

D R A F T

FOR APPROVAL

**HARMONIZATION OF BUSINESS ENTITY ACTS
(2013 AMENDMENTS TO 2011 REVISIONS)**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**HARMONIZATION OF BUSINESS ENTITY ACTS
(2013 AMENDMENTS TO 2011 REVISIONS)**

WITH PREFATORY NOTE

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 5, 2013

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HARMONIZATION OF BUSINESS ENTITY ACTS

TABLE OF CONTENTS

AMENDMENTS TO ARTICLE 1 OF THE UNIFORM BUSINESS ORGANIZATIONS CODE

1. SECTION 1-104. DELIVERY OF RECORD.....	2
2. SECTION 1-206. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE.....	2
3. SECTION 1-209. SIGNING OF ENTITY FILING.....	2
4. SECTION 1-210. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.....	3
5. SECTION 1-211. LIABILITY FOR INACCURRATE INFORMATION IN FILED RECORD.....	4
6. SECTION 1-301. PERMITTED NAMES.....	4
7. SECTION 1-411. DESIGNATION OF REGISTERED AGENT BY NONREGISTERED FOREIGN ENTITY OR NONFILING DOMESTIC ENTITY.....	4
8. SECTION 1-501. GOVERNING LAW.....	5

AMENDMENTS TO MODEL ENTITY TRANSACTIONS ACT

1. SECTION 104. REQUIRED NOTICE OR APPROVAL.....	6
2. SECTION 203. APPROVAL OF MERGER.....	6
3. SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE OF MERGER.....	7
4. SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE OF INTEREST EXCHANGE.....	8
5. SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE OF CONVERSION.....	8
6. SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE OF DOMESTICATION.....	9

AMENDMENTS TO UNIFORM LIMITED LIABILITY COMPANY ACT

1. SECTION 105. OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.....	10
2. SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.....	14
3. SECTION 206. FILING REQUIREMENTS.....	14
4. SECTION 602. EVENTS CAUSING DISSOCIATION.....	15
5. SECTION 603. EFFECT OF DISSOCIATION.....	16
6. SECTION 901. GOVERNING LAW.....	17
7. SECTION 1002. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS.....	17

AMENDMENTS TO UNIFORM PARTNERSHIP ACT

1. SECTION 105. PARTNERSHIP AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.....	19
2. SECTION 111. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.....	20
3. SECTION 401. PARTNER’S RIGHTS AND DUTIES.	20
4. SECTION 407. LIABILITY FOR IMPROPER DISTRIBUTIONS BY LIMITED LIABILITY PARTNERSHIP.....	21
5. SECTION 503. TRANSFER OF TRANSFERABLE INTEREST.	21
6. SECTION 1126. EFFECT OF MERGER.	22

AMENDMENTS TO UNIFORM LIMITED PARTNERSHIP ACT

1. SECTION 404. GENERAL PARTNER’S LIABILITY.	23
2. SECTION 1001. GOVERNING LAW.....	23

AMENDMENTS TO UNIFORM STATUTORY TRUST ENTITY ACT

1. SECTION 706. COURT PROCEEDINGS.....	25
--	----

AMENDMENTS TO UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT

1. SECTION 102. DEFINITIONS.....	26
2. SECTION 203. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.....	26
3. SECTION 518. APPROVAL OF TRANSACTIONS UNDER [ARTICLE] 16.....	26
4. SECTION 605. CHARGING ORDER.	28
5. SECTION 901. INDEMNIFICATION AND ADVANCEMENT OF EXPENSES; INSURANCE.....	29
6. SECTION 1301. DIRECT ACTION BY MEMBER.	29

HARMONIZATION OF BUSINESS ENTITY ACTS

Prefatory Note

The Harmonization of Business Entity Acts project involves nine separate acts: These are:

1. Business Organizations Act (a/k/a the Hub)
2. Model Entity Transactions Act (META)
3. Uniform Partnership Act (UPA)
4. Uniform Limited Partnership Act (ULPA)
5. Uniform Limited Liability Company Act (ULLCA)
6. Uniform Statutory Trust Entity Act (USTEA)
7. Uniform Limited Cooperative Associations Act (ULCAA)
8. Uniform Unincorporated Nonprofit association Act (UUNAA)
9. Model Registered Agents Act (MORAA)

The overall objective of the project is to harmonize, to the extent possible, the language in all nine acts so that the language in the provisions that are common in one or more of the acts are identical. The nine acts will be available for enactment by the states as stand-alone acts. Alternatively, all the acts (except MORAA, which is Part 4 of the Hub) may be combined into an overall code to be known as the Uniform Business Organizations Code (UBOC). The Hub is Article 1 of the UBOC, META is Article 2 of the UBOC, the UPA, ULPA, ULLCA, USTEA, ULCAA, and UUNAA are Articles 3-8 of the UBOC (collectively these six acts are referred to as the spoke acts). Articles 9 (the Model Business Corporation Act (MBCA)) and 10 (the Model Nonprofit Corporation Act (MNCA)) are currently reserved and will be added to the UBOC upon approval by the ABA Business Law Section. The UBOC will be the 10th Conference business entity product (the District of Columbia has already enacted the entire UBOC and Utah has a pending bill that is Articles 1-5 of the UBOC).

The Harmonization of Business Entity Organizations Acts Drafting Committee was given 2 years to complete its work. At the 2011 Annual Meeting we presented for final reading 64 sections with amendments for approval. Many of the changes affected more than one act. We only read these changes one time and said that conforming changes would be made in the other affected acts. All the amendments were approved. After the 2011 Annual Meeting, we discovered that there were a significant number of instances where we had inadvertently failed to read harmonization changes that were already in one of the 2011 Annual Meeting drafts acts but had not been incorporated in one or more of the other acts. We also found a small number of true glitches in the Official Texts of the acts. In addition, the ABA Corporate Laws Committee recently submitted three technical changes to the Hub filing provisions which will make the Hub more compatible with the MBCA and MNCA filing provisions. Except for style and purely technical amendments, the post-2011 Annual Meeting changes, all of which have been reviewed by the Harmonization of Business Entity Acts Drafting Committee, will be presented to the Committee of the Whole for approval at the 2013 Annual Meeting.

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

Note

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

(e) The filing of or refusal to file an entity filing does not:

- (1) affect the validity or invalidity of the entity filing in whole or in part; or
- (2) create a presumption that the information contained in the filing is correct or

ct.

The new language is from MBCA Section 1.25(d)(1) and is a change recommended by the ABA Committee on Corporate Laws. This amendment will be made in the equivalent section in all the spoke acts, except UUNAA, which is not a filing entity.

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

requires a particular individual to sign an entity filing and the individual is deceased or incompetent, the filing may be signed by a personal representative of the individual ~~in the place~~ on behalf of the decedent or incompetent individual.

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

Note

This is an example of a harmonization change that was already in one of the other acts which was discovered after the 2011 Annual Meeting. We were supposed to make both forward harmonization changes (starting with the Hub and making parallel changes in the other acts) and reverse harmonization changes (making changes found in a later act in the prior acts). This is an example of a reverse harmonization change. Our record on forward harmonization changes in 2011 was much better than our record on reverse harmonization changes.

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

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

(1) the person to sign the record;

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

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

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

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

Note

This is another example of a reverse harmonization change that we discovered after the 2011 Annual Meeting. This provision was in the spoke acts.

5. SECTION 1-211. LIABILITY FOR INACCURRATE INFORMATION IN FILED RECORD. If a record delivered to the [Secretary of State] for filing under this [act] and filed by the [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

Note

This is a third example of a reverse harmonization change in one or more of the spoke acts that was not discovered until after the 2011 Annual Meeting.

6. SECTION 1-301. PERMITTED NAMES.

* * *

(f) An entity may use a name that is not distinguishable from a name described in subsection (a)(1) – (6) if the entity delivers to the [Secretary of State] a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the entity to use the name in this state.

Note

The language is identical to MBCA Section 4.01(c)(2) and was recommended by the ABA Committee on Corporate Laws. This change will be made in the equivalent section in all the spoke acts except UUNAA.

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

* * *

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

1 and that the agent has consented to serve.

2 **Note**

3 This is another reverse harmonization change we discovered after the 2011
4 Annual Meeting.

5
6 **8. SECTION 1-501. GOVERNING LAW.**

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

8 (1) the internal affairs of the entity;

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

11 (3) {the liability of a series of a-series limited liability company; and (4)} the
12 ~~liability of a series of a~~ statutory trust, or other unincorporated entity.

13 * * *

14
15 **Note**

16 The 2011 Annual Meeting draft covered only series of LLCs and statutory trusts.
17 At least one state, Delaware, has limited partnership series provisions, and the
18 Conference has recently approved a drafting committee to consider series
19 authority for all unincorporated entities.

1 **AMENDMENTS TO MODEL ENTITY TRANSACTIONS ACT**

2 **1. SECTION 104. REQUIRED NOTICE OR APPROVAL.**

3 * * *

4 (c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
5 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
6 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
7 trust obligation that would govern property if transferred to the nonsurviving entity applies to
8 property that is transferred to the surviving entity under this section.

9 **Note**

10 Subsection (c), which is derived from UUNAA Section 29(f), deals with the status
11 of a bequest, etc. to an entity that has disappeared as a result of a merger. Parallel
12 changes will be made in UPA, ULPA, ULLCA, USTEA, and ULCAA.

13
14 **2. SECTION 203. APPROVAL OF MERGER.**

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

16 (1) by a domestic merging entity:

17 (A) in accordance with the requirements, if any, in its organic law and
18 organic rules for approval of:

19 (i) in the case of an entity that is not a ~~business corporation~~, a
20 limited cooperative association, the merger; or

21 (ii) in the case of a ~~business corporation~~, a ~~merger requiring~~
22 ~~approval by a vote of the interest holders of the business corporation~~ limited cooperative
23 association, a transaction under this [article]; or

24 (B) ~~if neither its organic law nor organic rules provide for approval of a~~
25 ~~merger described in subparagraph (A)(ii)~~, by all of the interest holders of the entity entitled to

1 vote on or consent to any matter if:

2 (i) in the case of an entity that is not a business corporation or
3 limited cooperative association, neither its organic law nor organic rules provide for approval of
4 the merger; or

5 (ii) in the case of an entity that is a limited cooperative association,
6 neither its organic law nor organic rules provide for approval of a transaction under this [article];
7 and

8 * * *

10 **Note**

11 This change is made to authorize limited cooperatives to engage in META
12 transactions. Parallel amendments will be made in META Sections 303(a)
13 (interest exchanges), 403(a) (conversions), and 503(a). ULCAA was promulgated
14 after META.

15
16 **3. SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE OF**
17 **MERGER.**

18 * * *

19 (f) A statement of merger becomes effective ~~upon~~ on the date and time of filing or the
20 later date and time specified in the statement of merger. If the surviving entity is a domestic
21 entity, the merger becomes effective when the statement of merger is effective. If the surviving
22 entity is a foreign entity, the merger becomes effective on the later of:

23 (1) the date and time provided by the organic law of the surviving entity; and

24 (2) when the statement of merger is effective.

25 **Note**

26 For some unknown reason, the Official Text of META (2007) has a provision for
27 the effective date of a statement of merger and a separate section for the effect of
28 a merger, but no provision for the effective date of a merger. The same glitch is

in the META interest exchange, conversion and domestication provisions.
Effective date language will have to be changed in the other META effective date provisions and in all the META effective date provisions in all the spoke acts, except for UUNAA, which has a unique merger provision and no interest exchange, conversion, or domestication provisions.

**4. SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE
DATE OF INTEREST EXCHANGE.**

* * *

(e) ~~A statement of interest exchange~~ An interest exchange in which the acquired entity is a domestic entity becomes effective upon on the date and time of filing of the statement of interest exchange or the later date and time specified in the statement of interest exchange.

Note

See the note to Section 205. Similar language will be used in the equivalent interest exchange sections in the spoke acts (except UUNAA).

**5. SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE OF
CONVERSION.**

* * *

(f) A statement of conversion becomes effective ~~upon~~ on the date and time of filing or the later date and time specified in the statement of conversion. If the converted entity is a domestic entity, the conversion becomes effective when the statement of conversion is effective. If the converted entity is a foreign entity, the conversion becomes effective on the later of:

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

(2) when the statement of conversion is effective.

Note

See the note to Section 205. Similar language will be used in the equivalent conversion sections in the spoke acts (except UUNAA).

1 **6. SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE**
2 **OF DOMESTICATION.**

3 * * *

4 (f) A ~~statement of~~ domestication in which the domesticated entity is a domestic entity
5 becomes effective ~~upon~~ on the date and time of filing of the statement of domestication or the
6 later date and time specified in the statement ~~of domestication~~. A domestication in which the
7 domesticated entity is a foreign entity becomes effective on the later of:

8 (1) the date and time provided by the organic law of the domesticated entity; and

9 (2) when the statement of domestication is effective.

10 **Note**

11 See the note to Section 205. Similar language will be used in the equivalent
12 domestication sections of the spoke acts (except UUNAA).

1 **AMENDMENTS TO UNIFORM LIMITED LIABILITY COMPANY ACT**

2 **1. SECTION 105. OPERATING AGREEMENT; SCOPE, FUNCTION, AND**
3 **LIMITATIONS.**

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

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

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

9 (3) the activities and affairs of the company and the conduct of those activities
10 and affairs; and

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

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

14 (c) An operating agreement may not:

15 (1) vary ~~a limited liability company's capacity~~ the law applicable under Section
16 ~~105 to sue and be sued in its own name~~ 104;

17 (2) vary ~~the law applicable~~ a limited liability company's capacity under Section
18 ~~106~~ 109 to sue and be sued in its own name;

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

20 (A) registered agents; or

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

23 (4) vary the provisions of Section 204;

(5) alter or eliminate the duty of care loyalty or the duty of loyalty care, except as otherwise provided in subsection (d);

(6) eliminate the contractual obligation of good faith and fair dealing under Section 409(d), but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

(7) relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or ~~recklessness~~ knowing violation of law;

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

(9) vary the causes of dissolution specified in Section 701(a)(4)(A) ~~and (5)~~;

(10) vary the requirement to wind up the company's activities and affairs as specified in Section 702(a), (b)(1), and (e);

(11) unreasonably restrict the right of a member to maintain an action under [Article] 9 8;

(12) vary the provisions of Section ~~905~~ 805, but the operating agreement may provide that the company may not have a special litigation committee;

(13) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Section 1023(a)(2), 1033(a)(2), 1043(a)(2), or 1053(a)(2); ~~or~~

(14) vary the required contents of a plan of merger under Section 1022(a), plan of interest exchange under Section 1032(a), plan of conversion under Section 1042(a), or plan of domestication under Section 1052(a); or

1 (15) except as otherwise provided in Sections ~~442~~ 106 and ~~443~~ 107(b), restrict the
2 rights under this [act] of a person other than a member or manager.

3 (d) Subject to subsection (c)(7), without limiting other terms that may be included in an
4 operating agreement, the following rules apply:

5 (1) The operating agreement may:

6 (A) specify the method by which a specific act or transaction that would
7 otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested
8 and independent persons after full disclosure of all material facts; and

9 (B) alter the prohibition stated in Section 405(a)(2) so that the prohibition
10 requires solely that the company's total assets not be less than the sum of its total liabilities.

11 (2) To the extent the operating agreement of a member-managed limited liability
12 company expressly relieves a member of a responsibility that the member would otherwise have
13 under this [act] and imposes the responsibility on one or more other members, the operating
14 agreement may, to the benefit of the member that the operating agreement relieves of the
15 responsibility, also eliminate or limit any fiduciary duty that would have pertained to the
16 responsibility.

17 (3) If not manifestly unreasonable, the operating agreement may:

18 (A) ~~restrict~~ alter or eliminate the aspects of the duty of loyalty stated in
19 Section 409(b) and ~~(h)(1)~~ (i);

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

22 (C) alter the duty of care, but may not authorize conduct involving bad
23 faith, willful or intentional misconduct, or knowing violation of law; and

1 (D) alter or eliminate any other fiduciary duty.

2 (e) The court shall decide as a matter of law ~~any claim under subsection (c)(6) or (d)(3)~~
3 ~~that whether~~ a term of an operating agreement is manifestly unreasonable under subsection (c)(6)
4 or (d)(3). The court:

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

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

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

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

12 Note

13 Most of the changes in this section are stylistic in nature. Four of the
14 changes, however, might be viewed as being substantive or otherwise need an
15 explanation.

16
17 Two involve the changes in subsection (c)(7) and (d)(3)(C). After the
18 2011 Annual Meeting, we discovered that inconsistent terminology had been used
19 in ULLCA, UPA and ULPA for the limitations on exoneration and alteration of
20 the duty of care. Since these three acts are all based on a partnership model, we
21 determined that for harmonization purposes, the language should be the same in
22 all three. We further determined that ULCAA and UUNAA use a corporate
23 structure for the duty of care, and USTEAA has a trust law construct for the duty of
24 care and exoneration. So it would not be appropriate to harmonize their duty of
25 care and exoneration provisions with those in ULLCA, UPA, and ULPA. The
26 Drafting Committee considered several different formulations for the exoneration
27 and duty of care and ultimately decided on the language in (c)(7) and (d)(3)(C),
28 which is from the Delaware General Corporation Law. This language has been
29 the subject of extensive litigation in Delaware and appropriate Delaware case law
30 will be cited in the comments. Similar provisions will be made in the equivalent
31 sections of the UPA and ULPA. Conforming changes will be made in the
32 provisions of ULLCA, UPA, and ULPA which define the duty of care.

33
34 We thought what is now (c)(14) was covered by (c)(3)(B); but ultimately

1 decided to create a separate provision in order to eliminate any question about this
2 issue.

3
4 Subsection (d)(1)(B) is really a stylistic change in the sense that the
5 concept has been moved from Section 405(a)(2). The drafting convention we
6 used was that Section 105 should contain a complete list of provisions that can
7 and cannot be varied or eliminated. This provision will also be added in the
8 equivalent sections of the other spoke acts, except ULCAA (this concept is in the
9 ULCAA distribution section and it was not feasible to move it to the equivalent
10 section of ULCAA) and UUNAA (distributions are prohibited).

11
12 **2. SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF**
13 **ORGANIZATION.**

14 * * *

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

17 (1) the name of the company;

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

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

21 * * *

22 **Note**

23 The change in (b)(2) is stylistic. The change in (b)(3) was generated by the
24 position of a SOS filing officer that an amendment that dealt with an issue not
25 covered in the certificate would be rejected, an interpretation that was clearly not
26 intended. The identical change will be made in all the spoke acts (except
27 UUNAA, which is not a filing entity).

28
29 **3. SECTION 206. FILING REQUIREMENTS.**

30 * * *

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

(ii) not later than 90 days after the notification, the ~~certificate statement~~ of dissolution or the equivalent has not been withdrawn, rescinded, or revoked ~~or its, the person has not been reinstated, or the person's charter or the equivalent~~ or right to conduct business has not been reinstated; or

(D) the person is an unincorporated entity that has been dissolved and whose ~~business is~~ activities and affairs are being wound up;

* * *

(11) in the case of a person that is not an individual, ~~corporation, unincorporated entity, trust, or estate~~, the existence of the person terminates;

* * *

Note

These are clarifying amendments. No substantive change is intended. Similar changes will be made in the equivalent sections of the UPA and ULPA.

5. SECTION 603. EFFECT OF DISSOCIATION.

(a) If a person is dissociated as a member :

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

(2) ~~if the company is member managed,~~ the person's duties and obligations under Section 409 as a member end with regard to matters arising and events occurring after the person's dissociation; and

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

* * *

1 **Note**

2 The change in subsection (a)(2) corrects a glitch that has existed since the 2006
3 version of ULLCA. It was discovered at the time the ULLCA comments were
4 being revised.

5
6 **6. SECTION 901. GOVERNING LAW.**

7 (a) The law of the jurisdiction of formation of a foreign limited liability company
8 governs:

9 (1) the internal affairs of the company; ~~and~~

10 (2) the liability of a member as member and a manager as manager for a debt,
11 obligation, or other liability of the company; and

12 (3) the liability of a series of the company.

13 * * *

14 **Note**

15 The change makes it clear that the enacting state will recognize the special
16 liability shield of a foreign series LLC.

17
18 **7. SECTION 1002. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS.**

19 * * *

20 (b) A transaction effected under this [article] may not create or impair any right or
21 obligation on the part of a person under a provision of the law of this state other than this
22 [article] relating to a change in control, takeover, business combination, control-share
23 acquisition, or similar transaction involving a domestic merging, acquired, converting, or
24 domesticating business corporation unless:

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

27 (2) if the corporation survives the transaction, the approval of the plan is by a vote

1 of the shareholders or directors which would be sufficient to create or impair the right or
2 obligation directly under the provision.

3 **Note**

4 This change of control provision was in META and should have been in all the
5 2011 Annual Meeting spoke acts, with the exception of UUNAA.

AMENDMENTS TO UNIFORM PARTNERSHIP ACT

1. SECTION 105. PARTNERSHIP AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

* * *

(c) A partnership agreement may not:

* * *

(7) unreasonably restrict the right of a person to maintain an action under Section

* * *

(13) vary the right of a partner under Section 901(f) to vote on or consent to a
cancellation of a statement of qualification;

* * *

(d) Subject to subsection (c)(8), without limiting other terms that may be included in a partnership agreement, the following rules apply:

* * *

(2) To the extent the partnership agreement expressly relieves a partner of a responsibility that the partner would otherwise have under this [act] and imposes the responsibility on one or more other partners, the partnership agreement may to the benefit of the partner that the partnership agreement relieves of the responsibility also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

* * *

Note

Subsection (c)(7) was inadvertently omitted in the 2011 Annual Meeting Draft of the UPA. The equivalent language is in ULLCA and ULPA.

1 Subsection (c)(13) corrects a glitch that was recently discovered.

2
3 Subsection (d)(2) is in ULLCA but was not one of the changes read at the
4 2011 Annual Meeting. This provision will also be in the equivalent section of
5 ULPA.

6
7 **2. SECTION 111. LIABILITY FOR INACCURATE INFORMATION IN FILED**
8 **RECORD.**

9 * * *

10 (b) To the extent that the partnership agreement expressly relieves a partner of
11 responsibility for maintaining the accuracy of information contained in records delivered on
12 behalf of the partnership to the [Secretary of State] for filing under this [act] and imposes that
13 responsibility on one or more other partners, the liability stated in subsection (a)(2) applies to
14 those other partners and not to the partner that the partnership agreement relieves of the
15 responsibility.

16 * * *

17 **Note**

18 This provision is in ULLCA and should have been in the 2011 Annual Meeting
19 Drafts for UPA and ULPA.

20
21 **3. SECTION 401. PARTNER'S RIGHTS AND DUTIES.**

22 * * *

23 (k) A difference arising as to a matter in the ordinary course of business of a partnership
24 may be decided by a majority of the partners. An act outside the ordinary course of business of a
25 partnership, and an amendment to the partnership agreement, ~~and the approval of a transaction~~
26 ~~under [Article] 9~~ may be undertaken only with the affirmative vote or consent of all the partners.

27 **Note**

28 The deletion of the phrase “and the approval of a transaction under [Article] 9” is

1 really only a style change that harmonizes this subsection with the equivalent
2 sections of ULLCA and the ULPA.

3
4 **4. SECTION 407. LIABILITY FOR IMPROPER DISTRIBUTIONS BY**
5 **LIMITED LIABILITY PARTNERSHIP.**

6 * * *

7 (b) To the extent the partnership agreement of limited liability partnership expressly
8 relieves a partner of the authority and responsibility to consent to distributions and imposes that
9 authority and responsibility on one or more other partners, the liability stated in subsection (a)
10 applies to the other partners and not the partner that the partnership agreement relieves of
11 authority and responsibility.

12 * * *

13 **Note**

14 This is another harmonization change that was inadvertently omitted from the
15 2011 Annual Meeting draft. This provision was in the equivalent section of
16 ULLCA but was not one of the sections read at the 2011 Annual Meeting. This
17 change will also be made in the equivalent section of ULPA.

18
19 **5. SECTION 503. TRANSFER OF TRANSFERABLE INTEREST.**

20 * * *

21 (c) In a dissolution and winding up of a partnership, a transferee is entitled to an account
22 of the partnership's transactions only from the date of ~~the latest account agreed to by all the~~
23 ~~partners~~ dissolution.

24 * * *

25 **Note**

26 This is another harmonization change that might reasonably be viewed as
27 substantive because it changes the date of the accounting.

1 **6. SECTION 1126. EFFECT OF MERGER.**

2 * * *

3 (d) When a merger becomes effective, the interest holder liability of a person that ceases
4 to hold an interest in a domestic merging ~~entity~~ partnership with respect to which the person had
5 interest holder liability is as follows:

6 (1) The merger does not discharge any interest holder liability under ~~the organic~~
7 ~~law of the domestic merging entity~~ this [act] to the extent the interest holder liability arose before
8 the merger became effective.

9 (2) The person does not have interest holder liability under ~~the organic law of the~~
10 ~~domestic merging entity~~ this [act] for any debt, obligation, or other liability that arises after the
11 merger becomes effective.

12 (3) ~~The organic law of the domestic merging entity~~ This [act] continues to apply
13 to the release, collection, or discharge of any interest holder liability preserved under paragraph
14 (1) as if the merger had not occurred and the surviving entity were the domestic merging entity.

15 (4) The person has whatever rights of contribution from any other person as are
16 provided by this [act], law other than this [act], ~~this [act]~~, or the ~~organic rules~~ partnership
17 agreement of the domestic merging ~~entity~~ partnership with respect to any interest holder liability
18 preserved under paragraph (1) as if the merger had not occurred.

19 * * *

20 **Note**

21 Subsection (d) was in META and ULLCA but was not carried over correctly into
22 the 2011 Annual Meeting drafts of the other spoke acts (with the exception of
23 UUNAA which has a unique merger provision). The identical provision needs to
24 be in the equivalent section of the interest exchange, conversion, and
25 domestication provisions in ULLCA, UPA, ULPA, USTEAA, and ULCAA.

1 **AMENDMENTS TO UNIFORM LIMITED PARTNERSHIP ACT**

2 **1. SECTION 404. GENERAL PARTNER'S LIABILITY.**

3 * * *

4 (c) A debt, obligation, or other liability of a limited partnership incurred while the
5 partnership is a limited liability limited partnership is solely the debt, obligation, or other liability
6 of the limited liability limited partnership. A general partner is not personally liable, directly or
7 indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the
8 limited liability limited partnership solely by reason of being or acting as a general partner. This
9 subsection applies:

10 (1) despite anything inconsistent in the partnership agreement that existed
11 immediately before the vote or consent required to become a limited liability limited partnership
12 under Section 406(b)(2); ~~or~~ and

13 (2) regardless of the dissolution of the partnership.

14 * * *

15 **Note**

16 The change in paragraph (2) parallels Section 306(c) of UPA. It was in the 2011
17 Annual Meeting draft of UPA, but was inadvertently left out of the 2011 Annual
18 Meeting draft of ULPA.

19
20 **2. SECTION 1001. GOVERNING LAW.**

21 (a) The law of the jurisdiction of formation of a foreign limited partnership ~~is formed~~
22 governs:

23 (1) the internal affairs of the partnership; ~~and~~

24 (2) the liability of a partner as partner for a debt, obligation, or other liability of
25 the partnership; and

(3) the liability of a series of the partnership.

Note

The change makes it clear that the enacting state must recognize the special liability shield of a foreign series limited partnership. See also the amendment to Hub Section 1-501 and ULLCA Section 901.

1 **AMENDMENTS TO UNIFORM STATUTORY TRUST ENTITY ACT**

2 **1. SECTION 706. COURT PROCEEDINGS.**

3 (a) A dissolved statutory trust that has published a notice under Section ~~805~~ 705 may file
4 an application with [the appropriate court] in the [county] where the ~~dissolved~~ trust's principal
5 office; is located or, if ~~there is none~~ the principal office is not located in this state, where the
6 office of its registered agent; is or was last located, for a determination of the amount and form of
7 security to be provided for payment of claims that are contingent, or have not been made known
8 to the dissolved trust or that are based on an event occurring after the ~~effective~~ date of
9 dissolution but which, based on the facts known to the ~~dissolved~~ trust, are reasonably expected to
10 arise after the ~~effective~~ date of dissolution. ~~Provision need~~ Security is not be made required for
11 any claim that is or is reasonably anticipated to be barred under Section ~~805~~ 705(c).

12 * * *

13 **Note**

14 Except for the change in the last sentence, the changes in this subsection are
15 stylistic. The change in the last sentence is a clarifying harmonization change that
16 will also be made in the equivalent section of ULCAA. The correct wording is
17 already in ULLCA, UPA and ULPA (UUNAA has a unique formulation).

AMENDMENTS TO UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT

1. SECTION 102. DEFINITIONS. In this [act]:

* * *

(44) (10) “Foreign cooperative” means an entity organized in a jurisdiction other than this state under a limited cooperative association law similar to this [act].

* * *

Note

The change makes it clear that only foreign limited cooperatives, and not other types of cooperatives, can qualify to do business in the enacting state under this act.

**2. SECTION 203. LIABILITY FOR INACCURATE INFORMATION IN FILED
ORD.**

* * *

(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.

Note

Subsection (b) dealing with the perjury penalty for filing inaccurate information was inadvertently omitted from the 2011 Annual Meeting draft of ULCAA. A similar provision is in all the other spoke filing entity acts.

3. SECTION 518. APPROVAL OF TRANSACTIONS UNDER [ARTICLE] 16.

(a) For a limited cooperative association to approve a transaction under [Article] 16, a plan must be approved by a majority of the board of directors, or a greater percentage if required by the organic rules, and the board of directors must call a members meeting to consider the plan, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

1 (1) the plan, or a summary of the plan and a statement of the manner in which a
2 copy of the plan in a record may be reasonably obtained by a member;

3 (2) a recommendation that the members approve the plan, or if the board
4 determines that because of a conflict of interest or other circumstances it should not make a
5 favorable recommendation, the basis for that determination;

6 (3) a statement of any condition of the board's submission of the plan to the
7 members; and

8 (4) notice of the meeting at which the plan will be considered, which must be
9 given in the same manner as notice of a special meeting of members.

10 (b) Subject to subsections (c) and (d), a plan must be approved by:

11 (1) at least two-thirds of the voting power of members present at a members
12 meeting called under subsection (a); and

13 (2) if the limited cooperative association has investor members, at least a majority
14 of the votes cast by patron members, unless the organic rules require a greater percentage vote by
15 patron members.

16 (c) The organic rules may require that the percentage of votes under subsection (b)(1) is:

17 (1) a different percentage that is not less than a majority of members voting at the
18 meeting;

19 (2) measured against the voting power of all members; or

20 (3) a combination of paragraphs (1) and (2).

21 (d) The vote required to approve a plan may not be less than the vote required for the
22 members of the limited cooperative association to amend the articles of organization.

(e) Consent in a record to a plan by a member must be delivered to the limited cooperative association before delivery to the [Secretary of State] for filing of articles of merger, interest exchange, conversion, or domestication, if, as a result of the merger, interest exchange, conversion, or domestication, the member will have interest holder liability for debts, obligations, or other liabilities that arise after the transaction becomes effective.

(f) The voting requirements for districts, classes, or voting groups under Section 404 apply to approval of a transaction under this [article].

Note

This section, which deals with the approval of META transactions involving limited cooperatives, is unique because of the unusual voting scheme in ULCAA.

4. SECTION 605. CHARGING ORDER.

* * *

(f) If a court forecloses a charging order lien against the sole member of a limited
cooperative association:

(1) the court shall confirm the sale;

(2) the purchaser at the sale obtains the member's entire interest, not only the
member's financial rights:

(3) the purchaser thereby becomes a member; and

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

* * *

Note

This subsection parallels the similar provision in ULLCA dealing with the foreclosure of a charging order against the member of a single member LLC.

