**UNIFORM STATUTORY TRUST ENTITY ACT (2009)**

***(Last Amended 2013)***

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

at its

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR

BOSTON, MASSACHUSETTS

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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# [ARTICLE] 1 GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Statutory Trust Entity Act ([year of enactment]).

SECTION 102. DEFINITIONS. In this [act]:

(1) “Beneficial owner” means the owner of a beneficial interest in a statutory trust.

(2) “Certificate of trust” means the certificate required by Section 201. The term includes the certificate as amended or restated.

(3) “Common-law trust” means a fiduciary relationship with respect to property arising from a manifestation of intent to create that relationship and subjecting the person that holds title to the property to duties to deal with the property for the benefit of charity or for one or more persons, at least one of which is not the sole trustee, whether the purpose of the trust is donative or commercial. The term includes the type of trust known at common law as a “business trust”, “Massachusetts trust”, or “Massachusetts business trust”.

(4) “Contribution”, except in the phrase “right of contribution”, means property or a benefit described in Section 604 which is provided by a person to a statutory trust to become a beneficial owner or in the person’s capacity as a beneficial owner.

(5) “Distribution” means a transfer of money or other property from a statutory trust on account of a beneficial interest. The term includes a redemption or other purchase by a statutory trust of a beneficial interest.

(6) “Foreign statutory trust” means a trust formed under the law of a jurisdiction other than this state which would be a statutory trust if formed under the law of this state.

(7) “Governing instrument” means the trust instrument and certificate of trust.

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

(9) “Jurisdiction of formation” means the jurisdiction whose law governs the internal affairs of an entity.

(10) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. The term does not include a common-law trust.

(11) “Principal office” means the principal executive office of a statutory trust or foreign statutory trust, whether or not the office is located in this state.

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

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

(14) “Registered agent” means an agent of a statutory trust or foreign statutory trust which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the trust.

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

(16) “Related party”, with respect to a party that is a trustee, officer, employee, manager, or beneficial owner, means:

(A) the spouse of the party;

(B) a child, parent, sibling, grandchild, or grandparent of the party, or the spouse of one of them;

(C) an individual having the same residence as the party;

(D) a trust or estate of which a related party described in subparagraph (A), (B), or (C) is a substantial beneficiary;

(E) a trust, estate, legally incapacitated individual, conservatee, or minor for which the party is a fiduciary; or

(F) a person that directly or indirectly controls, is controlled by, or is under common control with, the party.

(17) “Series trust” means a statutory trust that has one or more series created under Section 401.

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

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

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

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

(20) “Statutory trust”, except in the phrase “foreign statutory trust” and in [Article] 9, means an entity formed under this [act] or that becomes subject to this [act] under [Article] 9 or Section 108.

(21) “Transfer” includes:

(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

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

(F) a gift; and

(G) a transfer by operation of law.

(22) “Trust” includes a common-law trust, statutory trust, and foreign statutory trust.

(23) “Trust instrument” means a record other than the certificate of trust which provides for the governance of the affairs of a statutory trust and the conduct of its activities and affairs. The term includes a trust agreement, a declaration of trust, and bylaws.

(24) “Trustee” means a person designated, appointed, or elected as a trustee of a statutory trust in accordance with the governing instrument or applicable law.

## SECTION 103. GOVERNING INSTRUMENT.

(a) Except as otherwise provided in Section 104, the governing instrument governs:

(1) the management, affairs, and conduct of the activities and affairs of a statutory trust; and

(2) the rights, interests, duties, obligations, and powers of, and the relations among, the trustees, a person designated under subsection (e)(8) or (9), the beneficial owners, and the statutory trust.

(b) To the extent the governing instrument does not otherwise provide for a matter described in subsection (a), this [act] governs the matter.

(c) The governing instrument may include one or more instruments, agreements, declarations, bylaws, or other records and refer to or incorporate any record.

(d) The governing instrument may be amended with the approval of all the beneficial owners.

(e) Subject to Section 104, without limiting the terms that may be included in a governing instrument, the governing instrument may:

(1) provide the means by which beneficial ownership is determined and evidenced;

(2) limit a beneficial owner’s right to transfer its beneficial interest;

(3) provide for one or more series under [Article] 4;

(4) to the extent that voting rights are granted under the governing instrument, include terms relating to:

(A) notice of the date, time, place, or purpose of any meeting at which any matter is to be voted on;

(B) waiver of notice;

(C) action by consent without a meeting;

(D) establishment of record dates;

(E) quorum requirements;

(F) voting:

(i) in person;

(ii) by proxy;

(iii) by any form of communication that creates a record, telephone, or video conference; or

(iv) in any other manner; or

(G) any other matter with respect to the exercise of the right to vote;

(5) subject to Section 404, provide for the creation of one or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties;

(6) subject to Section 404, provide for any action to be taken without the vote or approval of any particular trustee or beneficial owner, or classes of trustees, beneficial owners, or beneficial interests, including:

(A) amendment of the governing instrument;

(B) merger, interest exchange, conversion, or domestication;

(C) appointment of trustees;

(D) sale, lease, exchange, transfer, pledge, or other disposition of all or any part of the property of the statutory trust or the property of any series thereof; and

(E) dissolution of the statutory trust;

(7) provide for the creation of a statutory trust, including the creation of a statutory trust to which all or any part of the property, liabilities, profits, or losses of a statutory trust may be transferred or exchanged, and for the conversion of beneficial interests in a statutory trust, or series thereof, into beneficial interests in the new statutory trust or series thereof;

(8) provide for the appointment, election, or engagement of agents or

independent contractors of the statutory trust or delegates of the trustees, or agents, officers, employees, managers, committees, or other persons that may manage the activities and affairs of the statutory trust, designate their titles, and specify their rights, powers, and duties;

(9) provide rights to any person, including a person that is not a party to the governing instrument;

(10) subject to paragraph (11), specify the manner in which the governing instrument may be amended, including, unless waived by all persons for whose benefit the condition or requirement was intended:

(A) a condition that a person that is not a party to the instrument must approve the amendment for it to be effective; and

(B) a requirement that the governing instrument may be amended only as provided in the governing instrument or as otherwise permitted by law;

(11) provide that a person may comply with paragraph (10) by a representative authorized by the person orally, in a record, or by conduct;

(12) provide that a person becomes a beneficial owner, acquires a beneficial interest, and is bound by the governing instrument if the person complies with the conditions for becoming a beneficial owner set forth in the governing instrument, such as payment to the statutory trust or to a previous beneficial owner;

(13) provide that the statutory trust or the trustees, acting for the statutory trust, hold beneficial ownership of any income earned on securities held by the statutory trust that are issued by any business entity formed, organized, or existing under the laws of any jurisdiction;

(14) provide for the establishment of record dates;

(15) grant to, or withhold from, a trustee or beneficial owner, or class of trustees or beneficial owners, the right to vote, separately or with any or all other trustees or beneficial owners, or class of trustees or beneficial owners, on any matter; and

(16) alter the prohibition in Section 615(a)(2) so that the prohibition requires only that the statutory trust’s total assets not be less than the sum of its total liabilities.

SECTION 104. MANDATORY RULES. The governing instrument may not:

(1) vary any requirement, procedure, or other provision of this [act] pertaining to:

(A) registered agents; or

(B) the [Secretary of State], including provisions pertaining to records authorized or required to be delivered to the [Secretary of State] for filing under this [act];

(C) the application of this [act] to existing relationships under Section 108 or the reservation of power to amend or repeal under Section 109;

(2) vary the law applicable under Sections 301 and 801;

(3) negate the exclusion of a predominantly donative purpose under Section 303(b);

(4) vary the provisions pertaining to the duration of a statutory trust under Section 306(a);

(5) vary the capacity of a statutory trust under Section 308 to sue and be sued in its own name;

(6) vary the provisions pertaining to series trusts in Sections 401, 402(b), 402(c), 403, 404, and 405(c);

(7) vary the standards of conduct for trustees under Section 505, but the governing instrument may prescribe the standards by which good faith, best interests of the statutory trust, and care that a person in a similar position would reasonably believe appropriate under similar circumstances are determined, if the standards are not manifestly unreasonable;

(8) vary the obligation of a trustee or other person under Section 506 to act reasonably if the trustee or other person is not to be liable for relying on a term of the governing instrument, a record of the statutory trust, or an opinion, report, or statement of another person, but the governing instrument may prescribe the standards for assessing whether the reliance was reasonable, if the standards are not manifestly unreasonable;

(9) restrict the right of a trustee to information under Section 508, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the trustee’s discharge of the trustee’s duties as trustee, if the standards are not manifestly unreasonable;

(10) vary the prohibition under Section 509 of indemnification, advancement of expenses, or exoneration for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

(11) vary the obligation of a trustee under Section 510(c) not to follow a direction that is manifestly contrary to the terms of the governing instrument or would constitute a serious breach of fiduciary duty by the trustee;

(12) vary the provisions pertaining to the transfer of a beneficial interest and the power of a court under Section 602(a), (c), and (d);

(13) restrict the right of a beneficial owner to information under Section 608, but the governing instrument may prescribe the standards for assessing whether information is reasonably related to the beneficial owner’s interest, if the standards are not manifestly unreasonable;

(14) restrict the right of a beneficial owner to bring an action under Section 609 or 610, but the governing instrument may subject the right to additional standards and restrictions, including a requirement that beneficial owners owning a specified amount or type of beneficial interest, including in a series trust an interest in the series, join in bringing the action, if the additional standards and restrictions are not manifestly unreasonable;

(15) vary the rules under Section 613, if a statutory trust appoints a special litigation committee;

(16) vary the right of a beneficial owner under Section 923(a)(2), 933(a)(2), 943(a)(2), or 953(a)(2) to approve a merger, interest exchange, conversion, or domestication;

(17) vary the required contents of a plan of merger under Section 922(a), plan of interest exchange under Section 932(a), a plan of conversion under Section 942(a), or a plan of domestication under Section 952(a); or

(18) vary [Article] 7;

(19) vary [Article] 10; or

(20) restrict the rights under this [act] of a person other than a trustee, person designated under Section 103(e)(8) and (9), or beneficial owner.

SECTION 105. APPLICABILITY OF TRUST LAW. The law of this state pertaining to common-law trusts supplements this [act]. However, the governing instrument may supersede or modify application to the statutory trust of any law of this state pertaining to common-law trusts.

SECTION 106. RULE OF CONSTRUCTION. The presumption that a civil statute in derogation of the common law is construed strictly does not apply to this [act].

SECTION 107. CONSTRUCTIVE NOTICE. A person that is not a beneficial owner is deemed to have notice of a statutory trust’s merger, interest exchange, conversion, or domestication 90 days after articles of merger, interest exchange, conversion, or domestication under [Article] 9 become effective.

## SECTION 108. APPLICATION TO EXISTING RELATIONSHIPS.

(a) This [act] does not limit, prohibit, or invalidate the existence, acts, or obligations of any common-law trust created or doing business in this state before, on, or after [the effective date of this [act]]. The law of this state other than this [act] pertaining to trusts applies to common-law trusts.

(b) A common-law trust created under the law of this state before, on, or after [the effective date of this [act]] which does not have a predominantly donative purpose may elect to become a statutory trust under this [act] by filing a certificate of trust under Section 201.

[(c) A trust created pursuant to a statute of this state that was required by that statute to file a certificate of trust with [the Secretary of State] before [the effective date of this [act]] may elect to be governed by the provisions of this [act] by filing an amendment to its certificate of trust under Section 202.]

[(d) On [two years after the effective date of this [act]], this [act] governs the organization and internal affairs of a trust created pursuant to a statute of this state that was required by that statute to file a certificate of trust with the [Secretary of State] before [the effective date of this [act]].]

SECTION 109. RESERVATION OF POWER TO AMEND OR REPEAL. The [legislature of this state] has power to amend or repeal all or part of this [act] at any time and all statutory trusts and foreign statutory trusts subject to this [act] are governed by the amendment or repeal.

# **[ARTICLE] 2** FORMATION; CERTIFICATE OF TRUST AND OTHER FILINGS

## SECTION 201. FORMATION OF STATUTORY TRUST; CERTIFICATE OF TRUST.

(a) To form a statutory trust, a person must deliver a certificate of trust to the [Secretary of State] for filing.

(b) A certificate of trust must state:

(1) the name of the statutory trust, which must comply with Section 213;

(2) the street and mailing addresses of the trust’s principal office;

(3) the name and street and mailing addresses in this state of the trust’s registered agent; and

(4) if the trust may have one or more series, a statement to that effect.

(c) A certificate of trust may contain any term in addition to those required by subsection (b), but may not vary or otherwise affect the provisions specified in Section 104 in a manner inconsistent with that section.

(d) A statutory trust is formed when the certificate of trust becomes effective.

(e) A filed certificate of trust, a filed statement of cancellation or change, or filed articles under [Article] 9 prevail over inconsistent terms of a trust instrument.

## SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF TRUST.

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

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

(1) the name of the trust;

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

(3) the text of the amendment.

(c) To restate its certificate of trust, a statutory trust must deliver to the [Secretary of State] for filing a restatement designated as such in its heading.

(d) If a trustee knows that any information in a filed certificate of trust was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the trustee 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 217 or a statement of correction under Section 210.

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

(a)A record delivered by a statutory trust to the [Secretary of State] for filing pursuant to this [act] must be signed by at least one of the trustees.

(b) A record delivered for filing under this [act] may be signed by an agent. Whenever this [act] requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

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

## SECTION 204. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.

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

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

(2) a trustee of a statutory trust, if:

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

(B) the trustee knew or had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the trustee reasonably could have:

(i) effected an amendment under Section 202;

(ii) filed a petition under Section 204; or

(iii) delivered to the [Secretary of State] for filing a statement of change under Section 217 or a statement of correction under Section 210.

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

## SECTION 205. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

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

(1) the person to sign the record;

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

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

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

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

## SECTION 206. DELIVERY OF RECORD.

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

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

## SECTION 207. 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], 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.

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an 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 or required under this [act] to sign the record.

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this [act] prohibits the disclosure by the [Secretary of State] of information contained in a record delivered to the [Secretary of State] for filing, the [Secretary of State] shall file the record if the record otherwise complies with this [act] but may redact the information.

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

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

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

(f) The [Secretary of State] may require that a cover sheet for a filing be on a form prescribed by the [Secretary of State].

SECTION 208. EFFECTIVE DATE AND TIME. Except as otherwise provided in Section 209 and subject to Section 210(d), a record filed under this [act] is effective:

(1) on the date and at the time of its filing by the [Secretary of State] as provided in Section 211;

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

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

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

## SECTION 209. WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.

(a) Except as otherwise provided in Sections 924, 934, 944, and 954, a record delivered to the [Secretary of State] for filing may be withdrawn before it takes effect by delivering to the [Secretary of State] for filing a statement of withdrawal.

(b) A statement of withdrawal must:

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

(2) identify the record to be withdrawn; and

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

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

## SECTION 210. CORRECTING FILED RECORD.

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

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

(2) the record was defectively signed; or

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

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

(c) A statement of correction:

(1) may not state a delayed effective date;

(2) must be signed by the person correcting the filed record;

(3) must identify the filed record to be corrected;

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

(5) must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Section 107 and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

## SECTION 211. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE; DELIVERY OF RECORD BY [SECRETARY OF STATE].

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

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

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

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

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

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

(e) The filing of or refusal to file a record does not:

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

(2) create a presumption that the information contained in the record is correct or incorrect.

(f) Except as provided by Section 220 or by law other than this [act], the [Secretary of State] may deliver any record to a person by delivering it:

(1) in person to the person that submitted it;

(2) to the address of the person’s registered agent;

(3) to the principal office of the person; or

(4) to another address the person provides to the [Secretary of State] for delivery.

## SECTION 212. CERTIFICATE OF GOOD STANDING OR REGISTRATION.

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

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

(1) the statutory trust’s name or the registered foreign statutory trust’s name used in this state;

(2) in the case of a statutory trust:

(A) that a certificate of trust has been filed and has taken effect;

(B) the date the certificate became effective;

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

(D) that:

(i) no articles of dissolution or statement of administrative dissolution have been filed;

(ii) the records of the [Secretary to State] do not otherwise reflect that the trust has been dissolved or terminated; and

(iii) a proceeding is not pending under Section 707;

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

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

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

(B) nonpayment affects the good standing or registration of the trust or foreign trust;

(5) that the most recent [annual] [biennial] report required by Section 221 has been delivered to the [Secretary of State] for filing; and

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

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

## SECTION 213. PERMITTED NAMES.

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

(b) Except as otherwise provided in subsection (e), the name of a statutory trust, and the name under which a foreign statutory trust may register to do business in this state, must be distinguishable on the records of the [Secretary of State] from any:

(1) name of an existing person whose formation required the filing of a record by the [Secretary of State] and which is not at the time administratively dissolved;

(2) name of a limited liability partnership whose statement of qualification is in effect;

(3) name under which a person is registered to do business in this state by the filing of a record by the [Secretary of State];

(4) a name reserved under Section 214 or other law of this state providing for the reservation of a name by the filing of a record by the [Secretary of State];

(5) a name registered under Section 215 or law of this state other than this [act] providing for the registration of a name by the filing of a record by the [Secretary of State]; and

(6) a name registered under [this state’s assumed or fictitious name statute].

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

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

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

(f) The name of a statutory trust or foreign statutory trust may not contain the words [insert prohibited word or words that may be used only with approval by the appropriate state agency].

(g) A statutory trust or foreign statutory trust may use a name that is not distinguishable from a name described in subsection (b)(1) through (6) if the trust delivers to the [Secretary of State] a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the trust to use the name in this state.

## SECTION 214. RESERVATION OF NAME.

(a) A person may reserve the exclusive use of the name that complies with Section 213 by delivering an application to the [Secretary of State] for filing. The application must state the name and address of the applicant and the name to be reserved. If the [Secretary of State] finds that the name is available, the [Secretary of State] shall reserve the name for the applicant’s exclusive use for [120] days.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the [Secretary of State] a signed notice in a record of the transfer which states the name and address of the person to which the reservation is being transferred.

## **SECTION 215. REGISTRATION OF NAME**.

(a) A foreign statutory trust not registered to do business in this state under [Article] 8 may register its name, or an alternate name adopted pursuant to Section 806, if the name is distinguishable on the records of the [Secretary of State] from the names that are not available under Section 213.

(b) To register its name or an alternate name adopted pursuant to Section 806, a foreign statutory trust must deliver to the [Secretary of State] for filing an application stating the trust’s name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 806. If the [Secretary of State] finds that the name applied for is available, the [Secretary of State] shall register the name for the applicant’s exclusive use.

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

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

(e) A foreign statutory trust whose name registration is effective may register as a foreign statutory trust under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

## SECTION 216. REGISTERED AGENT.

(a) Each statutory trust and each registered foreign statutory trust shall designate and maintain a registered agent in this state. The designation of a registered agent is an affirmation of fact by the statutory trust or registered foreign statutory trust that the agent has consented to serve.

(b) A registered agent for a statutory trust or registered foreign statutory trust must have a place of business in this state.

(c) The only duties under this [act] of a registered agent that has complied with this [act] are:

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

(2) if the registered agent resigns, to provide the notice required by Section 218(c) to the trust or foreign trust at the address most recently supplied to the agent by the trust or foreign trust; and

(3) to keep current the information with respect to the agent in the certificate of trust or foreign registration statement.

## **SECTION 217. CHANGE OF REGISTERED AGENT OR ADDRESS FOR REGISTERED AGENT BY STATUTORY TRUST.**

(a) A statutory trust or registered foreign statutory trust may change its registered agent or the address of its registered agent by delivering to the [Secretary of State] for filing a statement of change that states:

(1) the name of the trust or foreign trust; and

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

(b) The beneficial owners or trustees of a statutory trust need not approve the filing of:

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

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

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

(d) As an alternative to using the procedure in this section, a statutory trust may amend its certificate of trust.

## SECTION 218. RESIGNATION OF REGISTERED AGENT.

(a) A registered agent may resign as agent for a statutory trust or registered foreign statutory trust by delivering to the [Secretary of State] for filing a statement of resignation that states:

(1) the name of the trust or foreign trust;

(2) the name of the agent;

(3) that the agent resigns from serving as registered agent for the trust or foreign trust; and

(4) the address of the trust or foreign trust to which the agent will send the notice required by subsection (c).

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

(1) the 31st day after the day on which it is filed by the [Secretary of State]; or

(2) the designation of a new registered agent for the statutory trust or registered foreign statutory trust.

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

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility under this [act] for any matter thereafter tendered to it as agent for the statutory trust or registered foreign statutory trust. The resignation does not affect any contractual rights the trust or foreign trust has against the agent or that the agent has against the trust or foreign trust.

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

## SECTION 219. CHANGE OF NAME OR ADDRESS BY REGISTERED AGENT.

(a) If a registered agent changes its name or address, the agent may deliver to the [Secretary of State] for filing a statement of change that states:

(1) the name of the statutory trust or registered foreign statutory trust represented by the registered agent;

(2) the name of the agent as currently shown in the records of the [Secretary of State] for the trust or foreign trust;

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

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

(b) A registered agent promptly shall furnish notice to the represented statutory trust or registered foreign statutory trust of the filing by the [Secretary of State] of the statement of change and the changes made by the statement.

***Legislative Note:*** *Many registered agents act in that capacity for many entities, and the Model Registered Agents Act (2006) (Last Amended 2013) provides a streamlined method through which a commercial registered agent can make a single filing to change its information for all represented entities. The single filing does not prevent an enacting state from assessing filing fees on the basis of the number of entity records affected.*

## SECTION 220. SERVICE OF PROCESS, NOTICE, OR DEMAND.

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

(b) If a statutory trust or registered foreign statutory trust ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the trust or foreign trust may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the trust or foreign trust at its principal office. The address of the principal office must be as shown in the trust’s or foreign trust’s most recent [annual] [biennial] report filed by the [Secretary of State]. Service is effected under this subsection on the earliest of:

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

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

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

(c) If process, notice, or demand cannot be served on a statutory trust or registered foreign statutory trust 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 trust or foreign trust 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].

## SECTION 221. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF STATE].

(a) A statutory trust or registered foreign statutory trust shall deliver to the [Secretary of State] for filing [an annual] [a biennial] report that states:

(1) the name of the trust or foreign trust;

(2) the name and street and mailing addresses of its registered agent in this state;

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

(4) the name of at least one trustee; and

(5) in the case of a foreign statutory trust, its jurisdiction of formation and any alternate name adopted under Section 806.

(b) Information in the [annual] [biennial] report must be current as of the date the report is signed by the statutory trust or registered foreign statutory trust.

(c) The first [annual] [biennial] report must be delivered to the [Secretary of State] for filing after [January 1] and before [April 1] of the year following the calendar year in which the statutory trust’s certificate of trust became effective or the registered foreign statutory trust registered to do business in this state. Subsequent [annual] [biennial] reports must be delivered to the [Secretary of State] for filing after [January 1] and before [April 1] of each [second] calendar year thereafter.

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

(e) If [an annual] [a biennial] report contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the report becomes effective, the differing information in the report is considered a statement of change under Section 217.

# [ARTICLE] 3 GOVERNING LAW; AUTHORIZATION; DURATION; POWERS

SECTION 301. GOVERNING LAW. The law of this state governs:

(1) the internal affairs of a statutory trust;

(2) the liability of a beneficial owner as beneficial owner, a trustee as trustee, and a person designated under Section 103(e)(8) or (9) as a person in the designated capacity, for a debt, obligation, or other liability of a statutory trust or a series thereof; and

(3) the extent to which:

(A) a debt, obligation, or other liability of a series trust is enforceable against the property of any series thereof; and

(B) a debt, obligation, or other liability of a series of a series trust is enforceable against the property of the trust or any other series thereof.

SECTION 302. STATUTORY TRUST AS ENTITY. A statutory trust is an entity distinct from its trustees and beneficial owners.

## SECTION 303. PERMISSIBLE PURPOSES.

(a) Except as otherwise provided in subsection (b), a statutory trust may have any lawful purpose, regardless of whether for profit.

(b) A statutory trust may not have a predominantly donative purpose.

## SECTION 304. LIABILITY OF TRUSTEES AND BENEFICIAL OWNERS.

(a) A debt, obligation, or other liability of a statutory trust or series thereof is solely the debt, obligation, or other liability of the trust or series thereof. A beneficial owner, trustee, or person designated pursuant to Section 103(e)(8) or (9) is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the trust or series thereof solely by reason of being or acting as a beneficial owner, trustee, or person designated pursuant to Section 103(e)(8) or (9). This subsection applies regardless of the dissolution of the trust.

(b) Except as otherwise provided in [Article] 4, property of a statutory trust held in the name of the trust or by the trustee in the trustee’s capacity as trustee is subject to attachment and execution to satisfy a debt, obligation, or other liability of the trust.

SECTION 305. NO CREDITOR RIGHTS IN TRUST PROPERTY. A creditor of a beneficial owner or trustee may not obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a statutory trust or any series thereof.

## SECTION 306. DURATION.

(a) Except as otherwise provided in its certificate of trust, a statutory trust:

(1) has perpetual duration; and

(2) may not be terminated or revoked except in accordance with this [act] or the terms of the trust’s certificate of trust.

(b) A series of a statutory trust may not be terminated or revoked except in accordance with this [act] or the terms of the governing instrument.

(c) The death, incapacity, dissolution, termination, or bankruptcy of a beneficial owner, ~~or~~ trustee, or person designated under Section 103(e)(8) or (9) does not result in the termination or dissolution of a statutory trust or any series thereof.

(d) A statutory trust or any series thereof does not terminate because the same person is the sole trustee and sole beneficial owner.

SECTION 307. POWER TO HOLD PROPERTY; TITLE TO TRUST PROPERTY. A statutory trust may hold or take title to property in its own name, or in the name of a trustee in the trustee’s capacity as trustee, whether in an active, passive, or custodial capacity.

SECTION 308. POWER TO SUE AND BE SUED. A statutory trust has the capacity to sue and be sued in its own name.

# [ARTICLE 4] SERIES TRUSTS

## SECTION 401. STATUTORY TRUST HAVING SERIES.

(a) The governing instrument may provide for the creation by the statutory trust of one or more series with respect to specified property of the statutory trust if:

(1) records are maintained for the series which reasonably identify the property of the series, including by specific listing, category, type, quantity, or computational or allocational formula or procedure, such as a percentage or share of any property, or by any other method by which the identity of the property of the series is objectively determinable; and

(2) notice that the trust may have one or more series is set forth in the certificate of trust as required by Section 201(b)(4).

(b) A series of a statutory trust is not an entity separate from the statutory trust.

(c) A series of a statutory trust may have a purpose, regardless of whether for profit, separate from the trust or any other series thereof if the purpose of the series is lawful and not a predominantly donative purpose.

(d) Subject to Section 404, the governing instrument may provide for the creation of one or more classes of trustees, beneficial owners, or beneficial interests having separate rights, powers, or duties with respect to the statutory trust or any series thereof.

## SECTION 402. LIABILITY OF SERIES TRUST.

(a) In a series trust:

(1) a debt, obligation, or other liability incurred or otherwise existing with respect to the property of a particular series is enforceable against the property of the series only, and not against the property of the trust generally or any other series thereof; and

(2) a debt, obligation, or other liability incurred or otherwise existing with respect to the trust generally or the property of any other series thereof is not enforceable against the property of the series.

(b) The rules pertaining to distributions under Sections 615 and 616 apply to a distribution from a series trust and from the property of any series thereof, except for a distribution under Section 405.

(c) The association, disassociation, or reassociation of property of a statutory trust or a series thereof to or with the trust or a series thereof, including by a transaction under [Article] 9, is deemed to be a transfer between separate persons under [Uniform Voidable Transaction Act or other state fraudulent transfer statute] and a distribution under Section 615.

## SECTION 403. CLAIMS PERTAINING TO A SERIES TRUST.

(a) A series of a statutory trust may not sue or be sued in its own name.

(b) If a series trust has a claim against a person which pertains to the property of a series thereof, the trust may assert the claim under Section 308and shallallocate the proceeds of the claim under Sections 401 and 402.

(c) If a person has a claim against a series trust which pertains to the property of a series thereof, to assert the claim the person must bring the claimagainst the trust, stating that the claim pertains to the property of a series thereof and specifying the series if known. To the extent the claim succeeds and is reduced to judgment:

(1) the judgment must state that it is collectable only against the property of the specified series; and

(2) the judgment creditor may levy on the judgment only by serving the series trust, which shall satisfy the judgment using only the property of the specified series.

SECTION 404. DUTIES OF TRUSTEE IN SERIES TRUST. If there is at least one trustee of a series trust that, in discharging its duties, is obligated to consider the interests of the trust and all series thereof, the governing instrument may provide that one or more other trustees, in discharging their duties, may consider only the interests of the trust or one or more series thereof.

## SECTION 405. DISSOLUTION OF SERIES.

(a) A series of a series trust may be dissolved or its property distributed without causing the dissolution of the trust or any other series thereof.

(b) A series of a series trust is dissolved, and its activities must be wound up, on the occurrence of an event or circumstance that the governing instrument states causes dissolution of the series or upon the dissolution of the trust.

(c) On dissolution of a series of a series trust, the persons that under the governing instrument are responsible for winding up the affairs of the series may cause the trust to take all actions permitted under Section 703 and shall take actions with respect to the claims and obligations of the series as provided in Sections 703 through 706.

(d) A person, including a trustee, that under the governing instrument is responsible for winding up the affairs of a series of a series trust is not liable to the creditors of the dissolved series solely because the person acts in that capacity.

# [ARTICLE 5] TRUSTEES AND TRUST MANAGEMENT

SECTION 501. MANAGEMENT OF STATUTORY TRUST. The activities and affairs of a statutory trust must be managed by or under the authority of its trustees.

SECTION 502. TRUSTEE POWERS. A trustee may exercise:

(1) powers conferred by the governing instrument;

(2) except as limited by the governing instrument, any other powers necessary or convenient to carry out the activities and affairs of the statutory trust; and

(3) other powers conferred by this [act].

SECTION 503. ACTION BY TRUSTEES. On any matter that is to be acted on by trustees, the following rules apply:

(1) The trustees act by majority of the trustees.

(2) The trustees may act without a meeting, without previous notice, and without a vote, if the minimum number of trustees necessary to authorize or take the action at a meeting at which all trustees entitled to vote thereon were present and voted consent in a signed record. However, prompt notice of the action must be given to those trustees that did not consent.

(3) A trustee may vote in person or by proxy, but, if by proxy, the proxy must be in a signed record.

## SECTION 504. PROTECTION OF PERSON DEALING WITH TRUSTEE.

(a) A person that in good faith assists a trustee, or in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee’s power, is protected from liability as if the trustee properly exercised the power.

(b) A person that in good faith deals with a trustee need not inquire into the extent of a trustee’s power or the propriety of the exercise of the power.

(c) A person that in good faith delivers property to a trustee need not ensure its proper use.

(d) A person that in good faith and without knowledge that the trusteeship has terminated assists a former trustee as if the former trustee were still a trustee, or in good faith and for value deals with a former trustee as if the former trustee were still a trustee, is protected from liability as if the former trustee were still a trustee.

## **SECTION 505. STANDARDS OF CONDUCT FOR TRUSTEES**.

(a) Subject to Section 404, in exercising the powers of trusteeship, a trustee shall act in good faith and in a manner the trustee reasonably believes to be in the best interests of the statutory trust.

(b) A trustee shall discharge its duties with the care that a person in a similar position would reasonably believe appropriate under similar circumstances.

SECTION 506. REASONABLE RELIANCE. A trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to Section 103(e)(8) or (9), is not liable to the trust or to a beneficial owner for breach of any duty, including a fiduciary duty, to the extent the breach results from reasonable reliance on:

(1) a term of the governing instrument;

(2) a record of the statutory trust; or

(3) an opinion, report, or statement of another person that the person to which the

opinion, report, or statement is made or delivered reasonably believes is within the other person’s professional or expert competence and is made or delivered to the trustee, officer, employee, manager, or committee of a statutory trust, or other person designated pursuant to Section 103(e)(8) or (9).

## SECTION 507. INTERESTED TRANSACTIONS.

(a) In this section, “covered party” means a trustee, officer, employee, or manager of a statutory trust, or a related party of a trustee, officer, employee, manager, or other person designated pursuant to Section 103(e)(8) or (9).

(b) Subject to subsection (c), a covered party may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an obligation of, provide collateral for, or do other business with the statutory trust and, subject to law other than this [act], has the same rights and obligations with respect to those matters as a person that is not a covered party.

(c) A transaction described in subsection (b) is voidable by the statutory trust unless the covered party shows that the transaction is fair to the trust.

SECTION 508. TRUSTEE’S RIGHT TO INFORMATION. A trustee has the right to receive from a statutory trust or another trustee information relating to the affairs of the trust which is reasonably related to the trustee’s discharge of the trustee’s duties as trustee. The trustee may enforce this right by summary proceeding in [the appropriate court].

## SECTION 509. REIMBURSEMENT, INDEMNIFICATION, ADVANCEMENT, EXONERATION, AND INSURANCE.

(a) A statutory trust shall reimburse a trustee for any payment made by the trustee in the course of the trustee’s activities on behalf of the statutory trust, if the trustee complied with Sections 505 and 615 in making the payment.

(b) A statutory trust may indemnify and hold harmless a trustee, beneficial owner, or person designated pursuant to Section 103(e)(8) or (9) with respect to any claim or demand against the person by reason of the person’s relationship with the trust if the claim or demand does not arise from the person’s conduct involving bad faith, willful or intentional misconduct, or knowing violation of law.

(c) Expenses, including reasonable attorney’s fees and costs, incurred by a trustee, beneficial owner, or person designated pursuant to Section 103(e)(8) or (9) in connection with a claim or demand against the person by reason of the person’s relationship to a statutory trust may be paid by the trust before the final disposition of the claim or demand, upon an undertaking by or on behalf of the person to repay the trust if the person is ultimately determined not to be entitled to be indemnified under subsection (b).

(d) A term in the governing instrument relieving or exonerating a trustee or person designated under Section 103(e)(8) or (9) from liability is unenforceable to the extent it relieves or exonerates the trustee or person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law.

(e) A statutory trust may purchase and maintain insurance on behalf of a trustee, person designated under Section 103(e)(8) or (9), or beneficial owner of the trust against liability asserted against or incurred by the trustee, person, or beneficial owner in that capacity or arising from that status even if, under Section 104(10), the trust instrument could not eliminate or limit the person’s liability to the trust for the conduct giving rise to the liability.

## SECTION 510. DIRECTION OF TRUSTEES.

(a) The governing instrument may authorize any person, including a beneficial owner, to direct a trustee or other person in the management of a statutory trust.

(b) The governing instrument may provide that neither the power to direct a trustee or other person nor the exercise of the power by any person, including a beneficial owner, causes the person to be a trustee or imposes on the person duties, including fiduciary duties, or liabilities relating to these duties, to a statutory trust or beneficial owner.

(c) If the governing instrument confers on a person a power to direct actions by a trustee or other person, the trustee or other person shall act in accordance with an exercise of the power, unless the direction is manifestly contrary to the terms of the governing instrument or the trustee knows or has reason to know that following the direction would constitute a serious breach of fiduciary duty by the trustee.

## SECTION 511. DELEGATION BY TRUSTEE.

(a) A trustee may delegate duties and powers. The trustee shall exercise the care a person in a similar position would reasonably believe appropriate under similar circumstances in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation; and

(3) periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) Subject to subsection (a), a trustee may delegate duties and powers to a co-trustee.

(c) In performing a delegated function, an agent of a trustee owes a duty to the statutory trust to exercise reasonable care to comply with the terms of the delegation.

(d) A trustee that complies with subsection (a) is not liable to a beneficial owner or to the statutory trust for an act or omission of the agent of the trustee to which a function was delegated.

(e) An agent of a trustee submits to the jurisdiction of the courts of this state by accepting a delegation of powers or duties from a trustee with respect to a claim related to the agency.

## SECTION 512. INDEPENDENT TRUSTEE IN REGISTERED INVESTMENT COMPANY.

(a) In this section, “affiliated person” and “interested person” have the meanings set forth in the Investment Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq. [or any successor statute] [and any regulations issued thereunder].

(b) If a statutory trust is registered as an investment company under the Investment Company Act of 1940, [as amended,] 15 U.S.C. Section 80a-1 et seq., [or any successor statute] [and any regulations issued thereunder,] a trustee is an independent trustee for all purposes under this [act] if the trustee is not an interested person of the trust. The receipt of compensation both

for service as an independent trustee of the trust and for service as an independent trustee of one or more other investment companies managed by a single investment adviser or an affiliated person of an investment adviser, does not affect the status of the trustee as an independent trustee under this section.

# [ARTICLE] 6 BENEFICIAL OWNERS

## SECTION 601. BENEFICIAL INTEREST.

(a) A beneficial interest in a statutory trust is personal property.

(b) A beneficial interest in a statutory trust is not an interest in specific property of the statutory trust.

(c) A beneficial owner does not have a preemptive right to subscribe to any additional issue of beneficial interests or any other interest of a statutory trust.

## **SECTION 602. TRANSFER OF BENEFICIAL INTEREST.**

(a) In this section, “covered creditor” means a judgment creditor of a beneficial owner or a person to which a beneficial interest in a statutory trust has been transferred by operation of law.

(b) A beneficial interest in a statutory trust is freely transferable.

(c) The governing instrument may not limit the transferability of a beneficial interest if the same person is the sole trustee and sole beneficial owner.

(d) If a beneficial interest in a statutory trust is not freely transferable by a beneficial owner under a provision of the governing instrument such that a transferee may become a beneficial owner without further requirement except notice to the statutory trust, the following rules apply:

(1) On petition by a covered creditor, [the appropriate court] may authorize the petitioner to reach the beneficial owner’s interest by attachment of present or future distributions to or for the benefit of the beneficial owner or by other means. The court may limit the award to relief that is appropriate under the circumstances.

(2) On petition by a covered creditor, to the extent a trustee has not complied with a standard of distribution provided in the governing instrument or has abused the trustee’s discretion to make a distribution, [the appropriate court]:

(A) may order a distribution to the benefit of the petitioner; and

(B) if a distribution is ordered, shall direct the trustee to pay to the

petitioner an equitable amount but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficial owner if the trustee had complied with the standard or had not abused the discretion.

SECTION 603. VOTING OR CONSENT BY BENEFICIAL OWNERS. On any matter that is to be acted on by beneficial owners, the following rules apply:

(1) The beneficial owners act by majority of the beneficial interests.

(2) The beneficial owners may take the action without a meeting, without notice, and without a vote, if beneficial owners having at least the minimum number of votes necessary to authorize or take the action at a meeting at which all beneficial owners entitled to vote thereon were present and voted consent in a signed record. However, prompt notice of the action must be given to those beneficial owners that did not consent.

(3) A beneficial owner may vote in person or by proxy, but if by proxy, the proxy must be contained in a signed record.

## SECTION 604. FORM OF AND LIABILITY FOR CONTRIBUTIONS.

(a) A contribution may consist of property transferred to, services performed for, or another benefit provided to the statutory trust or an agreement to transfer property to, perform services for, or provide another benefit to the trust.

(b) A person may become a beneficial owner of a statutory trust and may receive a beneficial interest in a statutory trust without making a contribution or being obligated to make a contribution to the trust.

(c) A person’s obligation to make a contribution to a statutory trust is not excused by the person’s death, disability, termination, or other inability to perform personally.

(d) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the trustee to contribute money equal to the value of the part of the contribution which has not been made.

(e) The governing instrument may provide that a beneficial owner that fails to make a required contribution, or comply with the terms and conditions of the governing instrument, is subject to consequences of the failure, including:

(1) reduction or elimination of the defaulting beneficial owner’s proportionate interest in the statutory trust or series thereof;

(2) subordination of the defaulting beneficial owner’s beneficial interest to that of nondefaulting beneficial owners;

(3) forced sale of the defaulting beneficial owner’s beneficial interest;

(4) imposition of an obligation to repay a loan to the statutory trust by another beneficial owner of the amount necessary to meet the defaulting beneficial owner’s commitment; (5) redemption or sale of the defaulting beneficial owner’s beneficial interest at a value fixed by appraisal or by formula; and

(6) specific performance of an obligation under the governing instrument.

## SECTION 605. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

(a) Any distribution made by a statutory trust before its dissolution and winding up must be in proportion to the beneficial interests.

(b) If a beneficial owner becomes entitled to receive a distribution, the beneficial owner has the status of, and is entitled to all remedies available to,a creditor of the statutory trust with respect to the distribution.

(c) A beneficial owner has a right to a distribution before the dissolution and winding up of a statutory trust only if the trustee decides to make an interim distribution. A beneficial owner does not have a right to demand or receive a distribution from the trust in any form other than money.

(d) Except as otherwise provided in Section 703(b), the trust may distribute an asset in kind only if each part of the asset is fungible with each other part and each beneficial owner receives a percentage of the asset equal in value to the beneficial owner’s share of the distributions.

SECTION 606. REDEMPTION OF BENEFICIAL INTEREST. A statutory trust may acquire, by purchase, redemption, or otherwise, any beneficial interest in the trust or series thereof. A beneficial interest acquired under this section is canceled.

SECTION 607. TRANSACTION WITH BENEFICIAL OWNER. Subject to Section 507, a beneficial owner or related party of a beneficial owner may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume an obligation of, provide collateral for, or do other business with the statutory trust and, subject to law other than this [act], has the same rights and obligations with respect to those matters as a person that is not a beneficial owner.

SECTION 608. BENEFICIAL OWNER’S RIGHT TO INFORMATION. A beneficial owner has the right to receive from the statutory trust or a trustee information relating to the affairs of a statutory trust which is reasonably related to the beneficial owner’s interest. The beneficial owner may enforce this right by summary proceeding in the [appropriate court].

SECTION 609. DIRECT ACTION BY BENEFICIAL OWNER. A beneficial owner may maintain a direct action against a statutory trust to redress an injury sustained by, or to enforce a duty owed to, the beneficial owner only if the owner can plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the statutory trust.

SECTION 610. DERIVATIVE ACTION. A beneficial owner may maintain a derivative action to enforce a right of a statutory trust if:

(1) the beneficial owner first makes a demand on the trustees, requesting that the trustees cause the trust to bring an action to redress the injury or enforce the right, and the trustees do not bring the action within a reasonable time; or

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

SECTION 611. PROPER PLAINTIFF. A derivative action to enforce a right of a statutory trust may be maintained only by a person that is a beneficial owner at the time the action is commenced and:

(1) was a beneficial owner when the conduct giving rise to the action occurred; or

(2) whose status as a beneficial owner devolved on the person by operation of law or pursuant to the terms of the governing instrument from a person that was a beneficial owner at the time of the conduct.

SECTION 612. PLEADING. In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff’s demand and the response to the demand by the trustees; or

(2) why demand should be excused as futile.

## SECTION 613. SPECIAL LITIGATION COMMITTEE.

(a) If a statutory trust is named as or made a party in a derivative proceeding, the trust may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the trust. If the trust appoints a special litigation committee, on motion by the committee made in the name of the trust, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

(1) enforcing a person’s right to information under Section 508 or 608; or

(2) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

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

(c) A special litigation committee may be appointed:

(1) by a majority of the trustees not named as parties in the proceeding; or

(2) if all trustees are named as parties in the proceeding, by a majority of the trustees named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the statutory trust that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

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

(4) be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to continue under the control of the plaintiff.

## SECTION 614. PROCEEDS AND EXPENSES.

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

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the statutory trust and not to the plaintiff; and

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

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including attorney’s fees and costs, from the recovery by the trust.

(c) A derivative action on behalf of a statutory trust may not be voluntarily dismissed or settled without the court’s approval.

## SECTION 615. LIMITATIONS ON DISTRIBUTIONS.

(a) A statutory trust may not make a distribution, including a distribution under Section 703(b)(2), if after the distribution:

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

(2) the trust’s total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the trust were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of beneficial owners and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) A trustee may base a determination that a distribution is not prohibited under subsection (a) on:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) a fair valuation or other method that is reasonable under the circumstances.

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

(1) in the case of a distribution by purchase, redemption, or other acquisition of a beneficial interest, as of the earlier of:

(A) the date money or other property is transferred or debt incurred by the statutory trust; or

(B) the date the person entitled to the distribution ceases to own the interest or rights being acquired by the trust in return for the distribution;

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

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

(A) the distribution is authorized, if the payment occurs not later than 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) A statutory trust’s indebtedness to a beneficial owner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the trust’s indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A statutory trust’s indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest are made only if and to the extent that payment of a distribution could then be made under this section. If indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under Section 703(b)(2), the liabilities of a dissolved statutory trust do not include any claim that has been disposed of under Section 704, 705, or 706.

## SECTION 616. LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) If a trustee consents to a distribution made in violation of Section 615 and in consenting to the distribution fails to comply with Section 505, the trustee is personally liable to the trust or the series thereof for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 505.

(b) A person that receives a distribution knowing that the distribution violated Section 615 is personally liable to the statutory trust or series thereof but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 615.

(c) A trustee against which an action is commenced because the trustee is liable under subsection (a) may:

(1) implead any other trustee that is liable under subsection (a) and seek to enforce a right of contribution from the trustee; and

(2) implead any person that received a distribution in violation of subsection (b) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (b).

(d) An action under this section is barred unless commenced not later than two years after the distribution.

# [ARTICLE] 7 DISSOLUTION AND WINDING UP

SECTION 701. EVENTS CAUSING DISSOLUTION. A statutory trust is dissolved only by:

(1) an administrative dissolution under Section 707; or

(2) the filing of articles of dissolution under Section 702:

(A) with the approval of all the beneficial owners; or

(B) as provided in the certificate of trust.

## SECTION 702. ARTICLES OF DISSOLUTION.

(a) If dissolution of a statutory trust is authorized under Section 701, the trust shall deliver to the [Secretary of State] for filing articles of dissolution setting forth:

(1) the name of the trust; and

(2) the date of the dissolution.

(b) Except as otherwise provided in Section 208, a statutory trust is dissolved when articles of dissolution that comply with subsection (a) are filed by the [Secretary of State].

## SECTION 703. WINDING UP.

(a) A dissolved statutory trust shall wind up its activities and affairs, and the trust and each series thereof continues after dissolution only for the purpose of winding up.

(b) In winding up its activities and affairs, a statutory trust shall:

(1) discharge the trust’s debts, obligations, and other liabilities, settle and close the trust’s activities and affairs, and marshal and distribute the property of the trust; and

(2) distribute any surplus property after complying with paragraph (1) to the beneficial owners in proportion to their beneficial interests.

(c) In winding up its activities, a statutory trust may:

(1) preserve the trust’s activities and property as a going concern for a reasonable time;

(2) institute, maintain, and defend actions and proceedings, whether civil, criminal, or administrative;

(3) transfer the trust’s property;

(4) settle disputes; and

(5) perform other acts necessary or appropriate to its winding up.

(d) Trustees of a dissolved statutory trust that has disposed of claims under Section 704 or 705 are not liable for breach of duty with respect to claims against the trust that are barred or satisfied under Section 704 or 705.

(e) The dissolution of a statutory trust does not terminate the authority of its agent for service of process.

(f) On application of any person that shows good cause, [the appropriate court] may appoint a person to be a receiver for a dissolved statutory trust with the power to undertake any action that might have been done by the trust during its winding up if the action is necessary for final settlement of the trust.

## SECTION 704. KNOWN CLAIMS AGAINST DISSOLVED STATUTORY TRUST.

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

(b) A dissolved statutory trust 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) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a 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 statutory trust 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 trust:

(A) the trust 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 trust to enforce the claim not later than 90 days after the claimant receives the notice; and

(B) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.

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

## SECTION 705. OTHER CLAIMS AGAINST DISSOLVED STATUTORY TRUST.

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

(b) A notice under 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 statutory trust’s principal office is located or, if the principal office is not located in this state, in the [county] in which the office of the trust’s registered agent is or was last located;

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

(3) state that a claim against the trust is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.

(c) If a dissolved statutory trust publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce a claim against the trust not later than three years after the publication date of the notice:

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

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

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

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

(1) against a dissolved statutory trust, to the extent of its undistributed assets; and

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

## SECTION 706. COURT PROCEEDINGS.

(a) A dissolved statutory trust that has published a notice under Section 705 may file an application with [the appropriate court] in the [county] where the trust’s principal office is located or, if the principal office is not located in this state, where the office of its registered agent is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the trust and:

(1) at the time of the application:

(A) are contingent; or

(B) have not been made known to the dissolved trust or

(2) are based on an event occurring after the date of dissolution.

(b) Security is not required for a claim that is or is reasonably anticipated to be barred under Section 705(c).

(c) Not later than 10 days after the filing of an application under subsection (a), the dissolved trust shall give notice of the proceeding to each claimant holding a contingent claim known to the trust.

(d) In a proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including reasonable expert witness fees, must be paid by the dissolved statutory trust.

(e) A dissolved statutory trust that provides security in the amount and form ordered by the court under subsection (a) satisfies the trust’s obligations with respect to claims that are contingent, have not been made known to the trust, or are based on an event occurring after the date of dissolution, and such claims may not be enforced against a beneficial owner on account of assets received in liquidation

## SECTION 707. ADMINISTRATIVE DISSOLUTION.

(a) The [Secretary of State] may commence a proceeding under subsections (b) to dissolve a statutory trust administratively if the trust does not:

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

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

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

(b) If the [Secretary of State] determines that one or more grounds exist for administratively dissolving a statutory trust, the [Secretary of State] shall serve the trust with notice in a record of the [Secretary of State’s] determination.

(c) If a statutory trust, not later than [60] days after service of the notice under subsection (b), does not cure or demonstrate to the satisfaction of the [Secretary of State] the nonexistence of each ground determined by the [Secretary of State], the [Secretary of State] shall administratively dissolve the trust by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The [Secretary of State] shall file the statement and serve a copy on the trust pursuant to Section 220.

(d) A statutory trust that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 703, 704 and 705, or to apply for reinstatement under Section 708.

(e) The administrative dissolution of a statutory trust does not terminate the authority of its registered agent.

## SECTION 708. REINSTATEMENT.

(a) A statutory trust that is administratively dissolved under Section 707 may apply to the [Secretary of State] for reinstatement [not later than [two] years after the effective date of dissolution]. The application must state:

(1) the name of the trust at the time of its administrative dissolution and, if needed, a different name that satisfies Section 213;

(2) the address of the principal office of the trust and the name and street and mailing addresses of its registered agent;

(3) the effective date of the trust’s administrative dissolution; and

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

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

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

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

(2) file the statement of reinstatement and serve a copy on the statutory trust.

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

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

(2) The statutory trust resumes carrying on its activities and affairs as if the administrative dissolution had not occurred.

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

## SECTION 709. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.

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

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

# [ARTICLE] 8 FOREIGN STATUTORY TRUSTS

## SECTION 801. GOVERNING LAW.

(a) The law of the jurisdiction of formation of a foreign statutory trust governs:

(1) the internal affairs of the trust;

(2) the liability of a beneficial owner as beneficial owner and trustee as trustee for a debt, obligation, or other liability of the trust or a series thereof; and

(3) the extent to which:

(A) a debt, obligation, or other liability of the foreign statutory trust is enforceable against the property of any series thereof; and

(B) a debt, obligation, or other liability of a series of a foreign statutory trust is enforceable against the property of the trust or any other series thereof.

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

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

## SECTION 802. REGISTRATION TO DO BUSINESS IN THIS STATE.

(a) A foreign statutory trust may not do business in this state until it registers with the [Secretary of State] under this [article].

(b) A foreign statutory trust doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

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

(d) A limitation on the liability of a beneficial owner or trustee of a foreign statutory trust is not waived solely because the trust does business in this state without registering to do business in this state.

(e) Section 801(a) and (b) applies even if a foreign statutory trust fails to register under this [article].

SECTION 803. FOREIGN REGISTRATION STATEMENT. To register to do business in this state, a foreign statutory trust must deliver a foreign registration statement to the [Secretary of State] for filing. The statement must state:

(1) the name of the trust and, if the name does not comply with Section 213, an alternate name adopted pursuant to Section 806(a);

(2) that the trust is a foreign statutory trust;

(3) the trust’s jurisdiction of formation;

(4) the street and mailing addresses of the trust’s principal office and, if the law of the trust’s jurisdiction of formation requires the trust to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(5) the name and street and mailing addresses of the trust’s registered agent in this state.

SECTION 804. AMENDMENT OF FOREIGN REGISTRATION STATEMENT. A registered foreign statutory trust shall deliver to the [Secretary of State] for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the trust;

(2) the trust’s jurisdiction of formation;

(3) an address required by Section 803(4); or

(4) the information required by Section 803(5).

## SECTION 805. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.

(a) Activities of a foreign statutory trust which do not constitute doing business in this state under this [article] include:

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

(2) carrying on any activity concerning its internal affairs, including holding meetings of its beneficial owners or trustees;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the trust or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in property;

(8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property;

(9) conducting an isolated transaction that is not in the course of similar transactions;

(10) owning, without more, property; and

(11) doing business in interstate commerce.

(b) A person does not do business in this state solely by being a beneficial owner or trustee of a foreign statutory trust that does business in this state.

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

## SECTION 806. NONCOMPLYING NAME OF FOREIGN STATUTORY TRUST.

(a) A foreign statutory trust whose name does not comply with Section 213 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 213. A trust that registers under an alternate name under this subsection need not comply with [this state’s assumed or fictitious name statute]. After registering to do business in this state with an alternate name, a trust shall do business in this state under:

(1) the alternate name;

(2) the trust’s name, with the addition of its jurisdiction of formation; or

(3) a name the trust is authorized to use under [this state’s assumed or fictitious name statute].

(b) If a registered foreign statutory trust changes its name to one that does not comply with Section 213, it may not do business in this state until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with Section 213.

## SECTION 807. WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN STATUTORY TRUST.

(a) A registered foreign statutory trust 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 trust and its jurisdiction of formation;

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

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

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

(b) After the withdrawal of the registration of a foreign statutory trust, service of process in any action or proceeding based on a cause of action arising during the time the trust was registered to do business in this state may be made pursuant to Section 220.

SECTION 808. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP. A registered foreign statutory trust that converts to a domestic limited liability partnership or to a domestic entity whose formation requires delivery of a record to the [Secretary of State] for filing is deemed to have withdrawn its registration on the effective date of the conversion.

## SECTION 809. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.

(a) A registered foreign statutory trust that has dissolved and completed winding up or has converted to a domestic or foreign entity whose formation does not require the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the [Secretary of State] for filing. The statement must state:

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

(A) its name and jurisdiction of formation;

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

(2) in the case of a trust that has converted:

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

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

(C) that the converted entity surrenders the converting trust’s registration to do business in this state and revokes the authority of the converting trust’s registered agent to act as registered agent in this state on the behalf of the trust or the converted entity; and

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

(b) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign statutory trust was registered to do business in this state may be made pursuant to Section 220.

## SECTION 810. TRANSFER OF REGISTRATION.

(a) When a registered foreign statutory trust 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 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 registered foreign statutory trust before the merger or conversion;

(2) that before the merger or conversion the registration pertained to a foreign statutory trust;

(3) the name of the applicant foreign entity into which the foreign statutory trust has merged or to which it has been converted, and, if the name does not comply with Section 213, an alternate name adopted pursuant to Section 806(a);

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

(5) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of that entity’s jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(6) the name and street and mailing addresses 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 foreign statutory trust to do business in this state is transferred without interruption to the entity into which the trust has merged or to which it has been converted.

## SECTION 811. TERMINATION OF REGISTRATION.

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

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

(2) deliver to the [Secretary of State] for filing, not later than [60] days after the due date, [an annual] [a biennial] report required under Section 221;

(3) have a registered agent as required by Section 216; or

(4) deliver to the [Secretary of State] for filing a statement of change under Section 217 not later than [30] days after a change has occurred in the name or address of the registered agent.

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

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

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

(c) The notice must state or the information in the notation must include:

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

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

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

[SECTION 812. ACTION BY [ATTORNEY GENERAL]. The [Attorney General] may maintain an action to enjoin a foreign statutory trust from doing business in this state in violation of this [article].]

# [ARTICLE] 9 MERGER, INTEREST EXCHANGE, CONVERSION, AND DOMESTICATION

# [PART] 1 GENERAL PROVISIONS

SECTION 901. DEFINITIONS. In this [article]:

(1) “Acquired entity” means the entity, all of one or more classes or series of interests of which are acquired in an interest exchange.

(2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) “Conversion” means a transaction authorized by [Part] 4.

(4) “Converted entity” means the converting entity as it continues in existence after a conversion.

(5) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 943 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

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

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

(8) “Domesticated statutory trust” means the domesticating statutory trust as it continues in existence after a domestication.

(9) “Domesticating statutory trust” means the domestic statutory trust that approves a plan of domestication pursuant to Section 953 or the foreign statutory trust that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) “Domestication” means a transaction authorized by [Part] 5.

(11) “Entity”:

(A) means:

(i) a business corporation;

(ii) a nonprofit corporation;

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

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

(v) a limited liability company;

[(vi) a general cooperative association;]

(vii) a limited cooperative association;

(viii) an unincorporated nonprofit association;

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

(x) any other person that has:

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

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

(B) does not include:

(i) an individual;

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

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

(iv) a decedent’s estate; or

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

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

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

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

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

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

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

(15) “Governor” means:

(A) a director of a business corporation;

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

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

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

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

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

(H) a director of a limited cooperative association;

(I) a manager of an unincorporated nonprofit association;

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

(K) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(16) “Interest” means:

(A) a share in a business corporation;

(B) a membership in a nonprofit corporation;

(C) a partnership interest in a general partnership;

(D) a partnership interest in a limited partnership;

(E) a membership interest in a limited liability company;

[(F) a share in a general cooperative association;]

(G) a member’s interest in a limited cooperative association;

(H) a membership in an unincorporated nonprofit association;

(I) a beneficial interest in a statutory trust, business trust, or common-law business trust; or

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

(17) “Interest exchange” means a transaction authorized by [Part] 3.

(18) “Interest holder” means:

(A) a shareholder of a business corporation;

(B) a member of a nonprofit corporation;

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

(E) a limited partner of a limited partnership;

(F) a member of a limited liability company;

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

(H) a member of a limited cooperative association;

(I) a member of an unincorporated nonprofit association;

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

(K) any other direct holder of an interest.

(19) “Interest holder liability” means:

(A) personal liability for a liability of an entity which is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(20) “Merger” means a transaction authorized by [Part] 2.

(21) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.

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

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

(24) “Plan” means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

(25) “Plan of conversion” means a plan under Section 942.

(26) “Plan of domestication” means a plan under Section 952.

(27) “Plan of interest exchange” means a plan under Section 932.

(28) “Plan of merger” means a plan under Section 922.

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

(A) the bylaws of a business corporation;

(B) the bylaws of a nonprofit corporation;

(C) the partnership agreement of a general partnership;

(D) the partnership agreement of a limited partnership;

(E) the operating agreement of a limited liability company;

[(F) the bylaws of a general cooperative association;]

(G) the bylaws of a limited cooperative association;

(H) the governing principles of an unincorporated nonprofit association; and

(I) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(30) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on [the effective date of this [act]];

(B) an agreement that is binding on an entity on [the effective date of this [act]];

(C) the organic rules of an entity in effect on [the effective date of this [act]]; or

(D) an agreement that is binding on any of the governors or interest holders of an entity on [the effective date of this [act]].

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

(A) the articles of incorporation of a business corporation;

(B) the articles of incorporation of a nonprofit corporation;

(C) the certificate of limited partnership of a limited partnership;

(D) the certificate of organization of a limited liability company;

[(E) the articles of incorporation of a general cooperative association;]

(F) the articles of organization of a limited cooperative association; and

(G) the certificate of trust of a statutory trust or similar record of a business trust.

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

(33) “Statement of conversion” means a statement under Section 945.

(34) “Statement of domestication” means a statement under Section 955.

(35) “Statement of interest exchange” means a statement under Section 935.

(36) “Statement of merger” means a statement under Section 925.

(37) “Surviving entity” means the entity that continues in existence after or is created by a merger.

(38) “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.

## **SECTION 902. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS.**

(a) This [article] does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this [article].

(b) A transaction effected under this [article] may not create or impair a right, duty, or obligation of a person under the statutory law of this state relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating business corporation unless:

(1) if the corporation does not survive the transaction, the transaction satisfies any requirements of the law; or

(2) if the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right, duty, or obligation directly under the law.

## SECTION 903. REQUIRED NOTICE OR APPROVAL.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this [article] becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of [the appropriate court] [the Attorney General] specifying the disposition of the property.

(c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which:

(1) is made to a merging entity that is not the surviving entity; and

(2) takes effect or remains payable after the merger inures to the surviving entity.

(d) A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

***Legislative Note:*** *As an alternative to enacting subsection (a), a state may identify each of its regulatory laws that require prior approval for a merger of a regulated entity, decide whether regulatory approval should be required for an interest exchange, conversion, or domestication, and make amendments as appropriate to those laws.*

*As with subsection (a), an adopting state may choose to amend its various laws with respect to the nondiversion of chartable property to cover the various transactions authorized by this article as an alternative to enacting subsection (b).*

SECTION 904. NONEXCLUSIVITY. The fact that a transaction under this [article] produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this [article].

SECTION 905. REFERENCE TO EXTERNAL FACTS. A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

SECTION 906.  APPRAISAL RIGHTS. An interest holder of a domestic merging, acquired, converting, or domesticating statutory trust is entitled to contractual appraisal rights in connection with a transaction under this [article] to the extent provided in:

(1) the trust instrument; or

(2) the plan.

## [SECTION 907. EXCLUDED ENTITIES AND TRANSACTIONS.

(a) The following entities may not participate in a transaction under this [article]:

(1)

(2).

(b) This [article] may not be used to effect a transaction that:

(1)

(2).]

***Legislative Note:*** *Subsection (a) may be used by states that have special statutes restricted to the organization of certain types of entities. A common example is banking statutes that prohibit banks from engaging in transactions other than pursuant to those statutes.*

*Nonprofit entities may participate in transactions under this article with for-profit entities, subject to compliance with Section 903(b). If a state desires, however, to exclude entities with a charitable purpose or to exclude other types of entities from the scope of the article, that may be done by referring to those entities in subsection (a).*

*Subsection (b) maybe used to exclude certain types of transactions governed by more specific statutes. A common example is the conversion of an insurance company from mutual to stock form. There may be other types of transactions that vary greatly among the states.*

# [PART] 2 MERGER

## SECTION 921. MERGER AUTHORIZED.

(a) By complying with this [part]:

(1) one or more domestic statutory trusts may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic statutory trust.

(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity may be a party to a merger under this [part] or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity’s jurisdiction of formation.

## SECTION 922. PLAN OF MERGER.

(a) A domestic statutory trust may become a party to a merger under this [part] by approving a plan of merger. The plan must be in a record and contain:

(1) as to each merging entity, its name, jurisdiction of formation, and type of entity;

(2) if the surviving entity is to be created in the merger, a statement to that effect and the entity’s name, jurisdiction of formation, and type of entity;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to:

(A) its public organic record, if any; and

(B) 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:

(A) its proposed public organic record, if any; and

(B) 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) In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

## SECTION 923. APPROVAL OF MERGER.

(a) A plan of merger is not effective unless it has been approved:

(1) by a domestic merging statutory trust, by all the beneficial owners of the trust entitled to vote on or consent to any matter; and

(2) in a record, by each beneficial owner of a domestic merging statutory trust which will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:

(A) the trust instrument of the trust provides in a record for the approval of a merger in which some or all its beneficial owners become subject to interest holder liability by the affirmative vote or consent of fewer than all the beneficial owners; and

(B) the beneficial owner consented in a record to or voted for that provision of the trust instrument or became a beneficial owner after the adoption of that provision.

(b) A merger involving a domestic merging entity that is not a statutory trust 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.

## SECTION 924. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

(a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic merging statutory trust may approve an amendment of a plan of merger:

(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 its trustees or beneficial owners of the trust in the manner provided in the plan, but a beneficial owner 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, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owner in any material respect.

(c) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging statutory trust may abandon the plan in the same manner as the plan was approved.

(d) If a plan of merger is abandoned after a statement of merger has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the [Secretary of State] for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of each party to the plan of merger;

(2) the date on which the statement of merger was filed by the [Secretary of State]; and

(3) a statement that the merger has been abandoned in accordance with this section.

## SECTION 925. STATEMENT OF MERGER; EFFECTIVE DATE OF MERGER.

(a) A statement of merger must be signed by each merging entity and delivered to the [Secretary of State] for filing.

(b) A statement of merger must contain:

(1) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of formation, and type of entity of the surviving entity;

(3) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this [part] and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(4) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(5) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;

(6) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 926(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 the public organic record does not need to be signed.

(e) A plan of merger that is signed by all the merging entities and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of merger and on 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.

(f) If the surviving entity is a domestic statutory trust, the merger becomes effective when the statement of merger is effective. In all other cases, the merger becomes effective on the later of:

(1) the date and time provided in the organic law of the surviving entity; or

(2) when the statement is effective.

## SECTION 926. 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 the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) all its property continues to be vested in it without transfer, reversion, or impairment;

(B) it remains subject to all its debts, obligations, and other liabilities; and

(C) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger:

(A) its public organic record, if any, is amended to the extent provided in the statement of merger; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) if the surviving entity is created by the merger, plaintiff’s private organic rules are effective and:

(A) If it is a filing entity, its public organic record is effective; and

(B) If it is a limited liability partnership, its statement of qualification is effective; and

(10) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 908 and the merging entity’s organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging statutory trust with respect to which the person had interest holder liability is subject to the following rules:

(1) The merger does not discharge any interest holder liability under this [act] to the extent the interest holder liability arose before the merger became effective.

(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that arises after the merger becomes effective.

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the governing instrument of the domestic merging statutory trust with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging statutory trust as provided in Section 220.

(f) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

# [PART] 3 INTEREST EXCHANGE

## SECTION 931. INTEREST EXCHANGE AUTHORIZED.

(a) By complying with this [part]:

(1) a domestic statutory trust may acquire all of one or more classes or series of interests of another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic statutory trust may be acquired by another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under this [part] if the interest exchange is authorized by the law of the foreign entity’s jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic statutory trust but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic statutory trust is the acquired entity as if the interest exchange were a merger until the provision is amended after [the effective date of this [act]].

## SECTION 932. PLAN OF INTEREST EXCHANGE.

(a) A domestic statutory trust may be the acquired entity in an interest exchange under this [part] by approving a plan of interest exchange. The plan must be in a record and contain:

(1) the name of the acquired entity;

(2) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(3) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) any proposed amendments to:

(A) the certificate of trust; and

(B) the trust instrument of the acquired entity that are, or are proposed to be, in a record;

(5) the other terms and conditions of the interest exchange; and

(6) any other provision required by the law of this state or the governing instrument of the acquired entity.

(b) In addition to the requirements of subsection (a), a plan of interest exchange may contain any other provision not prohibited by law.

## SECTION 933. APPROVAL OF INTEREST EXCHANGE.

(a) A plan of interest exchange is not effective unless it has been approved:

(1) by all the beneficial owners of a domestic acquired statutory trust entitled to vote on or consent to any matter; and

(2) in a record, by each beneficial owner of the domestic acquired statutory trust that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:

(A) the governing instrument of the trust in a record provides for the approval of an interest exchange or a merger in which some or all of its beneficial owners become subject to interest holder liability by the affirmative vote or consent of fewer than all the beneficial owners; and

(B) the beneficial owner consented in a record to or voted for that provision of the governing instrument or became a beneficial owner after the adoption of that provision.

(b) An interest exchange involving a domestic acquired entity that is not a statutory trust 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.

## SECTION 934. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.

(a) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic acquired statutory trust may approve an amendment of a plan of interest exchange:

(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 its trustees or beneficial owners in the manner provided in the plan, but a beneficial owner that was entitled to vote on or consent to approval of the interest exchange 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, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the beneficial owners of the acquired trust under the plan;

(B) the governing instrument of the acquired trust that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the beneficial owners of the acquired trust under this [act] or the governing instrument; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owner in any material respect.

(c) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired statutory trust may abandon the plan in the same manner as the plan was approved.

(d) 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 statutory trust, must be delivered to the [Secretary of State] for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the acquired trust;

(2) the date on which the statement of interest exchange was filed by the [Secretary of State]; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

## SECTION 935. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE OF INTEREST EXCHANGE.

(a) A statement of interest exchange must be signed by a domestic acquired statutory trust and delivered to the [Secretary of State] for filing.

(b) A statement of interest exchange must contain:

(1) the name of the acquired statutory trust;

(2) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(3) a statement that the plan of interest exchange was approved by the acquired trust in accordance with this [part]; and

(4) any amendments to the acquired trust’s certificate of trust 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 statutory trust and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of interest exchange and on 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.

(e) An interest exchange under this section becomes effective when the statement of interest exchange is effective.

## SECTION 936. EFFECT OF INTEREST EXCHANGE.

(a) When an interest exchange in which the acquired entity is a domestic statutory trust becomes effective:

(1) the interests in the acquired trust which are the subject of the interest exchange are converted and the beneficial owners 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 906;

(2) the acquiring entity becomes the interest holder of the interests in the acquired trust stated in the plan of interest exchange to be acquired by the acquiring entity; and

(3) the governing instrument of the acquired trust is amended to the extent provided in the statement of interest exchange.

(b) Except as otherwise provided in the governing instrument of a domestic acquired statutory trust, the interest exchange does not give rise to any rights that a beneficial owner, trustee, or third party would have upon a dissolution, liquidation, or winding up of the acquired trust.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired statutory trust and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired statutory trust with respect to which the person had interest holder liability is subject to the following rules:

(1) The interest exchange does not discharge any interest holder liability under this [act] to the extent the interest holder liability arose before the interest exchange became effective.

(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that arises after the interest exchange becomes effective.

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the governing instrument of the acquired trust with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

# [PART] 4 CONVERSION

## SECTION 941. CONVERSION AUTHORIZED.

(a) By complying with this [part], a domestic statutory trust may become:

(1) a domestic entity that is a different type of entity; or

(2) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity’s jurisdiction of formation.

(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity that is not a foreign statutory trust may become a domestic statutory trust if the conversion is authorized by the law of the foreign entity’s jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic statutory trust but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after [the effective date of this [act]].

## SECTION 942. PLAN OF CONVERSION.

(a) A domestic statutory trust may convert to a different type of entity under this [part] by approving a plan of conversion. The plan must be in a record and contain:

(1) the name of the converting statutory trust;

(2) the name, jurisdiction of formation, and type of entity of the converted entity;

(3) the manner of converting the interests in the converting statutory trust into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) the proposed public organic record of the converted entity if it will be a filing entity;

(5) the full text of the private organic rules of the converted entity which are proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of this state or the governing instrument of the converting statutory trust.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

## SECTION 943. APPROVAL OF CONVERSION.

(a) A plan of conversion is not effective unless it has been approved:

(1) by a domestic converting statutory trust, by all the beneficial owners of the trust entitled to vote on or consent to any matter; and

(2) in a record, by each beneficial owner of a domestic converting statutory trust which will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective, unless:

(A) the governing instrument of the trust provides in a record for the approval of a conversion or a merger in which some or all of its beneficial owners become subject to interest holder liability by the affirmative vote or consent of fewer than all the beneficial owners; and

(B) the beneficial owner voted for or consented in a record to that provision of the governing instrument or became a beneficial owner after the adoption of that provision.

(b) A conversion involving a domestic converting entity that is not a statutory trust 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.

## SECTION 944. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.

(a) A plan of conversion of a domestic converting statutory trust 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 its beneficial owners of the trust in the manner provided in the plan, but a beneficial owner that was entitled to vote on or consent to approval of the conversion 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, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the beneficial owners of the converting trust under the plan;

(B) the public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owner in any material respect.

(b) After a plan of conversion has been approved by a domestic converting statutory trust and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting statutory trust may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the [Secretary of State] for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting statutory trust;

(2) the date on which the statement of conversion was filed by the [Secretary of State]; and

(3) a statement that the conversion has been abandoned in accordance with this section.

## SECTION 945. STATEMENT OF CONVERSION; EFFECTIVE DATE OF CONVERSION.

(a) A statement of conversion must be signed by the converting entity and delivered to the [Secretary of State] for filing.

(b) A statement of conversion must contain:

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

(2) the name, jurisdiction of formation, and type of entity of the converted entity;

(3) if the converting entity is a domestic statutory trust, a statement that the plan of conversion was approved in accordance with this [part] or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(4) if the converted entity is a domestic filing entity, its public organic record, as an attachment;

(5) if the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(6) if the converted entity is a foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 946(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.

(e) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [article] to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) If the converted entity is a domestic statutory trust, the conversion becomes effective when the statement of conversion is effective. In all other cases, the conversion becomes effective on the later of:

(1) the date and time provided by the organic law of the converted entity; or

(2) when the statement is effective.

## SECTION 946. EFFECT OF CONVERSION.

(a) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) the governing instrument of the converted entity is effective; and

(7) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 906 and the converting entity’s organic law.

(b) Except as otherwise provided in the governing instrument of a domestic converting statutory trust, the conversion does not give rise to any rights that a beneficial owner or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting statutory trust with respect to which the person had interest holder liability is subject to the following rules:

(1) The conversion does not discharge any interest holder liability under this [act] to the extent the interest holder liability arose before the conversion became effective.

(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that arises after the conversion becomes effective;

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the organic rules of the converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 220.

(f) If the converting entity is a registered foreign entity, its registration to do business or other foreign qualification is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

# [PART] 5 DOMESTICATION

## SECTION 951. DOMESTICATION AUTHORIZED.

(a) By complying with this [part], a domestic statutory trust may become a foreign statutory trust if the domestication is authorized by the law of the foreign jurisdiction.

(b) By complying with the provisions of this [part] applicable to foreign statutory trusts, a foreign statutory trust may become a domestic statutory trust if the domestication is authorized by the law of the foreign statutory trust’s jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic statutory trust but does not refer to a domestication, the provision applies to a domestication of the statutory trust as if the domestication were a merger until the provision is amended after [the effective date of this [act]].

## SECTION 952. PLAN OF DOMESTICATION.

(a) A domestic statutory trust may become a foreign statutory trust in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) the name of the domesticating statutory trust;

(2) the name and jurisdiction of formation of the domesticated statutory trust;

(3) the manner of converting the interests in the domesticating statutory trust into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) the proposed governing instrument of the domesticated statutory trust;

(5) the other terms and conditions of the domestication; and

(6) any other provision required by the law of this state or the governing instrument of the domesticating statutory trust.

(b) In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

## SECTION 953. APPROVAL OF DOMESTICATION.

(a) A plan of domestication of a domestic domesticating statutory trust is not effective unless it has been approved:

(1) by all the beneficial owners entitled to vote on or consent to any matter; and

(2) in a record, by each beneficial owner that will have interest holder liability for debts, obligations and other liabilities that arise after the domestication becomes effective, unless:

(A) the governing instrument of the trust provides for the approval of a domestication or merger in which some or all of its beneficial owners become subject to interest holder liability by the affirmative vote or consent of fewer than all the beneficial owners; and

(B) the beneficial owner voted for or consented in a record to that provision of the governing instrument or became a beneficial owner after the adoption of that provision.

(b) A domestication of a foreign domesticating statutory trust is not effective unless it is approved in accordance with the law of the foreign statutory trust’s jurisdiction of formation.

## SECTION 954. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.

(a) A plan of domestication of a domestic domesticating statutory trust 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 beneficial owners in the manner provided in the plan, but a beneficial owner that was entitled to vote on or consent to approval of the domestication 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, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the beneficial owners of the domesticating statutory trust under the plan;

(B) the governing instrument of the domesticated statutory trust that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the beneficial owners of the domesticated statutory trust under its governing instrument; or

(C) any other terms or conditions of the plan, if the change would adversely affect the beneficial owners in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating statutory trust and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating statutory trust may abandon the plan in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the domesticating statutory trust, must be delivered to the [Secretary of State] for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the domesticating statutory trust;

(2) the date on which the statement of domestication was filed by the [Secretary of State]; and

(3) a statement that the domestication has been abandoned in accordance with this section.

## SECTION 955. STATEMENT OF DOMESTICATION; EFFECTIVE DATE OF DOMESTICATION.

(a) A statement of domestication must be signed by the domesticating statutory trust and delivered to the [Secretary of State] for filing.

(b) A statement of domestication must contain:

(1) the name and jurisdiction of formation of the domesticating statutory trust;

(2) the name and jurisdiction of formation of the domesticated statutory trust;

(3) if the domesticating statutory trust is a domestic statutory trust, a statement that the plan of domestication was approved in accordance with this [part] or, if the domesticating statutory trust is a foreign statutory trust, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(4) the certificate of trust of the domesticated statutory trust, as an attachment; and

(5) if the domesticated entity is a foreign statutory trust, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 956(e).

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) The certificate of trust of a domestic domesticated statutory trust must satisfy the requirements of this [act], but the certificate does not need to be signed.

(e) A plan of domestication that is signed by a domestic domesticating statutory trust and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of domestication and on 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.

(f) If the domestic entity is a domestic statutory trust, the domestication becomes effective when the statement of domestication is effective. If the domesticated entity is a foreign statutory trust, the domestication becomes effective on the later of:

(1) the date and time provided in the organic law of the domesticated entity; or

(2) when the statement is effective.

## SECTION 956. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

(1) the domesticated entity is:

(A) organized under and subject to the organic law of the domesticated entity; and

(B) the same entity without interruption as the domesticating trust;

(2) all property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

(4) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated trust may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) the governing instrument of the domesticated entity is effective; and

(7) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the beneficial owners of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 906.

(b) Except as otherwise provided in the governing instrument of the domesticating statutory trust, the domestication does not give rise to any rights that an interest holder or third party would have upon a dissolution, liquidation, or winding up of the domesticating trust.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating statutory trust and becomes subject to interest holder liability with respect to a domestic trust as a result of the domestication has interest holder liability only to the extent provided by this [act] and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating statutory trust with respect to which the person had interest holder ability is subject to the following rules:

(1) The domestication does not discharge any interest holder liability under this [act] to the extent the interest holder liability arose before the domestication became effective.

(2) A person does not have interest holder liability under this [act] for any debt, obligation, or other liability that arises after the domestication becomes effective.

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by this [act], or law other than this [act], or the partnership agreement of a domestic domesticating statutory trust 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 statutory trust that is the domesticated trust may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 220.

(f) If the domesticating statutory trust is a registered foreign entity, the registration of the entity is canceled when the domestication becomes effective.

(g) A domestication does not require the statutory trust to wind up its affairs and does not constitute or cause the dissolution of the trust.

# [ARTICLE] 10 MISCELLANEOUS PROVISIONS

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1002. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1003. SAVINGS CLAUSE. This [act] does not affect an action commenced, proceeding brought, or right accrued before [the effective date of this [act]].

[SECTION 1004. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

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

SECTION 1005. REPEALS. The following are repealed:

(1) [the state Statutory Trust Act, as [amended, and as] in effect immediately before [the effective date of this [act]]];

(2) [the state Business Trust Act, as [amended, and as] in effect immediately before [the effective date of this [act]]]; and

(3) [the state Real Estate Investment Trust Act, as [amended, and as] in effect immediately before [the effective date of this [act]]].

SECTION 1006. EFFECTIVE DATE. This [act] takes effect . . . .