (ii) by the organic rules of the entity that make one or more specified

13 interest holders or categories of interest holders liable in their capacity as interest holders for all

14 or specified liabilities of the entity; or

15 (B) an obligation of an interest holder under the organic rules of an entity to

16 contribute to the entity.

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

19 (20) “Merger” means a transaction in which two or more merging entities are combined
20 into a surviving entity pursuant to a filing with the [Secretary of State].

21 (21) “Merging entity” means an entity that is a party to a merger and exists immediately
22 before the merger becomes effective.

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

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

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

11 (25) “Plan” means a plan of merger, interest exchange, conversion, or domestication.

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

15 (A) the bylaws of a business corporation;

16 (B) the bylaws of a nonprofit corporation;

17 (C) the partnership agreement of a general partnership;

18 (D) the partnership agreement of a limited partnership;

19 (E) the operating agreement of a limited liability company;

20 [(F) the bylaws of a general cooperative association;]

21 (G) the bylaws of a limited cooperative association;

22 (H) the governing principles of an unincorporated nonprofit association; and

1 (I) the governing instrument of a statutory trust, business trust, or common-law
2 business trust.

3 (27) “Protected agreement” means:

4 (A) a record evidencing indebtedness and any related agreement in effect on the
5 effective date of this [act];

6 (B) an agreement that is binding on an entity on the effective date of this [act];

7 (C) the organic rules of an entity in effect on the effective date of this [act]; or

8 (D) an agreement that is binding on any of the governors or interest holders of an
9 entity on the effective date of this [act].

10 (28) “Public organic record” means the record the filing of which by the [Secretary of
11 State] forms an entity and any amendment to or restatement of that record. The term includes:

12 (A) the articles of incorporation of a business corporation;

13 (B) the articles of incorporation of a nonprofit corporation;

14 (C) the certificate of limited partnership of a limited partnership;

15 (D) the certificate of organization of a limited liability company;

16 [(E) the articles of incorporation of a general cooperative association;]

17 (F) the articles of organization of a limited cooperative association; and

18 (G) the certificate of trust of a statutory trust, business trust, or common-law
19 business trust.

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

22 (30) “Registered foreign entity” means a foreign entity that is registered to do business
23 or otherwise qualified in this state pursuant to a filing with the [Secretary of State].

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

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

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

(32) “Surviving entity” means the entity that continues in existence after or is created by
er.

(33) “Transfer” includes an assignment, conveyance, sale, lease, encumbrance, including by mortgaging or granting a security interest, gift, and transfer by operation of law.

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

(A) recognized at common law; or

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

Reporters' Notes

Patterned after harmonized META § 102.

SECTION 1002. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS. This

[article] does not authorize an act prohibited by, and does not affect the application or
requirements of, law other than this [article].

Reporters' Notes

Patterned after harmonized META § 103(b).

SECTION 1003. REQUIRED NOTICE OR APPROVAL.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval

1 of, a governmental agency or officer in order to be a party to a merger must give the notice or
2 obtain the approval in order to be a party to an interest exchange, conversion, or domestication.

3 (b) Property held for a charitable purpose under the law of this state by a domestic or
4 foreign entity immediately before a transaction under this [article] becomes effective may not, as
5 a result of the transaction, be diverted from the objects for which it was donated, granted, or
6 devised unless, to the extent required by or pursuant to the law of this state concerning cy pres or
7 other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order
8 of [name of court] [the attorney general] specifying the disposition of the property.

9 **Reporters' Notes**

10 Patterned after harmonized META § 104.

11
12 **SECTION 1004. STATUS OF FILINGS.** A filing under this [article] signed by a
13 domestic entity becomes part of the public organic record of the entity if the entity's organic law
14 provides that similar filings under that law become part of the public organic record of the entity.

15 **Reporters' Notes**

16 Patterned after harmonized META § 105.

17
18 **SECTION 1005. NONEXCLUSIVITY.** The fact that a transaction under this [article]
19 produces a certain result does not preclude the same result from being accomplished in any other
20 manner permitted by law other than this [article].

21 **Reporters' Notes**

22 Patterned after harmonized META § 106.
23

24 **SECTION 1006. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts
25 ascertainable outside of the plan if the manner in which the facts will operate upon the plan is

1 specified in the plan. The facts may include the occurrence of an event or a determination or
2 action by a person, whether or not the event, determination, or action is within the control of a
3 party to the transaction.

4 **Reporters' Notes**

5 Patterned after harmonized META § 107.

6 **SECTION 1007. ALTERNATIVE MEANS OF APPROVAL OF**

8 **TRANSACTIONS.** Except as otherwise provided in the organic law or organic rules of a
9 domestic entity, approval of a transaction under this [article] by the unanimous vote or consent of
10 its interest holders satisfies the requirements of this [article] for approval of the transaction.

11 **Reporters' Notes**

12 Patterned after harmonized META § 108.

13 **SECTION 1008. APPRAISAL RIGHTS.**

15 (a) An interest holder of a domestic merging, acquired, or converting entity is entitled to
16 appraisal rights in connection with the transaction if the interest holder would have been entitled
17 to appraisal rights under the entity's organic law in connection with a merger in which the
18 interest of the interest holder was changed, converted, or exchanged unless:

19 (1) the organic law permits the organic rules to limit the availability of appraisal
20 rights; and

21 (2) the organic rules provide such a limit.

22 (b) An interest holder of a domestic merging, acquired, converting, or domesticating
23 entity is entitled to contractual appraisal rights in connection with a transaction under this
24 [article] to the extent provided:

1 (1) in the entity's organic rules; or

2 (2) in the plan.

3 **Reporters' Notes**

4 Patterned after harmonized META § 109(a) and (b).

5

1 [PART] 2

2 MERGER

3
4 SECTION 1021. MERGER AUTHORIZED.

5 (a) Except as otherwise provided in this section, by complying with this [part]:

6 (1) one or more domestic limited liability companies may merge with one or
7 more domestic or foreign entities into a domestic or foreign surviving entity; and

8 (2) two or more foreign entities may merge into a domestic limited liability
9 company.

10 (b) Except as otherwise provided in this section, by complying with the provisions of this
11 [part] applicable to foreign entities a foreign entity may be a party to a merger under this [part] or
12 may be the surviving entity in such a merger if the merger is authorized by the law of the foreign
13 entity's jurisdiction of formation.

14 [(c) The following entities may not participate in a merger under this [part]:

15 (1)

16 (2).]

17 **Reporters' Notes**

18 Patterned after harmonized META § 201(a), (b), and (d).

19
20 SECTION 1022. PLAN OF MERGER.

21 (a) A domestic limited liability company may become a party to a merger under this
22 [part] by approving a plan of merger. The plan must be in a record and contain:

23 (1) as to each merging entity, its name, jurisdiction of formation, and type;

(2) if the surviving entity is to be created in the merger, a statement to that effect
and its name, jurisdiction of formation, and type;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to its public organic record or to its private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger, its proposed public organic record, if any, and the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(b) A plan of merger may contain any other provision not prohibited by law.

Reporters' Notes

Patterned after harmonized META § 202.

SECTION 1023. APPROVAL OF MERGER.

(a) A plan of merger is not effective unless it has been approved:

(1) by a domestic merging limited liability company, by all of the interest holders
of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic merging limited liability company
that will have interest holder liability for debts, obligations and other liabilities that arise after the
merger becomes effective, unless:

(A) the operating agreement of the limited liability company provides in a record for the approval of a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(b) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.

(c) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Reporters' Notes

Subsections (a) is a simplified version of harmonized META § 203(a). Subsection (b) is new and supplies some of the provisions of harmonized META § 203(a). Subsection (c) is patterned after harmonized META § 203(b).

SECTION 1024. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

(a) A plan of merger of a domestic merging limited liability company may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for
the manner in which it may be amended; or

(2) by the managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the members of any party to the plan;

1 (B) the public organic record or private organic rules of the surviving
2 entity that will be in effect immediately after the merger becomes effective, except for changes
3 that do not require approval of the interest holders of the surviving entity under its organic law or
4 organic rules; or

5 (C) any other terms or conditions of the plan, if the change would
6 adversely affect the member in any material respect.

7 (b) After a plan of merger has been approved by a domestic merging limited liability
8 company and before a statement of merger becomes effective, the plan may be abandoned:

9 (1) as provided in the plan; or

10 (2) unless prohibited by the plan, in the same manner as the plan was approved.

11 (c) If a plan of merger is abandoned after a statement of merger has been delivered to the
12 [Secretary of State] for filing and before the statement becomes effective, a statement of
13 abandonment, signed by a merging entity, must be delivered to the [Secretary of State] for filing
14 before the statement of merger becomes effective. The statement of abandonment takes effect
15 upon filing, and the merger is abandoned and does not become effective. The statement of
16 abandonment must contain:

17 (1) the name of each merging or surviving entity that is a domestic limited
18 liability company or a qualified foreign entity;

19 (2) the date on which the statement of merger was delivered to the [Secretary of
20 State] for filing; and

21 (3) a statement that the merger has been abandoned in accordance with this
22 section.

1 **Reporters' Notes**

2 Patterned after harmonized META § 204.

3
4 **SECTION 1025. STATEMENT OF MERGER; EFFECTIVE DATE.**

5 (a) A statement of merger must be signed by each merging entity and delivered to the
6 [Secretary of State] for filing.

7 (b) A statement of merger must contain:

8 (1) the name, jurisdiction of formation, and type of each merging entity that is
9 not the surviving entity;

10 (2) the name, jurisdiction of formation, and type of the surviving entity;

11 (3) if the statement of merger is not to be effective upon filing, the later date and
12 time on which it will become effective pursuant to Section 1026;

13 (4) a statement that the merger was approved by each domestic merging entity, if
14 any, in accordance with this [part] and by each foreign merging entity, if any, in accordance with
15 the law of its jurisdiction of formation;

16 (5) if the surviving entity exists before the merger and is a domestic filing entity,
17 any amendment to its public organic record approved as part of the plan of merger;

18 (6) if the surviving entity is created by the merger and is a domestic filing entity,
19 its public organic record, as an attachment;

20 (7) if the surviving entity is created by the merger and is a domestic limited
21 liability partnership, its [statement of qualification], as an attachment; and

22 (8) if the surviving entity is a foreign entity that is not a qualified foreign entity, a
23 mailing address to which the [Secretary of State] may send any process served on the [Secretary
24 of State] pursuant to Section 1026(e).

(c) In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [article] to a statement of merger refer to the plan of merger filed under this subsection.

Reporters' Notes

Patterned after harmonized META § 205.

SECTION 1026. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(4) all debts, obligations and other liabilities of each merging entity are debts,
obligations and other liabilities of the surviving entity;

(5) except as otherwise provided by law or the plan of merger, all of the rights,
privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

1 (6) if the surviving entity exists before the merger:

2 (A) all of its property continues to be vested in it without transfer,
3 reversion or impairment;

4 (B) it remains subject to all of its debts, obligations and other liabilities;
5 and

6 (C) all of its rights, privileges, immunities, powers, and purposes continue
7 to be vested in it;

8 (7) the name of the surviving entity may be substituted for the name of any
9 merging entity that is a party to any pending action or proceeding;

10 (8) if the surviving entity exists before the merger:

11 (A) its public organic record, if any, is amended as provided in the
12 statement of merger; and

13 (B) its private organic rules that are to be in a record, if any, are amended
14 to the extent provided in the plan of merger;

15 (9) if the surviving entity is created by the merger:

16 (A) its public organic record, if any, is effective; and

17 (B) its private organic rules are effective; and

18 (10) the interests in each merging entity that are to be converted in the merger are
19 converted, and the interest holders of those interests are entitled only to the rights provided to
20 them under the plan of merger and to any appraisal rights they have under Section 1008 and the
21 merging entity's organic law.

22 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,
23 the merger does not give rise to any rights that an interest holder, governor, or third party would

1 otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

2 (c) When a merger becomes effective, a person that did not have interest holder liability
3 with respect to any of the merging entities and that becomes subject to interest holder liability
4 with respect to a domestic entity as a result of a merger has interest holder liability only to the
5 extent provided by the organic law of that entity and only for those debts, obligations and other
6 liabilities that arise after the merger becomes effective.

7 (d) When a merger becomes effective, the interest holder liability of a person that ceases
8 to hold an interest in a domestic merging entity with respect to which the person had interest
9 holder liability is as follows:

10 (1) the merger does not discharge any interest holder liability under the organic
11 law of the domestic merging entity to the extent the interest holder liability arose before the
12 merger became effective;

13 (2) the person does not have interest holder liability under the organic law of the
14 domestic merging entity for any liability that arises after the merger becomes effective;

15 (3) the organic law of the domestic merging entity continues to apply to the
16 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
17 if the merger had not occurred and the surviving entity were the domestic merging entity; and

18 (4) the person has whatever rights of contribution from any other person as are
19 provided by other law or the organic rules of the domestic merging entity with respect to any
20 interest holder liability preserved under paragraph (1) as if the merger had not occurred.

21 (e) When a merger becomes effective, a foreign entity that is the surviving entity:

22 (1) may be served with process in this state for the collection and enforcement of
23 any debts, obligations or other liabilities of a domestic merging entity; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those debts, obligations and other liabilities.

(f) When a merger becomes effective, the registration to do business or other foreign qualification in this state of any foreign merging entity that is not the surviving entity is canceled.

Reporters' Notes

Patterned after harmonized META § 206.

1 [PART] 3

2 INTEREST EXCHANGE

3 SECTION 1031. INTEREST EXCHANGE AUTHORIZED.

4 (a) Except as otherwise provided in this section, by complying with this [part]:

5 (1) a domestic limited liability may acquire all of one or more classes or series of
6 interests of another domestic or foreign entity in exchange for interests, securities, obligations,
7 rights to acquire interests or securities, cash, or other property, or any combination of the
8 foregoing; or

9 (2) all of one or more classes or series of interests of a domestic limited liability
10 company may be acquired by another domestic or foreign entity in exchange for interests,
11 securities, obligations, rights to acquire interests or securities, cash, or other property, or any
12 combination of the foregoing.

13 (b) Except as otherwise provided in this section, by complying with the provisions of this
14 [part] applicable to foreign entities a foreign entity may be the acquiring or acquired entity in an
15 interest exchange under this [part] if the interest exchange is authorized by the law of the foreign
16 entity's jurisdiction of formation.

17 (c) If a protected agreement contains a provision that applies to a merger of a domestic
18 limited liability company but does not refer to an interest exchange, the provision applies to an
19 interest exchange in which the domestic limited liability company is the acquired entity as if the
20 interest exchange were a merger until the provision is amended after the effective date of this
21 [act].

22 (d) The following entities may not participate in an interest exchange under this [part]:

23 (1)

1 (2).]

2 **Reporters' Notes**

3 Patterned after harmonized META § 301(a) – (c) and (e).

4
5 **SECTION 1032. PLAN OF INTEREST EXCHANGE.**

6 (a) A domestic limited liability company it may be the acquired entity in an interest
7 exchange under this [part] by approving a plan of interest exchange. The plan must be in a
8 record and contain:

9 (1) the name of the acquired entity;

10 (2) the name, jurisdiction of formation, and type of the acquiring entity;

11 (3) the manner of converting the interests in the acquired entity into interests,
12 securities, obligations, rights to acquire interests or securities, cash, or other property, or any
13 combination of the foregoing;

14 (4) any proposed amendments to the certificate of organization or operating
15 agreement that are, or are proposed to be, in a record of the acquired entity;

16 (5) the other terms and conditions of the interest exchange; and

17 (6) any other provision required by the law of this state or the operating
18 agreement of the acquired entity.

19 (b) A plan of interest exchange may contain any other provision not prohibited by law.

20 **Reporters' Notes**

21 Patterned after harmonized META § 302.

22
23 **SECTION 1033. APPROVAL OF INTEREST EXCHANGE.**

24 (a) A plan of interest exchange is not effective unless it has been approved:

(1) by all of the interest holders of a domestic acquired limited liability company
entitled to vote on or consent to any matter; and

(2) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations and other liabilities that arise after the interest exchange becomes effective, unless:

(A) the operating agreement of the limited liability company provides in a record for the approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all of the members; and

(B) the member voted for or consented in a record to that provision of the
operating agreement or became a member after the adoption of that provision.

(b) An interest exchange involving a domestic acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.

(c) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(d) Except as otherwise provided in its organic law or organic rules, the interest holders
of the acquiring entity are not required to approve the interest exchange.

Reporters' Notes

Subsection (a) is a simplified version of harmonized META § 303(a). Subsection (b) is new and supplies some of the provisions of harmonized META § 303(a). Subsections (c) and (d) are patterned after harmonized META § 303(b) and (c).

1 **SECTION 1034. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**

2 **EXCHANGE.**

3 (a) A plan of interest exchange of a domestic acquired limited liability company may be
4 amended:

5 (1) in the same manner as the plan was approved, if the plan does not provide for
6 the manner in which it may be amended; or

7 (2) by the managers or members of the limited liability company in the manner
8 provided in the plan, but an interest holder that was entitled to vote on or consent to approval of
9 the interest exchange is entitled to vote on or consent to any amendment of the plan that will
10 change:

11 (A) the amount or kind of interests, securities, obligations, rights to
12 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
13 received by any of the members of the acquired limited liability company under the plan;

14 (B) the certificate of organization or operating agreement of the acquired
15 limited liability company that will be in effect immediately after the interest exchange becomes
16 effective, except for changes that do not require approval of the members of the acquired limited
17 liability company under this Act or the operating agreement; or

18 (C) any other terms or conditions of the plan, if the change would
19 adversely affect the member in any material respect.

20 (b) After a plan of interest exchange has been approved by a domestic acquired limited
21 liability company and before a statement of interest exchange becomes effective, the plan may be
22 abandoned:

23 (1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the [Secretary of State] for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the acquired limited liability company;

(2) the date on which the statement of interest exchange was delivered to the
[Secretary of State] for filing; and

(3) a statement that the interest exchange has been abandoned in accordance with
this section.

Reporters' Notes

Patterned after harmonized META § 304.

SECTION 1035. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE
DATE.

(a) A statement of interest exchange must be signed by a domestic acquired limited liability company and delivered to the [Secretary of State] for filing.

(b) A statement of interest exchange must contain:

(1) the name of the acquired limited liability company;

(2) the name, jurisdiction of formation, and type of the acquiring entity;

(3) if the statement of interest exchange is not to be effective upon filing, the later
date and time on which it will become effective pursuant to Section 1036;

(4) a statement that the plan of interest exchange was approved by the acquired limited liability entity in accordance with this [part]; and

(5) any amendments to the acquired limited liability company's certificate of organization approved as part of the plan of interest exchange.

(c) In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed by a domestic acquired limited liability company and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of interest exchange and upon filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this [article] to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

Reporters' Notes

Patterned after harmonized META § 305(a) – (d).

SECTION 1036. EFFECT OF INTEREST EXCHANGE.

(a) When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective:

(1) the interests in a domestic acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 1008;

(2) the acquiring entity becomes the holder of the interests in the acquired entity

stated in the plan of interest exchange to be acquired by the acquiring entity;

1 (3) the certificate of organization of the acquired entity is amended as provided in
2 the statement of interest exchange; and

3 (4) the provisions of the operating agreement of the acquired entity that are to be
4 in a record, if any, are amended to the extent provided in the plan of interest exchange.

5 (b) Except as otherwise provided in the operating agreement of a domestic acquired
6 limited liability company, the interest exchange does not give rise to any rights that a member,
7 manager, or third party would otherwise have upon a dissolution, liquidation, or winding-up of
8 the acquired entity.

9 (c) When an interest exchange becomes effective, a person that did not have interest
10 holder liability with respect to a domestic acquired limited liability company and that becomes
11 subject to interest holder liability with respect to a domestic entity as a result of the interest
12 exchange has interest holder liability only to the extent provided by the organic law of the entity
13 and only for those debts, obligations and liabilities that arise after the interest exchange becomes
14 effective.

15 (d) When an interest exchange becomes effective, the interest holder liability of a person
16 that ceases to hold an interest in a domestic acquired limited liability company with respect to
17 which the person had interest holder liability is as follows:

18 (1) the interest exchange does not discharge any interest holder liability to the
19 extent the interest holder liability arose before the interest exchange became effective;

20 (2) the person does not have interest holder liability for any liability that arises
21 after the interest exchange becomes effective; and

22 (3) the person has whatever rights of contribution from any other person as are
23 provided by other law or the operating agreement of the acquired entity with respect to any

1 interest holder liability preserved under paragraph (1) as if the interest exchange had not
2 occurred.

3 **Reporters' Notes**

4 Patterned after harmonized META § 306.

5

6

1 **[PART] 4**

2 **CONVERSION**

3
4 **SECTION 1041. CONVERSION AUTHORIZED.**

5 (a) Except as otherwise provided in this part, by complying with this [part], a domestic
6 limited liability company may become:

7 (1) a domestic entity of a different type; or

8 (2) a foreign entity of a different type, if the conversion is authorized by the law
9 of the foreign jurisdiction.

10 (b) Except as otherwise provided in this section, by complying with the provisions of this
11 [part] applicable to foreign entities a foreign entity that is not a foreign limited liability company
12 may become a domestic limited liability company if the conversion is authorized by the law of
13 the foreign entity's jurisdiction of formation.

14 (c) If a protected agreement contains a provision that applies to a merger of a domestic
15 limited liability company but does not refer to a conversion, the provision applies to a conversion
16 of the entity as if the conversion were a merger until the provision is amended after the effective
17 date of this [act].

18 [(d) The following entities may not engage in a conversion under this [part]]

19 (1)

20 (2).]

21 **Reporters' Notes**

22 Patterned after harmonized META § 401.

1 **SECTION 1042. PLAN OF CONVERSION.**

2 (a) A domestic limited liability company may convert to a different type of entity under
3 this [part] by approving a plan of conversion. The plan must be in a record and contain:

4 (1) the name of the converting limited liability company;

5 (2) the name, jurisdiction of formation, and type of the converted entity;

6 (3) the manner of converting the interests in the converting limited liability
7 company into interests, securities, obligations, rights to acquire interests or securities, cash, or
8 other property, or any combination of the foregoing;

9 (4) the proposed public organic record of the converted entity if it will be a filing
10 entity;

11 (5) the full text of the private organic rules of the converted entity that are
12 proposed to be in a record;

13 (6) the other terms and conditions of the conversion; and

14 (7) any other provision required by the law of this state or the operating
15 agreement of the converting limited liability company.

16 (b) A plan of conversion may contain any other provision not prohibited by law.

17 **Reporters' Notes**

18 Patterned after harmonized META § 402.

19
20 **SECTION 1043. APPROVAL OF CONVERSION.**

21 (a) A plan of conversion is not effective unless it has been approved:

22 (1) by a domestic converting limited liability company by all of the members of
23 the limited liability company entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic converting limited liability company that will have interest holder liability for debts, obligations and other liabilities that arise after the conversion becomes effective:

(A) the operating agreement of the limited liability company provides in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision
of the operating agreement or became an interest holder after the adoption of that provision.

(b) A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(c) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

Reporters' Notes

Subsection (a) is a simplified version of harmonized META § 403(a). Subsection (b) is new and supplies some of the provisions of harmonized META § 403(a). Subsection (c) is patterned after harmonized META § 403(b).

SECTION 1044. AMENDMENT OR ABANDONMENT OF PLAN OF
CONVERSION.

(a) A plan of conversion of a domestic converting limited liability company may be
amended:

(1) in the same manner as the plan was approved, if the plan does not provide for
the manner in which it may be amended; or

1 (2) by the managers or members of the entity in the manner provided in the plan,
2 but an interest holder that was entitled to vote on or consent to approval of the conversion is
3 entitled to vote on or consent to any amendment of the plan that will change:

4 (A) the amount or kind of interests, securities, obligations, rights to
5 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
6 received by any of the interest holders of the converting entity under the plan;

7 (B) the public organic record or private organic rules of the converted
8 entity that will be in effect immediately after the conversion becomes effective, except for
9 changes that do not require approval of the interest holders of the converted entity under its
10 organic law or organic rules; or

11 (C) any other terms or conditions of the plan, if the change would
12 adversely affect the interest holder in any material respect.

13 (b) After a plan of conversion has been approved by a domestic converting limited
14 liability company and before a statement of conversion becomes effective, the plan may be
15 abandoned:

16 (1) as provided in the plan; or

17 (2) unless prohibited by the plan, in the same manner as the plan was approved.

18 (c) If a plan of conversion is abandoned after a statement of conversion has been
19 delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement
20 of abandonment, signed by the entity, must be delivered to the [Secretary of State] for filing
21 before the time the statement of conversion becomes effective. The statement of abandonment
22 takes effect upon filing, and the conversion is abandoned and does not become effective. The
23 statement of abandonment must contain:

- 1 (1) the name of the converting limited liability company;
2 (2) the date on which the statement of conversion was delivered to the [Secretary
3 of State] for filing; and
4 (3) a statement that the conversion has been abandoned in accordance with this
5 section.

6 **Reporters' Notes**

7 Patterned after harmonized META § 404.

8
9 **SECTION 1045. STATEMENT OF CONVERSION; EFFECTIVE DATE.**

10 (a) A statement of conversion must be signed by the converting entity and delivered to
11 the [Secretary of State] for filing.

12 (b) A statement of conversion must contain:

- 13 (1) the name, jurisdiction of formation, and type of the converting entity;
14 (2) the name, jurisdiction of formation, and type of the converted entity;
15 (3) if the converting entity is a domestic entity, a statement that the plan of
16 conversion was approved in accordance with this [part] or, if the converting entity is a foreign
17 entity, a statement that the conversion was approved by the foreign converting entity in
18 accordance with the law of its jurisdiction of formation;
19 (4) if the converted entity is a domestic filing entity, the text of its public organic
20 record, as an attachment;
21 (5) if the converted entity is a domestic limited liability partnership, the text of its
22 [statement of qualification], as an attachment; and
23 (6) if the converted entity is a foreign entity that is not a qualified foreign entity,
24 a mailing address to which the [Secretary of State] may send any process served on the

1 [Secretary of State] pursuant to Section 1046(e).

2 (c) In addition to the requirements of subsection (b), a statement of conversion may
3 contain any other provision not prohibited by law.

4 (d) If the converted entity is a domestic entity, its public organic record, if any, must
5 satisfy the requirements of the law of this state, except that it does not need to be signed and may
6 omit any provision that is not required to be included in a restatement of the public organic
7 record.

8 (e) A plan of conversion that is signed by a domestic converting entity and meets all of
9 the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead
10 of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed
11 as provided in this subsection, references in this [article] to a statement of conversion refer to the
12 plan of conversion filed under this subsection.

13 **Reporters' Notes**

14 Patterned after harmonized META § 405(a) – (e).

15 **SECTION 1046. EFFECT OF CONVERSION.**

16
17 (a) When a conversion in which the converted entity is a domestic limited liability
18 company becomes effective:

19 (1) the converted entity is:

20 (A) organized under and subject to the organic law of the converted
21 entity; and

22 (B) the same entity without interruption as the converting entity;

23 (2) all property of the converting entity continues to be vested in the converted
24 entity without transfer, reversion, or impairment;

1 (3) all debts, obligations and liabilities of the converting entity continue as debts,
2 obligations and liabilities of the converted entity;

3 (4) except as otherwise provided by law or the plan of conversion, all of the
4 rights, privileges, immunities, powers, and purposes of the converting entity remain in the
5 converted entity;

6 (5) the name of the converted entity may be substituted for the name of the
7 converting entity in any pending action or proceeding;

8 (6) if a converted entity is a filing entity, its public organic record is effective;

9 (7) if the converted entity is a limited liability partnership, its [statement of
10 qualification] is effective simultaneously;

11 (8) the private organic rules of the converted entity that are to be in a record, if
12 any, approved as part of the plan of conversion are effective; and

13 (9) the interests in the converting entity are converted, and the interest holders of
14 the converting entity are entitled only to the rights provided to them under the plan of conversion
15 and to any appraisal rights they have under Section 109 and the converting entity's organic law.

16 (b) Except as otherwise provided in the operating agreement of a domestic converting
17 limited liability company, the conversion does not give rise to any rights that a member,
18 manager, or third party would otherwise have upon a dissolution, liquidation, or winding-up of
19 the converting entity.

20 (c) When a conversion becomes effective, a person that did not have interest holder
21 liability with respect to the converting entity and that becomes subject to interest holder liability
22 with respect to a domestic entity as a result of a conversion has interest holder liability only to

1 the extent provided by the organic law of the entity and only for those debts, obligations and
2 liabilities that arise after the conversion becomes effective.

3 (d) When a conversion becomes effective, the interest holder liability of a person that
4 ceases to hold an interest in a domestic limited liability company with respect o which the person
5 had interest holder liability is as follows:

6 (1) the conversion does not discharge any interest holder liability to the extent the
7 interest holder liability arose before the conversion became effective;

8 (2) the person does not have interest holder liability for any liability that arises
9 after the conversion becomes effective; and

10 (3) the person has whatever rights of contribution from any other person as are
11 provided by other law or the operating agreement of the converting entity with respect to any
12 interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

13 (e) When a conversion becomes effective, a foreign entity that is the converted entity:

14 (1) may be served with process in this state for the collection and enforcement of
15 any of its debts, obligations and liabilities; and

16 (2) appoints the [Secretary of State] as its agent for service of process for
17 collecting or enforcing those debts, obligations and liabilities.

18 (f) If the converting entity is a qualified foreign entity, the registration to do business or
19 other foreign qualification in this state of the converting entity is canceled when the conversion
20 becomes effective.

21 (g) A conversion does not require the entity to wind up its affairs and does not constitute
22 or cause the dissolution of the entity.

1 **Reporters' Notes**

2 Patterned after harmonized META § 406.

3

1 **[PART] 5**

2 **DOMESTICATION**

3
4 **SECTION 1051. DOMESTICATION AUTHORIZED.**

5 (a) Except as otherwise provided in this section, by complying with this [part], a
6 domestic limited liability company may become a foreign limited liability company if the
7 domestication is authorized by the law of the foreign jurisdiction.

8 (b) Except as otherwise provided in this section, by complying with the provisions of this
9 [part] applicable to foreign limited liability companies a foreign limited liability company may
10 become a domestic limited liability company if the domestication is authorized by the law of the
11 foreign limited liability company's jurisdiction of formation.

12 (c) If a protected agreement contains a provision that applies to a merger of a domestic
13 limited liability company but does not refer to a domestication, the provision applies to a
14 domestication of the limited liability company as if the domestication were a merger until the
15 provision is amended after the effective date of this [act].

16 **Reporters' Notes**

17 Patterned after harmonized META § 501(a) – (c).

18
19 **SECTION 1052. PLAN OF DOMESTICATION.**

20 (a) A domestic limited liability company may become a foreign limited liability
21 company in a domestication by approving a plan of domestication. The plan must be in a record
22 and contain:

23 (1) the name of the domesticating limited liability company;

24 (2) the name and jurisdiction of formation of the domesticated limited liability

1 company;

2 (3) the manner of converting the interests in the domesticating limited liability
3 company into interests, securities, obligations, rights to acquire interests or securities, cash, or
4 other property, or any combination of the foregoing;

5 (4) the proposed public organic record of the domesticated limited liability
6 company;

7 (5) the full text of the operating agreement of the domesticated limited liability
8 company that are proposed to be in a record;

9 (6) the other terms and conditions of the domestication; and

10 (7) any other provision required by the law of this state or the operating
11 agreement of the domesticating limited liability company.

12 (b) A plan of domestication may contain any other provision not prohibited by law.

13 **Reporters' Notes**

14 Patterned after harmonized META § 502.

15 **SECTION 1053. APPROVAL OF DOMESTICATION.**

16
17 (a) A plan of domestication of a domestic domesticating limited liability company is not
18 effective unless it has been approved:

19 (1) by all of the members entitled to vote on or consent to any matter; and

20 (2) in a record, by each interest holder that will have interest holder liability for
21 debts, obligations and liabilities that arise after the domestication becomes effective, unless:

22 (A) the operating agreement of the entity in a record provide for the
23 approval of a domestication or merger in which some or all of its interest holders become subject
24 to interest holder liability by the vote or consent of fewer than all of the interest holders; and

1 (B) the interest holder voted for or consented in a record to that provision
2 of the operating agreement or became an interest holder after the adoption of that provision.

3 (b) A domestication of a foreign domesticating limited liability company is not effective
4 unless it is approved in accordance with the law of the foreign limited liability company's
5 jurisdiction of formation.

6 **Reporters' Notes**

7 Subsection (a) is a simplified version of harmonized META § 503(a). Subsection (b) is
8 patterned after harmonized META § 503(b).

9 10 11 **SECTION 1054. AMENDMENT OR ABANDONMENT OF PLAN OF** 12 **DOMESTICATION.**

13 (a) A plan of domestication of a domestic domesticating limited liability company may
14 be amended:

15 (1) in the same manner as the plan was approved, if the plan does not provide for
16 the manner in which it may be amended; or

17 (2) by the managers or members of the limited liability company in the manner
18 provided in the plan, but an interest holder that was entitled to vote on or consent to approval of
19 the domestication is entitled to vote on or consent to any amendment of the plan that will change:

20 (A) the amount or kind of interests, securities, obligations, rights to
21 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
22 received by any of the interest holders of the domesticating limited liability company under the
23 plan;

24 (B) the certificate of organization or operating agreement of the
25 domesticated limited liability company that will be in effect immediately after the domestication

1 becomes effective, except for changes that do not require approval of the interest holders of the
2 domesticated limited liability company under its organic law or operating agreement; or
3 (C) any other terms or conditions of the plan, if the change would
4 adversely affect the interest holder in any material respect.

5 (b) After a plan of domestication has been approved by a domestic domesticating limited
6 liability company and before a statement of domestication becomes effective, the plan may be
7 abandoned:

8 (1) as provided in the plan; or

9 (2) unless prohibited by the plan, in the same manner as the plan was approved.

10 (c) If a plan of domestication is abandoned after a statement of domestication has been
11 delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement
12 of abandonment, signed by the limited liability company, must be delivered to the [Secretary of
13 State] for filing before the time the statement of domestication becomes effective. The statement
14 of abandonment takes effect upon filing, and the domestication is abandoned and does not
15 become effective. The statement of abandonment must contain:

16 (1) the name of the domesticating limited liability company;

17 (2) the date on which the statement of domestication was delivered to the
18 [Secretary of State] for filing; and

19 (3) a statement that the domestication has been abandoned in accordance with
20 this section.

21 **Reporters' Notes**

22 Patterned after harmonized META § 504.

1 **SECTION 1055. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.**

2 (a) A statement of domestication must be signed by the domesticating limited liability
3 company and delivered to the [Secretary of State] for filing.

4 (b) A statement of domestication must contain:

5 (1) the name and jurisdiction of formation of the domesticating limited liability
6 company;

7 (2) the name and jurisdiction of formation of the domesticated limited liability
8 company;

9 (3) if the domesticating limited liability company is a domestic limited liability
10 company, a statement that the plan of domestication was approved in accordance with this [part]
11 or, if the domesticating limited liability company is a foreign limited liability company, a
12 statement that the domestication was approved in accordance with the law of its jurisdiction of
13 formation;

14 (4) the certificate of organization of the domesticated limited liability company,
15 as an attachment; and

16 (5) if the domesticated foreign limited liability company is not a registered
17 foreign limited liability company, a mailing address to which the [Secretary of State] may send
18 any process served on the [Secretary of State] pursuant to Section 506(e).

19 (c) In addition to the requirements of subsection (b), a statement of domestication may
20 contain any other provision not prohibited by law.

21 (d) The certificate of organization of a domesticated domestic limited liability company
22 must satisfy the requirements of the law of this state, except that it does not need to be signed.

(e) A plan of domestication that is signed by a domesticating domestic limited liability company and meets all of the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of domestication and upon filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this [article] to a statement of domestication refer to the plan of domestication filed under this subsection.

Reporters' Notes

Patterned after harmonized META § 505(a) – (e).

SECTION 1056. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

(1) the domesticated limited liability company is:

(A) organized under and subject to the organic law of the domesticated
limited liability company; and

(B) the same entity without interruption as the domesticating limited liability company;

(2) all property of the domesticating limited liability company continues to be
vested in the domesticated entity without transfer, reversion, or impairment;

(3) all debts, obligations, and liabilities of the domesticating limited liability company continue as debts, obligations, and liabilities of the domesticated limited liability company;

(4) except as otherwise provided by law or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating limited liability company remain in the domesticated limited liability company;

1 (5) the name of the domesticated limited liability company may be substituted for
2 the name of the domesticating limited liability company in any pending action or proceeding;

3 (6) the certificate of organization of the domesticated limited liability company is
4 effective;

5 (7) the provisions of operating agreement of the domesticated limited liability
6 company that are to be in a record, if any, approved as part of the plan of domestication are
7 effective; and

8 (8) the interests in the domesticating limited liability company are converted to
9 the extent and as approved in connection with the domestication, and the interest holders of the
10 domesticating limited liability company limited liability company are entitled only to the rights
11 provided to them under the plan of domestication and to any appraisal rights they have under
12 Section 109.

13 (b) Except as otherwise provided in the organic law or operating agreement of the
14 domesticating limited liability company, the domestication does not give rise to any rights that
15 an interest holder, manager, or third party would otherwise have upon a dissolution, liquidation,
16 or winding-up of the domesticating limited liability company.

17 (c) When a domestication becomes effective, a person that did not have interest holder
18 liability with respect to the domesticating limited liability company and that becomes subject to
19 interest holder liability with respect to a domestic entity as a result of the domestication has
20 interest holder liability only to the extent provided by the organic law of the entity and only for
21 those debts, obligations and other liabilities that arise after the domestication becomes effective.

22 (d) When a domestication becomes effective:

(1) the domestication does not discharge any interest holder liability under this
[article] to the extent the interest holder liability arose before the domestication became
effective;

(2) a person does not have interest holder liability under this [article] for any debts, obligations, and liabilities that arise after the domestication becomes effective;

(3) a person has whatever rights of contribution from any other person as are provided by other law or the operating agreement of a domestic domesticating limited liability company with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign limited liability company that is
the domesticated limited liability company:

(1) may be served with process in this state for the collection and enforcement of
any of its debts, obligations, and liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for
collecting or enforcing those debts, obligations and liabilities.

(f) If the domesticating limited liability company is a registered foreign limited liability company, the registration of the limited liability company is canceled when the domestication becomes effective.

(g) A domestication does not require the limited liability company to wind up its affairs
and does not constitute or cause the dissolution of the limited liability company.

Reporters' Notes

Patterned after harmonized META § 506.

1 [ARTICLE] 11

2 MISCELLANEOUS PROVISIONS

3
4 **SECTION 1101. RESERVATION OF POWER TO AMEND OR REPEAL.** The

5 [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all
6 domestic and foreign entities subject to this [act] are governed by the amendment or repeal.

7 **Reporters' Notes**

8 It is one thing to eschew the “contract is G-d” language pioneered in Delaware. It is quite
9 another matter to authorize the government to retroactively change the rules of a private deal.
10

11
12 **SECTION ~~1101~~ 1102. UNIFORMITY OF APPLICATION AND**

13 **CONSTRUCTION.** In applying and construing this uniform act, consideration must be given
14 to the need to promote uniformity of the law with respect to its subject matter among states that
15 enact it.

16 **SECTION ~~1102~~ 1103. RELATION TO ELECTRONIC SIGNATURES IN**

17 **GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes
18 the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001
19 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section
20 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that
21 act, 15 U.S.C. Section 7003(b).

22 **SECTION ~~1103~~ 1104. SAVINGS CLAUSE.** This [act] does not affect an action
23 commenced, proceeding brought, or right accrued before this [act] takes effect.

24 **SECTION ~~1104~~ 1105. APPLICATION TO EXISTING RELATIONSHIPS.**

25 (a) Before [all-inclusive date], this [act] governs only:

26 (1) a limited liability company formed on or after [the effective date of this act];

1 and

2 (2) except as otherwise provided in subsection (c), a limited liability company
3 formed before [the effective date of this act] which elects, in the manner provided in its operating
4 agreement or by law for amending the operating agreement, to be subject to this [act].

5 (b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this
6 [act] governs all limited liability companies.

7 (c) For the purposes applying this [act] to a limited liability company formed before [the
8 effective date of this act]:

9 (1) the company's articles of organization are deemed to be the company's
10 certificate of organization; and

11 (2) for the purposes of applying Section 102(10) and subject to Section 112(d),
12 language in the company's articles of organization designating the company's management
13 structure operates as if that language were in the operating agreement.

14 **Legislative Note:** *It is recommended that the "all-inclusive" date should be at least one year*
15 *after the date of enactment but no longer than two years.*

16
17 *Each enacting jurisdiction should consider whether: (i) this Act makes material changes*
18 *to the "default" (or "gap filler") rules of jurisdiction's predecessor statute; and (ii) if so,*
19 *whether subsection (c) should carry forward any of those rules for pre-existing limited liability*
20 *companies. In this assessment, the focus is on pre-existing limited liability companies that have*
21 *left default rules in place, whether advisedly or not. The central question is whether, for such*
22 *limited liability companies, expanding subsection (c) is necessary to prevent material changes to*
23 *the members' "deal."*

24
25 *For an example of this type of analysis in the context of another business entity act, see*
26 *the Uniform Limited Partnership Act (2001), § 1206(c).*

27
28 *Section 301 (de-codifying statutory apparent authority) does not require any special*
29 *transition provisions, because: (i) applying the law of agency, as explained in the Comments to*
30 *Sections 301 and 407, will produce appropriate results; and (ii) the notion of "lingering*
31 *apparent authority" will protect any third party that has previously relied on the statutory*
32 *apparent authority of a member of a particular member-managed LLC or a manager of a*
33 *particular manager-managed LLC. RESTATEMENT (THIRD) OF AGENCY § 3.11, cmt. c (2006).*

1 *It is unnecessary to expand subsection (c) of this Act if the state's predecessor act is the*
2 *original Uniform Limited Liability Company Act, revised to provide for perpetual duration.*

3
4
5 **SECTION ~~1105~~ 1106. REPEALS.** Effective ~~[all inclusive date]~~, the The following
6 ~~acts and parts of acts are repealed: [the state limited liability company act, as amended, and in~~
7 ~~effect immediately before the effective date of this act].~~

8 (1) [the state limited liability company act, as [amended, and as] in effect immediately
9 before [the effective date of this [act]];

10 (2)

11 (3)

12 **SECTION ~~1106~~ 1107. EFFECTIVE DATE.** This [act] takes effect ~~on~~