

D R A F T
FOR DISCUSSION ONLY

**AMENDMENTS TO
UNIFORM LIMITED LIABILITY COMPANY ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

March 23, 2004

With Reporters' Notes

Copyright © 2004
by
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

The ideas, concepts and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been reviewed, debated or approved by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not reflect the views of the Conference and its Commissioners or the Drafting Committee and its Members and Reporters. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal made by the National Conference of Commissioners on Uniform State Laws.

**DRAFTING COMMITTEE ON AMENDMENTS TO
UNIFORM LIMITED LIABILITY COMPANY ACT**

DAVID S. WALKER, Drake University Law School, Des Moines, IA 50311, *Chair*
ANN CONAWAY ANKER, Widener University, School of Law, P.O. Box 7474, Wilmington,
DE 19803
DONALD K. DENSBORN, 8900 Keystone Crossing #1150, Indianapolis, IN 46240
STEVEN G. FROST, 111 W. Monroe St., Suite 1500, Chicago, IL 60603-4006
HARRY J. HAYNSWORTH, IV, William Mitchell College of Law, 875 Summit Ave., St. Paul,
MN 55105
TIMOTHY HEINSZ, University of Missouri-Columbia, School of Law, 203 Hulston Hall,
Columbia, MO 65211
MICHAEL HOUGHTON, P.O. Box 1347, 1201 N. Market St., 18th Floor, Wilmington, DE
19899, *Enactment Plan Coordinator*
HARRIET LANSING, Court of Appeals, Judicial Bldg., 25 Rev. Dr. Martin Luther King Jr.
Blvd., St. Paul, MN 55155
CARTER G. BISHOP, Suffolk University Law School, 120 Tremont St., Boston, MA 02108-
4977, *Co-Reporter*
DANIEL S. KLEINBERGER, William Mitchell College of Law, 875 Summit Ave., St. Paul,
MN 55105, *Co-Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Room
3056, Norman, OK 73019, *President*
REX BLACKBURN, 1673 West Shoreline Dr., Suite 200, P.O. Box 7808, Boise, ID 83702
Division Chair

AMERICAN BAR ASSOCIATION ADVISOR

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

AMERICAN BAR ASSOCIATION SECTION ADVISORS

WILLIAM J. CALLISON, Suite 3200, 1700 Lincoln St., Denver, CO 80203, *ABA Business Law
Section Advisor*
WILLIAM H. CLARK, JR., One Logan Square, 18th and Cherry Streets, Philadelphia, PA
19103-6996, *ABA Business Law Section Advisor*
THOMAS EARL GEU, University of South Dakota, School of Law, 414 Clark St., Suite 214,
Vermillion, SD 57069-2390, *ABA Real Property, Probate and Trust Law Section Advisor*
JON T. HIRSCHOFF, One Landmark Square, 14th Floor, Stamford, CT 06901, *ABA Business
Law Section Advisor*
ROBERT KRAPF, One Rodney Square, 920 King St., P.O. Box 551, Wilmington, DE 19899,
ABA Real Property, Probate and Trust Law Section Advisor
SCOTT E. LUDWIG, 200 Clinton Ave. W., Suite 900, Hunstville, AL 35801-4900, *ABA
Business Law Section Advisor*

JOHN R. MAXFIELD, 555 17th St., Suite 3200, Denver, CO 80201, *ABA Tax Section Advisor*
ELIZABETH STONE MILLER, Baylor Law School, 1114 S. University Parks Dr., Waco, TX
76706, *ABA Business Law Section Advisor*

BARRY NEKRITZ, 8000 Sears Tower, 233 S. Wacker Dr., Chicago, IL 60606, *ABA Real
Property, Probate and Trust Law Section Advisor*

THOMAS RUTLEDGE, 1700 Citizens Plaza, 500 W. Jefferson St., Louisville, KY 40202-2874,
ABA Business Law Section Advisor

EXECUTIVE DIRECTOR

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

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director
Emeritus*

Copies of this Act may be obtained from:

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

AMENDMENTS TO UNIFORM LIMITED LIABILITY COMPANY ACT

TABLE OF CONTENTS

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE 2
SECTION 102. DEFINITIONS 2
SECTION 103. KNOWLEDGE AND NOTICE 6
SECTION 104. NATURE, PURPOSE, AND DURATION OF ENTITY 9
SECTION 106. GOVERNING LAW 10
SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW; RATE OF INTEREST 11
SECTION 108. NAME 11
SECTION 109. RESERVATION OF NAME 13
SECTION 110. EFFECT OF OPERATING AGREEMENT; NONWAIVABLE
PROVISIONS 14
SECTION 111. REQUIRED INFORMATION 16
SECTION 112. BUSINESS TRANSACTIONS OF MEMBER WITH LIMITED
LIABILITY COMPANY 17
SECTION 113. OFFICE AND AGENT FOR SERVICE OF PROCESS 17
SECTION 114. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF
PROCESS 17
SECTION 115. RESIGNATION OF AGENT FOR SERVICE OF PROCESS. 18
SECTION 116. SERVICE OF PROCESS 19

[ARTICLE] 2

FORMATION; ARTICLES OF ORGANIZATION AND OTHER FILINGS

SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY; ARTICLES OF
ORGANIZATION 21
SECTION 202. AMENDMENT OR RESTATEMENT OF ARTICLES OR
ORGANIZATION 23
SECTION 203. STATEMENT OF TERMINATION 24
SECTION 204. SIGNING OF RECORDS 24
SECTION 205. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER 26
SECTION 206. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY OF
STATE]; EFFECTIVE TIME AND DATE 27
SECTION 207. CORRECTING FILED RECORD 28
SECTION 208. LIABILITY FOR FALSE INFORMATION IN FILED RECORD 29
SECTION 209. CERTIFICATE OF EXISTENCE OR AUTHORIZATION 30
SECTION 210. ANNUAL REPORT FOR [SECRETARY OF STATE]. 32

[ARTICLE] 3

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

SECTION 301. AGENCY OF MEMBERS AND MANAGERS 34
SECTION 302. STATEMENT OF AUTHORITY 35

SECTION 303. STATEMENTS OF DENIAL	36
SECTION 304. LIMITED LIABILITY COMPANY LIABLE FOR MEMBER'S OR MANAGER'S ACTIONABLE CONDUCT	37
SECTION 305. LIABILITY OF MEMBERS AND MANAGERS	38

[ARTICLE] 4

**RELATIONS OF MEMBERS TO EACH OTHER AND TO
LIMITED LIABILITY COMPANY**

SECTION 401. HOW A PERSON BECOMES A MEMBER	40
SECTION 402. FORM OF CONTRIBUTION	41
SECTION 403. LIABILITY FOR CONTRIBUTIONS	41
SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION	42
SECTION 405. LIMITATIONS ON DISTRIBUTION	43
SECTION 406. LIABILITY FOR IMPROPER DISTRIBUTIONS	45
SECTION 407. MANAGEMENT OF A LIMITED LIABILITY COMPANY	46
SECTION 408. MEMBER'S AND MANAGER'S RIGHTS TO PAYMENTS AND REIMBURSEMENT	48
SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS	49
SECTION 410. STANDARDS OF LIABILITY FOR GOVERNANCE RESPONSIBILITY	52
SECTION 411. RIGHT TO INFORMATION OF MEMBERS, MANAGERS AND FORMER MEMBERS	53

[ARTICLE] 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

SECTION 501. MEMBER'S TRANSFERABLE INTEREST	57
SECTION 502. TRANSFER OF MEMBER'S TRANSFERABLE INTEREST	58
SECTION 503. RIGHTS OF JUDGMENT CREDITOR OF MEMBER OR TRANSFEREE	60
SECTION 504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER	62

[ARTICLE] 6

MEMBER'S DISSOCIATION

SECTION 601. EVENTS CAUSING DISSOCIATION	63
SECTION 602. MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION ..	66
SECTION 603. EFFECT OF MEMBER'S DISSOCIATION	67
SECTION 604. STATEMENT OF DISSOCIATION	68

[ARTICLE] 7

DISSOLUTION AND WINDING UP

SECTION 701. EVENTS CAUSING DISSOLUTION	70
SECTION 702. WINDING UP.	72
SECTION 703. POWER OF MEMBERS AND MANAGERS TO BIND LIMITED LIABILITY COMPANY AFTER DISSOLUTION	74

SECTION 704. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY	74
SECTION 705. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY	76
SECTION 706. ADMINISTRATIVE DISSOLUTION	77
SECTION 707. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION ..	78
SECTION 708. APPEAL FROM REJECTION OF REINSTATEMENT	79
SECTION 709. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S BUSINESS	80

[ARTICLE] 8

FOREIGN LIMITED LIABILITY COMPANIES

SECTION 801. GOVERNING LAW	82
SECTION 802. APPLICATION FOR CERTIFICATE OF AUTHORITY	82
SECTION 803. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS	83
SECTION 804. FILING OF CERTIFICATE OF AUTHORITY	85
SECTION 805. NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY	85
SECTION 806. REVOCATION OF CERTIFICATE OF AUTHORITY	86
SECTION 807. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE	87
SECTION 808. ACTION BY [ATTORNEY GENERAL]	88

[ARTICLE] 9

ACTIONS BY MEMBERS

SECTION 901. DIRECT ACTION BY MEMBER	89
SECTION 902. DERIVATIVE ACTION	90
SECTION 903. PROPER PLAINTIFF	90
SECTION 904. PLEADING	91
SECTION 905. PROCEEDS AND EXPENSES	91

[ARTICLE] 10

DOMESTICATION, CONVERSION AND MERGER

[reserved pending META]	92
-------------------------------	----

[ARTICLE] 11

MISCELLANEOUS PROVISIONS

SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION	93
SECTION 1102. SEVERABILITY	93
SECTION 1103. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT	93
SECTION 1104. EFFECTIVE DATE	93
SECTION 1105. REPEALS	94
SECTION 1106. APPLICATION TO EXISTING RELATIONSHIPS	94
SECTION 1107. SAVINGS CLAUSE	94

REPORTERS' INTRODUCTORY NOTE

At this very preliminary stage of the drafting process, the reporters have identified three overarching issues:

1. Is a limited liability company more properly understood as:
 - a. a contractual relationship that primarily owes its existence to the private arrangement of its members and is “housed” within a statutorily-recognized entity merely to provide a liability shield for the members, or
 - b. a creature of statute, formed by filing a public document, properly thought of conceptually as well as legally as an entity separate from its members?
2. Given the decision made at the most recent Committee meeting to preserve the member-managed/manager-managed structure:
 - a. is a member-managed LLC essentially the same as an LLP (except that an LLC has perpetual duration)?
 - b. is a manager-managed LLC essentially the same as a LLLP?
 - c. what distinguishes an LLC from other entities beyond having a foundational statute that contemplates two alternate management structures?
3. What are the prospects for enactment of a second generation uniform LLC act, given that:
 - a. radical innovations will place the new Act “too far ahead of the curve” and are unlikely to find favor either with the Conference or with state bar associations,
 - b. incremental improvements will meet resistance in the majority of states (which have not adopted ULLCA I), because practitioners accustomed to their own state LLC act will question whether the improvements in the new Act are worth the costs of jettisoning their old knowledge and learning the new Act.

1 **UNIFORM LIMITED LIABILITY COMPANY ACT**

2
3
4
5 **[ARTICLE] 1**

6 **GENERAL PROVISIONS**

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

11 **Reporters' Notes**

12 We need to distinguish the title of this Act from the title of the current ULLCA.
13 "Revised" seems inappropriate, since the drafting committee intends a wholesale replacement.
14

15
16 **SECTION 102. DEFINITIONS.** In this [act]:

17 (1) "Articles of organization" means the articles required by Section 201. The term
18 includes the articles as amended or restated.

19 (2) "Contribution" means any benefit provided by a person to a limited liability company
20 in order to become a member or in the person's capacity as a member.

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

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

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

25 (4) "Designated office" means:

26 (A) with respect to a limited liability company, the office that the limited liability
27 company is required to designate and maintain under Section 113; and

1 (B) with respect to a foreign limited liability company, its principal office.

2 (5) “Distribution” means a transfer of money or other property from a limited liability
3 company to a member in the member’s capacity as a member or to a transferee on account of a
4 transferable interest owned by the transferee.

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

8 (7) “Governance responsibility” means the responsibility to determine principal policies
9 for a limited liability company and superintend the limited liability company’s overall
10 operations. The term includes decisions as to whether a proposed distribution complies with
11 Section 408.

12 (8) “Limited liability company”, except in “foreign limited liability company”, means an
13 entity formed under this [act].

14 (9) “Manager” means a person that is a manager of a limited liability company under
15 Section 407(b)(5). The term does not include a person that has ceased to be a manager under
16 Section 407(b)(5).

17 (10) “Member” means a person that is a member of a limited liability company under
18 Section 401. The term does not include a person that has dissociated as a member under Section
19 601.

20 (11) “Operating agreement” means the members’ agreement, whether oral, in a record,
21 implied, or in any combination thereof, concerning the limited liability company. The term
22 includes the agreement as amended.

1 (12) “Operational responsibilities” include responsibilities for implementing the policies
2 established for a limited liability company by those with governance authority, managing the
3 day-to-day activities of the limited liability company, and carrying out tasks on behalf of the
4 limited liability company.

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

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

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

13 (16) “Required information” means the information that a limited liability company is
14 required to maintain under Section 111.

15 (17) “Sign” means:

16 (A) to execute or adopt a tangible symbol with the present intent to
17 authenticate a record; or

18 (B) to attach or logically associate an electronic symbol, sound, or
19 process to or with a record with the present intent to authenticate the record.

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

1 (19) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage,
2 security interest, encumbrance, gift, and transfer by operation of law.

3 (20) “Transferable interest” means a member’s right to receive distributions.

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

6 **Reporters’ Notes**

7 **Paragraph (6) [Foreign limited liability company]** – Some statutes have elaborate
8 definitions addressing the question of whether a non-U.S. entity is a “foreign limited liability
9 company.” The NY statute, for example, defines a “foreign limited liability company” as:

10
11 . . . an unincorporated organization formed under the laws of any jurisdiction, including
12 any foreign country, other than the laws of this state (i) that is not authorized to do business in
13 this state under any other law of this state and (ii) of which some or all of the persons who are
14 entitled (A) to receive a distribution of the assets thereof upon the dissolution of the organization
15 or otherwise or (B) to exercise voting rights with respect to an interest in the organization have,
16 or are entitled or authorized to have, under the laws of such other jurisdiction, limited liability
17 for the contractual obligations or other liabilities of the organization.
18

19 NY CLS LLC § 102. ULLCA § 101(8) takes a similar but less complex approach (“an
20 unincorporated entity organized under laws other than the laws of this State which afford limited
21 liability to its owners comparable to the liability under Section 303 and is not required to obtain
22 a certificate of authority to transact business under any law of this State other than this [Act]”).
23 This Draft follows Delaware’s still simpler approach. Del. Code Ann. tit. 6, § 18-101(4)
24 (“denominated as such”).
25

26 **Paragraph (7) [Governance responsibility]** This definition is key to Sections 409 and
27 410, the Act’s operative provisions on standards of conduct and liability. As initially drafted, the
28 word “important” appeared instead of “principal”.
29

30 Jim McKay, the drafting committee’s liaison to the Committee on Style, made this
31 observation of “important”: “The word "important" is very fuzzy. You have provided no
32 standards from separating "important" from "nonimportant" matters. I suggest you delete
33 "important" and add language making an exception for ministerial or routine matters.” The
34 suggested approach would go too far, and so “principal” is offered (albeit tentatively).
35

36 **Paragraph (19) [Transfer]** – Following RUPA and ULPA (2001), this Act uses the
37 words “transfer” and “transferee” rather than the words “assignment” and “assignee.” See
38 RUPA § 503.
39

1 The reference to “transfer by operation of law” is significant in connection with Section
2 502 (Transfer of Member's Transferable Interest). That section severely restricts a transferee's
3 rights (absent the consent of the members), and this definition makes those restrictions
4 applicable, for example, to transfers ordered by a family court as part of a divorce proceeding
5 and transfers resulting from the death of a member.
6

7 **Paragraph (20) [Transferable Interest]** – On this point of terminology, this Draft
8 follows RUPA and ULPA (2001) rather than ULLCA, which refers to “distributional interest.”
9 ULLCA § 101(6).
10

11 **Paragraph (23) [Transferee]** – “Transferee” has displaced “assignee” as the
12 Conference’s term of art.
13
14

15 **SECTION 103. KNOWLEDGE AND NOTICE.**

16 (a) A person knows a fact if the person has actual knowledge of it.

17 (b) A person has notice of a fact if the person:

18 (1) knows of it;

19 (2) has notice of it under subsection (c);

20 (3) has received a notification of it under subsection (e); or

21 (4) has reason to know it exists from all of the facts known to the person at the
22 time in question.

23 (c) A person has notice of:

24 (1) another person’s dissociation as a member of a member-managed limited
25 liability company, 90 days after the effective date of a statement of dissociation pertaining to the
26 other person;

27 (2) another person’s ceasing to be a manager of a manager-managed limited
28 liability company, 90 days after the effective date of a statement of manager cessation pertaining
29 to the other person;

1 (3) a limited liability company's dissolution, 90 days after the effective date of a
2 statement of dissolution;

3 (4) a limited liability company's termination, 90 days after the effective date of a
4 statement of termination;

5 (5) a limited liability company's conversion, domestication, merger [**reserved**
6 **pending META**]

7 (6) the contents of a statement of authority under Section 302(a)(1), 90 days after
8 the effective date of the statement;

9 (7) the contents of a statement of denial pertaining to a statement of authority
10 under Section 302(a)(1), 90 days after the effective date of the statement, but this provision
11 ceases to operate as to any statement of denial 90 days after the effective date of a retraction of
12 the statement under Section 303(b).

13 (d) A person notifies or gives a notification to another person by taking steps reasonably
14 required to inform the other person in ordinary course, whether or not the other person knows it.

15 (e) A person receives a notification when the notification:

16 (1) comes to the person's attention; or

17 (2) is delivered at the person's place of business or at any other place held out by
18 the person as a place for receiving communications.

19 (f) Except as otherwise provided in subsection (g), a person other than an individual
20 knows, has notice, or receives a notification of a fact for purposes of a particular transaction
21 when the individual conducting the transaction for the person knows, has notice, or receives a
22 notification of the fact, or in any event when the fact would have been brought to the
23 individual's attention if the person had exercised reasonable diligence. A person other than an

1 individual exercises reasonable diligence if it maintains reasonable routines for communicating
2 significant information to the individual conducting the transaction for the person and there is
3 reasonable compliance with the routines. Reasonable diligence does not require an individual
4 acting for the person to communicate information unless the communication is part of the
5 individual's regular duties or the individual has reason to know of the transaction and that the
6 transaction would be materially affected by the information.

7 (g) Subject to subsection (c)(6) and (7):

8 (1) in a member-managed limited liability company, a member's knowledge,
9 notice, or receipt of a notification of a fact relating to the limited liability company is effective
10 immediately as knowledge of, notice to, or receipt of a notification by the limited liability
11 company, except in the case of a fraud on the limited liability company committed by or with the
12 consent of the member;

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

14 (A) a member's knowledge, notice, or receipt of a notification of a fact
15 relating to the limited liability company is not effective as knowledge of, notice to, or receipt of
16 a notification by the limited liability company, unless the member is also a manager or as
17 provided by law other than this [act].

18 (B) a manager's knowledge, notice, or receipt of a notification of a fact
19 relating to the limited liability company is effective immediately as knowledge of, notice to, or
20 receipt of a notification by the limited liability company, except in the case of a fraud on the
21 limited liability company committed by or with the consent of the manager.

22 **Reporters' Notes**

1 This Draft expands on ULLCA § 102 by providing for constructive notice (following
2 RUPA and ULPA (2001)) and by addressing the question of whether a member’s knowledge,
3 notice, etc. is attributed to the limited liability company.
4

5 **Subsection (g)** -- The rules stated in subsection (g) mirror the rules stated in RUPA and
6 ULPA (2001). The reference in subsection (g)(2)(i) to “other law” is meant to encompass a
7 member who is an agent (or apparent agent) of a manager-managed LLC without being a
8 manager.
9

10 The introductory clause (“Subject to . . .”) is novel and may cause problems, depending
11 on what types of constructive notice the new Act provides. If a statement of authority can limit a
12 person’s power to bind the limited liability company, query whether that limitation should also
13 affect the person’s power to bind via possession of information.
14

15 In any event, further refinement may be necessary to block attribution to the LLC when
16 the third party asserting attribution knows that the member or manager lacks authority in the area
17 to which the information to be attributed pertains. Suppose, for example, that Walker LLC files
18 a statement delineating the authority of its managers and the statement provides “David has no
19 responsibility for and authority to act for this limited liability company in matters pertaining to
20 its U.S. operations.” Before this statement begins to function as constructive notice (i.e., fewer
21 than 90 days have passed since the statement became effective), Bob – who knows of David’s
22 limitations – attempts to give the LLC a notice pertaining to the LLC’s U.S. operations by giving
23 the notice to David.
24
25

26 **SECTION 104. NATURE, PURPOSE, AND DURATION OF ENTITY.**

27 (a) A limited liability company is an entity distinct from its members, and a member does
28 not have any interest as a member in the property of the limited liability company. Property of
29 the limited liability company is not subject to attachment or execution except on a claim against
30 the limited liability company.

31 (b) A limited liability company may be organized under this [act] for any lawful purpose.

32 (c) A limited liability company has a perpetual duration.

33 **Reporters’ Notes**

34 **Subsection (a)** – The language concerning “attachment or execution” comes from UPA
35 25(2).
36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECTION 105. POWERS. A limited liability company has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a member for harm caused to the limited liability company by a breach of the operating agreement or violation of a duty to the limited liability company under this [act] or other law.

Reporters' Notes

Following ULPA (2001), this Draft omits as unnecessary any detailed list of specific powers. Compare ULLCA § 112, which contains such a list.

The power to sue and be sued is mentioned specifically so that Section 110(b) can prohibit the operating agreement from varying that power. The power to maintain an action against a member is mentioned specifically to establish that the limited liability company itself has standing to enforce the operating agreement, a point which should perhaps be made instead in Section 110 (concerning the operating agreement). In any event, the limited liability company's standing to enforce the operating agreement should be subject to change in the operating agreement.

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

(1) relations among the members of a limited liability company and between the members and the limited liability company, including relations with managers that are also members;

(2) relations between a limited liability company and any managers that are not members; and

(3) the liability of members as members for an obligation of the limited liability company.

Reporters' Notes

1 Clauses (1) and (3) are standard and, except for the reference to “including relations with
2 managers that are also members,” is derived from ULPA (2001) § 106. These provisions should
3 not be subject to change by the operating agreement.
4

5 This section separately states clause (2), because: (i) it is not clear that this Act should
6 choose the law for contracts between an LLC and its non-member manager(s); and (ii) even if
7 the Act should choose that law, perhaps that choice should be subject to change in the operating
8 agreement or in a separate agreement with the non-member manager. Suppose, for example, that
9 three individuals from Nevada form a manager-managed Nevada LLC to do business in Nevada
10 and Connecticut and wish to hire Jon, who lives in Connecticut, to serve as a manager of the
11 LLC and to direct its Connecticut operations. Should it be impossible to provide for Connecticut
12 law to govern the contract between Jon and the LLC?
13

14 Clause (2) does not mention the relations of non-member managers to members on the
15 assumption that, in a manager-managed LLC, a non-manager member “relates” to members
16 through the conceptual medium of the entity.
17
18

19 **SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW; RATE OF**
20 **INTEREST.**

21 (a) Unless displaced by particular provisions of this [act], the principles of law and
22 equity supplement this [act].

23 (b) If an obligation to pay interest arises under this [act] and the rate is not specified, the
24 rate is that specified in [applicable statute].
25

26 **SECTION 108. NAME.**

27 (a) The name of a limited liability company must contain “limited liability company” or
28 “limited company” or the abbreviation ““L.L.C.””, “LLC”, “L.C.”, or “LC”. “Limited” may be
29 abbreviated as “Ltd.”, and “company” may be abbreviated as “Co”.

30 (b) Unless authorized by subsection (c), the name of a limited liability company must be
31 distinguishable in the records of the [Secretary of State] from:

1 (1) the name of each person, other than an individual, incorporated, organized, or
2 authorized to transact business in this state; and

3 (2) each name reserved under Section 109 [or other state laws allowing the
4 reservation or registration of business names, including fictitious name statutes].

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

8 (1) the present user, registrant, or owner of the conflicting name consents in a
9 signed record to the use and submits an undertaking in a form satisfactory to the [Secretary of
10 State] to change the conflicting name to a name that complies with subsection (b) and is
11 distinguishable in the records of the [Secretary of State] from the name applied for;

12 (2) the applicant delivers to the [Secretary of State] a certified copy of the final
13 judgment of a court of competent jurisdiction establishing the applicant's right to use in this state
14 the name applied for; or

15 (3) the applicant delivers to the [Secretary of State] proof satisfactory to the
16 [Secretary of State] that the present user, registrant, or owner of the conflicting name:

17 (A) has domesticated, converted, or merged into the applicant; or

18 (B) has transferred substantially all of its assets, including the conflicting
19 name, to the applicant.

20 (d) Subject to Section 805, this section applies to any foreign limited liability company
21 transacting business in this state, having a certificate of authority to transact business in this
22 state, or applying for a certificate of authority.

1 **Reporters' Notes**

2
3 Subsection (a) is taken verbatim from ULLCA § 105(a). The rest of the section is taken
4 from ULPA (2001) § 108, which reflects the Conference's latest reworking of such provisions.
5
6

7 **SECTION 109. RESERVATION OF NAME.**

8 (a) The exclusive right to the use of a name that complies with Section 108 may be
9 reserved by:

10 (1) a person intending to organize a limited liability company under this [act] and
11 to adopt the name;

12 (2) a limited liability company or a foreign limited liability company authorized
13 to transact business in this state intending to adopt the name;

14 (3) a foreign limited liability company intending to obtain a certificate of
15 authority to transact business in this state and adopt the name;

16 (4) a person intending to organize a foreign limited liability company and
17 intending to have it obtain a certificate of authority to transact business in this state and adopt the
18 name;

19 (5) a foreign limited liability company formed under the name; or

20 (6) a foreign limited liability company formed under a name that does not comply
21 with Section 108(b) but the name reserved under this paragraph may differ from the foreign
22 limited liability company's name only to the extent necessary to comply with Section 108(b).

23 (b) A person may apply to reserve a name under subsection (a) by delivering to the
24 [Secretary of State] for filing an application that states the name to be reserved and the paragraph
25 of subsection (a) which applies. If the [Secretary of State] finds that the name is available for

1 use by the applicant, the [Secretary of State] shall file a statement of name reservation and
2 thereby reserve the name for the exclusive use of the applicant for a 120 days.

3 (c) An applicant that has reserved a name pursuant to subsection (b) may reserve the
4 same name for additional 120-day periods. A person having a current reservation for a name
5 may not apply for another 120-day period for the same name until 90 days have elapsed in the
6 current reservation.

7 (d) A person that has reserved a name under this section may deliver to the [Secretary of
8 State] for filing a notice of transfer that states the reserved name, the name and street and
9 mailing address of some other person to which the reservation is to be transferred, and the
10 paragraph of subsection (a) which applies to the other person. Subject to Section 206(c), the
11 transfer is effective when the [Secretary of State] files the notice of transfer.

12
13 **SECTION 110. EFFECT OF OPERATING AGREEMENT; NONWAIVABLE**
14 **PROVISIONS.**

15 (a) Except as otherwise provided in subsection (b), the members may make an operating
16 agreement, which governs relations among the members, managers and the limited liability
17 company and regulates the purpose, scope and conduct of the limited liability company's
18 activities.

19 (b) To the extent the operating agreement does not otherwise provide, this [act] governs
20 the limited liability company, its activities and the relations among the limited liability company
21 and its members and managers. This [act] must be applied to give maximum effect to the
22 principle of freedom of contract and to the enforceability of operating agreements. However, an
23 operating agreement may not: **[TBD]**

1 (c) An operating agreement may be oral, in a record, implied, or in any combination
2 thereof. An operating agreement and any amendment to the agreement must be agreed to by
3 each person that will be a member when the operating agreement or amendment takes effect. A
4 person that is admitted as a member in a limited liability company is bound by whatever
5 operating agreement is then in effect.

6 (d) Whether or not a limited liability company has itself manifested assent to the
7 operating agreement, the limited liability company:

8 (1) is bound by the operating agreement; and

9 (2) may enforce the operating agreement to the extent necessary to protect the
10 limited liability company from an actual or threatened direct injury.

11 (e) A limited liability company with one member may have an operating agreement. A
12 sole member may make an operating agreement by signing a record stating the terms of the
13 agreement and that the agreement is the limited liability company's operating agreement.

14 **Reporters' Notes**

15 Still pending issues -- whether a non-member may be a party to the operating
16 agreement; e.g., a non-member manager, a non-member lender

17
18 **Subsection (d)(2)** -- Section 901(b) explains when a member has standing to enforce the
19 operating agreement. This provision is the "flip side," empowering the limited liability company
20 to enforce the agreement but only when the limited liability company's interest are *directly* at
21 stake.

22
23 The Drafting Committee has yet to discuss, let alone decide, whether the direct/derivative
24 distinction should apply in a member-managed LLC. See Article 10, which tentatively answers
25 yes to that question.

26
27 **Subsection (e)** -- A comment will indicate that the "signed record" approach is not
28 exclusive and will note that a multi-member operating agreement does not automatically cease to
29 be effective merely because the LLC drops to having only one member.

1 **SECTION 111. REQUIRED INFORMATION.** A limited liability company shall
2 maintain at its designated office the following information:

3 (1) a copy of the initial articles of organization and all amendments to and restatements
4 of the articles, and signed copies of any powers of attorney under which any articles,
5 amendment, or restatement has been signed;

6 (2) a copy of the three most recent annual reports delivered by the limited liability
7 company to the [Secretary of State] pursuant to Section 210; and

8 (3) a copy of the limited liability company’s federal, state, and local income tax returns
9 and reports, if any, for the three most recent years.

10 **Reporters’ Notes**

11 The Drafting Committee has not yet discussed whether to include any required
12 information provision. This Draft takes a minimalist approach, requiring retention only of
13 records whose existence is required either by this Act (articles of organization; annual reports) or
14 tax law (tax returns). Even this minimalist approach raises the question of who is responsible for
15 maintaining the records in a member-managed LLC. Query whether this section should be
16 limited to manager-managed LLCs.
17

18 This Section could be expanded to required retention of other information that happens to
19 exist in record form. That is, the Act could say, in essence, “You don’t have to have this
20 information in record form, but if you do, you must maintain a copy at your designated office.”
21 We could consider whether any of the following items should be included in an expanded
22 required information provision:
23

- 24 ▪ a current list showing the full name and last known street and mailing address of each
25 member in alphabetical order, sion or merger;
- 26 ▪ a copy of any operating agreement made in a record and any amendment made in a
27 record to any operating agreement;
- 28 ▪ a copy of any financial statement of the limited liability company for the three most
29 recent years;
- 30 ▪ a copy of any record made by the limited liability company during the past three
31 years of any consent given by or vote taken of any member pursuant to this [act] or the
32 operating agreement; and
- 33 ▪ any record stating:
 - 34 ○ the amount of cash, and a description and statement of the agreed value of the
35 other benefits, contributed and agreed to be contributed by each member;

- the times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;
- any events upon the happening of which the limited liability company is to be dissolved and its activities wound up.

(This list is drawn from ULPA (2001), § 111.

SECTION 112. BUSINESS TRANSACTIONS OF MEMBER WITH LIMITED

LIABILITY COMPANY. A member may lend money to and transact other business with the limited liability company and has the same rights and obligations with respect to the loan or other transaction as a person that is not a member.

SECTION 113. OFFICE AND AGENT FOR SERVICE OF PROCESS.

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

- (1) an office, which need not be a place of its activity in this state; and
- (2) an agent for service of process.

(b) A foreign limited liability company shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited liability company or foreign limited liability company must be an individual who is a resident of this state or other person authorized to do business in this state.

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

1 (a) In order to change its designated office, agent for service of process, or the address of
2 its agent for service of process, a limited liability company or a foreign limited liability company
3 may deliver to the [Secretary of State] for filing a statement of change containing:

4 (1) the name of the limited liability company or foreign limited liability company;

5 (2) the street and mailing address of its current designated office;

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

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

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

12 (b) Subject to Section 206(c), a statement of change is effective when filed by the
13 [Secretary of State].

14 **Comment**

15 **Source** – ULPA (2001) § 115, which is based on ULLCA § 109.

16
17 **Subsection (a)** – This Draft uses “may” rather than “shall” here because other avenues
18 exist. A limited liability company may also change the information by an amendment to its
19 articles of organization, Section 202, or through its annual report. Section 210(e). A foreign
20 limited liability company may use its annual report. Section 210(e). However, neither a limited
21 liability company nor a foreign limited liability company may wait for the annual report if the
22 information described in the public record becomes inaccurate. See Sections 208 (imposing
23 liability for false information in record) and 117(b) (providing for substitute service).
24

25
26 **SECTION 115. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

1 (a) In order to resign as an agent for service of process of a limited liability company or
2 foreign limited liability company, the agent shall deliver to the [Secretary of State] for filing a
3 statement of resignation containing the name of the limited liability company or foreign limited
4 liability company.

5 (b) After receiving a statement of resignation, the [Secretary of State] shall file it and
6 mail a copy to the designated office of the limited liability company or foreign limited liability
7 company and another copy to the principal office if the address of the office appears in the
8 records of the [Secretary of State] and is different from the address of the designated office.

9 (c) An agency for service of process terminates on the 31st day after the [Secretary of
10 State] files the statement of resignation.

11 **Comment**

12 **Source** – ULPA (2001) § 116, which is based on ULLCA §110.
13

14
15 **SECTION 116. SERVICE OF PROCESS.**

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

20 (b) If a limited liability company or foreign limited liability company does not appoint or
21 maintain an agent for service of process in this state or the agent for service of process cannot
22 with reasonable diligence be found at the agent’s address, the [Secretary of State] is an agent of

1 the limited liability company or foreign limited liability company upon whom process, notice, or
2 demand may be served.

3 (c) Service of any process, notice, or demand on the [Secretary of State] may be made by
4 delivering to and leaving with the [Secretary of State] duplicate copies of the process, notice, or
5 demand. If a process, notice, or demand is served on the [Secretary of State], the [Secretary of
6 State] shall forward one of the copies by registered or certified mail, return receipt requested, to
7 the limited liability company or foreign limited liability company at its designated office.

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

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

11 (2) the date shown on the return receipt, if signed on behalf of the limited liability
12 company or foreign limited liability company; or

13 (3) five days after the process, notice, or demand is deposited in the mail, if
14 mailed correctly addressed and with postage prepaid.

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

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

19 **Reporters' Notes**

20 **Source** – ULPA (2001) § 117, which is based on ULLCA §111.

1 [ARTICLE] 2

2 FORMATION; ARTICLES OF ORGANIZATION AND OTHER FILINGS

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

6 (a) In order for a limited liability company to be formed, articles of organization must be
7 signed and delivered to the [Secretary of State] for filing pursuant to subsection (c). The articles
8 must state:

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

11 (2) the street and mailing address of the initial designated office and the name and
12 street and mailing address of the initial agent for service of process;

13 (3) whether the limited liability company is member-managed or manager-
14 managed;

15 (4) any additional information required by [Article] 10 and **[TBD – pending**
16 **META]**.

17 (b) Articles of organization may also contain matters other than those required by
18 subsection (a) but may not vary or otherwise affect the provisions specified in Section 110(b) in
19 a manner inconsistent with that section.

20 (c) If there has been substantial compliance with subsection (a), a limited liability
21 company is formed when the [Secretary of State] files the articles of organization, unless the
22 articles state a delayed effective date pursuant to Section 206(c). If the articles state a delayed
23 effective date, a limited liability company will not be formed if, before the articles take effect,

1 the person who signed the articles signs and delivers to the [Secretary of State] for filing a
2 statement of cancellation.

3 (d) Subject to subsection (b), if any provision of a operating agreement is inconsistent
4 with the filed and effective articles of organization or with a filed and effective statement of
5 authority, termination, or change, or filed articles of domestication, conversion, or merger:

6 (1) the operating agreement prevails as to members and transferees; and

7 (2) the filed and effective articles or statement prevail as to persons, other than
8 members and transferees, that reasonably rely to their detriment on the filed and effective record.

9 (e) Any result that may be accomplished by a provision in the operating agreement may
10 also be accomplished by a provision in the articles of organization

11 **Reporters' Notes**

12 **Subsection (a)(3)** – As drafted, this provision does not reflect a default rule. That is, a
13 person seeking to form a limited liability company must make an affirmative choice between
14 member-management and manager-management. The articles will be rejected as non-
15 conforming unless they specify the choice. Query whether this approach is appropriate, given
16 that LLC statutes (including ULLCA) typically default to member-management.
17

18 **Subsection (c)** – The second sentence is new, suggested by either a member of or advisor
19 to the Drafting Committee at the most recent meeting.
20

21 **Subsection (d)** – Source: ULLCA Section 203(c), which is also followed in ULPA
22 (2001) § 201(d). The following three paragraphs are from the comment to ULPA (2001) §
23 201(d), revised to refer to a limited liability company.
24

25 A limited liability company is a creature of contract as well as a creature of statute. It
26 will be possible, albeit improper, for the operating agreement to be inconsistent with the articles
27 of organization or other specified public filings relating to the limited liability company. For
28 those circumstances, this subsection provides the rule for determining which source of
29 information prevails.
30

31 For members and transferees, the operating agreement is paramount. For third parties
32 seeking to invoke the public record, actual knowledge of that record is necessary and notice
33 under Section 103(c) or (d) is irrelevant. A third party wishing to enforce the public record over

1 the operating agreement must show reasonable reliance on the public record, and reliance
2 presupposes knowledge.

3
4 This subsection does not expressly cover a situation in which (i) one of the specified filed
5 records contains information in addition to, but not inconsistent with, the operating agreement,
6 and (ii) a person, other than a member or transferee, detrimentally relies on the additional
7 information. However, the policy reflected in this subsection seems equally applicable to that
8 situation.

9
10 **Subsection (e)** – The subsection appears neither in ULLCA nor ULPA (2001) but does
11 reflect the approach taken (if not the language used) by many LLC statutes.
12
13

14 **SECTION 202. AMENDMENT OR RESTATEMENT OF ARTICLES OR**
15 **ORGANIZATION.**

16 (a) In order to amend its articles of organization, a limited liability company shall deliver
17 to the [Secretary of State] for filing an amendment or, pursuant to [Article] 10, articles of
18 domestication, conversion or merger [TBD – pending META] stating:

19 (1) the name of the limited liability company;

20 (2) the date of filing of its articles of organization; and

21 (3) the changes the amendment makes to the articles as most recently amended or
22 restated.

23 (b) Articles of organization may be amended at any time for any other proper purpose as
24 determined by the limited liability company.

25 (c) Restated articles of organization may be delivered to the [Secretary of State] for
26 filing in the same manner as an amendment.

27 (d) Subject to Section 206(c), an amendment to or restatement of articles of organization
28 is effective when filed by the [Secretary of State].

1 (e) If a member of a member-managed limited liability company, or a manager of a
2 manager-managed limited liability company, knows that any information in filed articles of
3 organization was false when article was filed or has become false owing to changed
4 circumstances, the member or manager shall promptly:

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

6 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of
7 change pursuant to Section 114 or a statement of correction pursuant to Section 207.

8 **Reporters' Notes**

9 **Subsection (e)** – This subsection is taken from ULPA (2001) § 202(c), which imposes
10 the responsibility on general partners. ULLCA has no comparable provision. This provision
11 imposes an obligation directly on the members and managers rather than on the limited liability
12 company. A member's or manager's failure to meet that responsibility can expose the member
13 or manager to liability to third parties under Section 208(a)(2) and might constitute a breach of
14 the member's or manager's operational duties under Section 409(a)(2). In addition, an aggrieved
15 person may seek a remedy under Section 205 (Signing and Filing Pursuant to Judicial Order).
16
17

18 **SECTION 203. STATEMENT OF TERMINATION.** A dissolved limited liability
19 company that has completed winding up may deliver to the [Secretary of State] for filing a
20 statement of termination that states:

21 (1) the name of the limited liability company;

22 (2) the date of filing of its initial articles of organization; and

23 (3) any other information as determined by the limited liability company.

24 **Reporters' Notes**

25 This section is permissive and perhaps belongs in Article 7.
26
27
28

29 **SECTION 204. SIGNING OF RECORDS.**

1 (a) Records delivered to the [Secretary of State] for filing pursuant to this [act] must be
2 signed in the following manner:

3 (1) Initial articles of organization must be signed by a person:

4 (A) on that person's behalf, if that person is to become the limited liability
5 company's sole member when the limited liability company is formed;

6 (B) on behalf of that person and other persons, if that person and the other
7 persons are to become the limited liability company's initial members when the limited liability
8 company is formed and that person is authorized by the other persons to sign the articles;

9 (C) on behalf of one or more other persons, if the other persons are to
10 become the limited liability company's initial members when the limited liability company is
11 formed, and that person is authorized by the other persons to sign the articles;

12 (2) A statement of cancellation under Section 201(c) must be signed by each of
13 the persons on whose behalf the initial articles of organization were signed.

14 (3) Except as otherwise provided in subsection (a)(4), a record signed on behalf of
15 an existing limited liability company must be signed by:

16 (A) at least one member, if the limited liability company is member-
17 managed; or

18 (B) at least one manager, if the limited liability company is manager-
19 managed.

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

1 (5) A statement of denial by a person under Section 303(a) must be signed by that
2 person.

3 (6) A statement canceling a statement of denial under Section 303(b) must be
4 signed by the same person that signed the statement of denial.

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

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

8 **Reporters' Notes**

9
10 This Draft uses “authorized agent” rather than “attorney in fact,” because the latter usage
11 seems needlessly recondite.

12
13 **Subsection (a)** – Query whether subsection (a)(3) and (7) suffice to indicate that a
14 statement of dissociation, Section 604, must be signed either by the dissociated member or the
15 limited liability company, depending on who is delivering the document to the Secretary of State
16 for filing.

17
18 **Subsection (a)(2)** – Query whether necessary to revise to accommodate situations when
19 one of the original signers has ceased to exist or lacks capacity?
20
21

22 **SECTION 205. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

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

26 (1) the person to sign the record;

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

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

1 (b) If the person aggrieved under subsection (a) is not the limited liability company or
2 foreign limited liability company to which the record pertains, the person shall make the limited
3 liability company or foreign limited liability company a party to the action.

4 (c) A person aggrieved under subsection (a) may seek the remedies provided in
5 subsection (a) in the same action in combination or in the alternative.

6 (d) A record that is filed pursuant to this section is effective even if it has not been
7 signed.

8 **Reporters' Notes**

9 **Source** – ULPA (2001) § 205, which is based on RULPA § 205, which was the source of
10 ULLCA § 210.
11
12

13 **SECTION 206. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY** 14 **OF STATE]; EFFECTIVE TIME AND DATE.**

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

20 (1) for a statement of denial, send a copy of the filed statement and a receipt for
21 the fees to the person on whose behalf the statement was delivered for filing and to the limited
22 liability company;

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

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

3 (c) Except as otherwise provided in Sections 115 and 207, a record delivered to the
4 [Secretary of State] for filing under this [act] may specify an effective time and a delayed
5 effective date. Subject to Sections 115, 201(c) and 207, a record filed by the [Secretary of State]
6 is effective:

7 (1) if the record does not specify an effective time and does not specify a delayed
8 effective date, on the date and at the time the record is filed as evidenced by the [Secretary of
9 State's] endorsement of the date and time on the record;

10 (2) if the record specifies an effective time but not a delayed effective date, on the
11 date the record is filed at the time specified in the record;

12 (3) if the record specifies a delayed effective date but not an effective time, at
13 12:01 a.m. on the earlier of:

14 (A) the specified date; or

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

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

18 (A) the specified date; or

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

20 **Comment**

21 **Source** – ULPA (2001) § 206, which was based on ULLCA §206.
22
23

24 **SECTION 207. CORRECTING FILED RECORD.**

1 (a) A limited liability company or foreign limited liability company may deliver to the
2 [Secretary of State] for filing a statement of correction to correct a record previously delivered
3 by the limited liability company or foreign limited liability company to the [Secretary of State]
4 and filed by the [Secretary of State], if at the time of filing the record contained false or
5 erroneous information or was defectively signed.

6 (b) A statement of correction may not state a delayed effective date and must:

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

9 (2) specify the incorrect information and the reason it is incorrect or the manner
10 in which the signing was defective; and

11 (3) correct the incorrect information or defective signature.

12 (c) When filed by the [Secretary of State], a statement of correction is effective
13 retroactively as of the effective date of the record the statement corrects, but the statement is
14 effective when filed:

15 (1) for the purposes of Section 103(c); and

16 (2) as to persons relying on the uncorrected record and adversely affected by the
17 correction.

18 **Comment**

19 **Source** – ULPA (2001) § 207, which was based on ULLCA §207.
20
21

22 **SECTION 208. LIABILITY FOR FALSE INFORMATION IN FILED RECORD.**

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

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

6 (2) a member of member-managed limited liability company, or a manager of a
7 manager-managed limited liability company, if the record was delivered for filing on behalf of
8 the limited liability company and the member or manager has notice that the information was
9 false when the record was filed or has become false because of changed circumstances for a
10 reasonably sufficient time before the information is relied upon to enable the member or
11 manager to effect an amendment under Section 202, file a petition pursuant to Section 205, or
12 deliver to the [Secretary of State] for filing a statement of change pursuant to Section 114 or a
13 statement of correction pursuant to Section 207.

14 (b) A person who signs a record authorized or required to be filed under this [act]
15 thereby affirms under the penalties of perjury that the facts stated in the record are true.

16 **Reporters' Notes**

17 Source: ULPA (2001) § 207, which expanded on ULLCA § 209.
18
19

20 **SECTION 209. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.**

21 (a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish
22 a certificate of existence for a limited liability company if the records filed in the [office of the
23 Secretary of State] show that the [Secretary of State] has filed a articles of organization and has
24 not filed a statement of termination. A certificate of existence must state:

- 1 (1) the limited liability company's name;
- 2 (2) that it was duly formed under the laws of this state and the date of formation;
- 3 (3) whether all fees, taxes, and penalties due to the [Secretary of State] under this
- 4 [act] or other law have been paid;
- 5 (4) whether the limited liability company's most recent annual report required by
- 6 Section 210 has been filed by the [Secretary of State];
- 7 (5) whether the [Secretary of State] has administratively dissolved the limited
- 8 liability company;
- 9 (6) whether the limited liability company has delivered to the [Secretary of State]
- 10 for filing a statement of dissolution;
- 11 (7) that a statement of termination has not been filed by the [Secretary of State];
- 12 and
- 13 (8) other facts of record in the [office of the Secretary of State] which may be
- 14 requested by the applicant.

15 (b) The [Secretary of State], upon request and payment of the requisite fee, shall furnish
16 a certificate of authorization for a foreign limited liability company if the records filed in the
17 [office of the Secretary of State] show that the [Secretary of State] has filed a certificate of
18 authority, has not revoked the certificate of authority, and has not filed a notice of cancellation.
19 A certificate of authorization must state:

- 20 (1) the foreign limited liability company's name and any alternate name adopted
- 21 under Section 805(a) for use in this state;
- 22 (2) that it is authorized to transact business in this state;

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

3 (4) whether the foreign limited liability company's most recent annual report
4 required by Section 210 has been filed by the [Secretary of State];

5 (5) that the [Secretary of State] has not revoked its certificate of authority and has
6 not filed a notice of cancellation; and

7 (6) other facts of record in the [office of the Secretary of State] which may be
8 requested by the applicant.

9 (c) Subject to any qualification stated in the certificate, a certificate of existence or
10 certificate of authorization issued by the [Secretary of State] may be relied upon as conclusive
11 evidence that the limited liability company or foreign limited liability company is in existence or
12 is authorized to transact business in this state.

13 **Reporters' Notes**

14 **Source** – ULPA (2001) § 209, which was based on ULLCA Section 208.
15
16

17 **SECTION 210. ANNUAL REPORT FOR [SECRETARY OF STATE].**

18 (a) Each year a limited liability company or a foreign limited liability company
19 authorized to transact business in this state shall deliver to the [Secretary of State] for filing a
20 report that states:

21 (1) the name of the limited liability company or foreign limited liability company;

22 (2) the street and mailing address of its designated office and the name and street
23 and mailing address of its agent for service of process in this state;

1 (3) in the case of a limited liability company, the street and mailing address of its
2 principal office; and

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

6 (b) Information in an annual report must be current as of the date the report is delivered
7 to the [Secretary of State] for filing.

8 (c) The first annual report must be delivered to the [Secretary of State] between [January
9 1 and April 1] of the year following the calendar year in which a limited liability company was
10 formed or a foreign limited liability company was authorized to transact business. A report must
11 be delivered to the [Secretary of State] between [January 1 and April 1] of each subsequent
12 calendar year.

13 (d) If an annual report does not contain the information required in subsection (a), the
14 [Secretary of State] shall promptly notify the reporting limited liability company or foreign
15 limited liability company and return the report to it for correction. If the report is corrected to
16 contain the information required in subsection (a) and delivered to the [Secretary of State] within
17 30 days after the effective date of the notice, it is timely delivered.

18 (e) If a filed annual report contains an address of a designated office or the name or
19 address of an agent for service of process which differs from the information shown in the
20 records of the [Secretary of State] immediately before the filing, the differing information in the
21 annual report is considered a statement of change under Section 114.

22 **Reporters' Notes**

23 **Source** – ULPA (2001) § 210, which was based on ULLCA 211.

1 [ARTICLE] 3

2 RELATIONS OF MEMBERS AND MANAGERS

3 TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

4
5
6 SECTION 301. AGENCY OF MEMBERS AND MANAGERS. Subject to Section

7
8 302, the following rules apply.

9 (1) In a member-managed limited liability company:

10 (A) Each member is an agent of the limited liability company for the purpose of
11 its activities, and an act of a member, including the signing of an instrument in the company's
12 name, for apparently carrying on in the ordinary course the company's activities or activities of
13 the kind carried on by the company binds the company, unless the member had no authority to
14 act for the company in the particular matter and the person with which the member was dealing
15 knew or had notice that the member lacked authority.

16 (B) An act of a member which is not apparently for carrying on in the ordinary
17 course the company's activities or activities of the kind carried on by the company binds the
18 company only if the act was authorized by the other members.

19 (2) In a manager-managed limited liability company:

20 (A) A member is not an agent of the company for the purpose of its activities
21 solely by reason of being a member.

22 (B) Each manager is an agent of the company for the purpose of its activities, and
23 an act of a manager, including the signing of an instrument in the company's name, for
24 apparently carrying on in the ordinary course the company's activities or activities of the kind

1 carried on by the company binds the company, unless the manager had no authority to act for the
2 company in the particular matter and the person with which the manager was dealing knew or
3 had notice that the manager lacked authority.

4 (C) An act of a manager which is not apparently for carrying on in the ordinary
5 course the company's activities or activities of the kind carried on by the company binds the
6 company only if the act was authorized under Section 407.

7 8 **SECTION 302. STATEMENT OF AUTHORITY**

9 (a) A limited liability company or foreign limited liability company may deliver to the
10 [Secretary of State] for filing a statement of authority, which must state the name of the limited
11 liability company or foreign limited liability company and may state the authority of any person
12 to:

13 (1) transfer real property held in the name of the limited liability company or
14 foreign limited liability company; and

15 (2) enter into other transactions on behalf of, or to otherwise act for, the limited
16 liability company or foreign limited liability company.

17 (b) A statement of authority under subsection (a) may:

18 (1) identify a particular person or may refer to a position that exists in or with
19 respect to the limited liability company; and

20 (2) state authority, limit authority or negate authority, or any do any combination
21 thereof.

22 (c) Except as otherwise provided in subsection (e), a statement of authority under
23 subsection (a)(1):

1 (1) is conclusive against the limited liability company in favor of:

2 (A) any person that gives value without knowledge to the contrary; and

3 (B) a person that has not given value if the person is not a member or a
4 transferee and relies on the statement without knowledge to the contrary;

5 (2) gives notice of its contents to all persons, as provided in Section 103(c)(6).

6 (d) Except as otherwise provided in subsection (e), a statement of authority under
7 subsection (b)(2) is conclusive against the limited liability company in favor of a person that is
8 not a member or a transferee and relies on the delineation without knowledge to the contrary.

9 (e) If statements of authority conflict, the later effective statement controls. If a
10 statement of authority conflicts with a statement of denial, the statement of authority has no
11 effect under this section until the statement of denial is retracted pursuant to Section 303.

12 **Reporters' Notes**

13 At the November, 2003 meeting the Drafting Committee considered a version of this
14 language which used the articles of organization rather than separate statements of authority.
15 The Committee directed the Reporters to use RUPA's "statement" approach. Accordingly, this
16 section follows RUPA § 303 while attempting to state the rules more directly. In addition, this
17 section extends the rules to foreign limited liability companies. This version does not (yet?)
18 require duplicate filings in the real estate records.

19
20 The Reporters believe that it would be better to return to the approach suggested in the
21 November, 2003 briefing materials and use the articles rather than separate statements.
22

23 **Subsection (d)** – This subsection is less powerful than subsection (c), providing no
24 constructive notice (i.e., section 103(c) does not operate on statements that do not concern real
25 property) and applying only to third parties. In general, members and transferees (who derive
26 their rights from members) should be governed by the operating agreement rather than any
27 public filing. Subsection (c) provides a different rule as to real estate transactions only because
28 certainty in real estate records is an extremely important value.
29

30 **SECTION 303. STATEMENTS OF DENIAL.**

31
32 (a) A person named in a filed statement of authority may deliver to the [Secretary of

1 State] for filing a statement of denial that contradicts the statement of authority in whole or in
2 part. Subject to subsection (b), a statement of denial has the effect provided in Section 302(e)
3 and gives notice of its contents to all persons as provided in Section 103(c)(7).

4 (b) A filed statement of denial is retracted if:

5 (1) the person who signed it delivers to the [Secretary of State] for filing a
6 statement retracting the statement of denial; or

7 (2) if, on application by the limited liability company, the [court] determines that
8 the statement of denial is incorrect in any material way and orders that the statement of denial be
9 retracted.

10
11 **SECTION 304. LIMITED LIABILITY COMPANY LIABLE FOR MEMBER'S**
12 **OR MANAGER'S ACTIONABLE CONDUCT.**

13 (a) A member-managed limited liability company is liable for loss or injury caused to a
14 person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable
15 conduct, of a member acting in the ordinary course of business of the company or with authority
16 of the limited liability company.

17 (b) If, in the course of the limited liability company's activities or while acting with
18 authority of the limited liability company, a member receives or causes the limited liability
19 company to receive money or property of a person that is not a member, and the money or
20 property is misapplied by a member, the limited liability company is liable for the loss.

21 (c) In a manager-managed limited liability company the rules stated in subsections (a)
22 and (b):

23 (1) apply to each manager of the limited liability company, whether or not the

1 manager is a member; and

2 (2) do not apply to a member in the member’s capacity as a member.

3 **Reporters’ Notes**

4
5 This section follows the paradigm of RUPA § 305, which combined UPA §§ 13 and 14
6 into a single section. ULLCA § 302 contains no parallel to RUPA § 305(b). That omission is
7 reversed here, in subsection (b).

8
9 RUPA § 305 contains a confusing use of the word authority, which was carried forward
10 in ULPA (2001) § 403. The following Comment to that section explains the usage issue:

11 **Comment [to ULPA (2001) § 403]**

12
13
14 Source: RUPA Section 305. For the meaning of “authority” in subsections (a) and (b),
15 see RUPA Section 305, Comment. The third-to-last paragraph of that Comment states:

16
17 The membership is liable for the actionable conduct or omission of a member acting in
18 the ordinary course of its business or “with the authority of the membership.” This is intended to
19 include a member's apparent, as well as actual, authority, thereby bringing within Section 305(a)
20 the situation covered in UPA Section 14(a).

21
22 The last paragraph of that Comment states:

23
24 Section 305(b) is drawn from UPA Section 14(b), but has been edited to improve clarity.
25 It imposes strict liability on the membership for the misapplication of money or property
26 received by a member in the course of the membership's business or otherwise within the scope
27 of the member's actual authority.

28
29 Section 403(a) of this Act is taken essentially verbatim from RUPA Section 305(a), and
30 Section 403(b) of this Act is taken essentially verbatim from RUPA Section 305(b).

31
32
33 **SECTION 305. LIABILITY OF MEMBERS AND MANAGERS.**

34 (a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities
35 of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts,
36 obligations, and liabilities of the limited liability company. A member or manager is not
37 personally liable for a debt, obligation, or liability of the limited liability company solely by

1 reason of being or acting as a member or manager.

2 (b) The failure of a limited liability company to observe the usual limited liability
3 company formalities or requirements relating to the exercise of its powers or management of its
4 activities is not a ground for imposing personal liability on the members or managers for the
5 debts, obligations, or liabilities of the limited liability company.

6 (c) All or specified members or categories of members are liable in their capacity as
7 members for all or specified debts, obligations, or liabilities of the company only if:

8 (1) the articles of organization contain a provision to that effect; and

9 (2) each member so liable has consented in writing to the adoption of the
10 provision or to be bound by the provision.

11 **Reporters' Notes**

12
13 This section comes almost verbatim from ULLCA § 303. This version makes the
14 stylistic change of replacing “company” with “limited liability company” and in subsection
15 (c)(2) changes “a member” to “each member.” That change highlights a question to be resolved
16 if the Drafting Committee decides to retain subsection (c) – namely, whether an obligation
17 intended to apply to more than one member will apply to those who do consent if some of the
18 members intended to be liable do not consent.

1 [ARTICLE] 4

2 RELATIONS OF MEMBERS TO EACH OTHER AND
3 TO LIMITED LIABILITY COMPANY
4

5 SECTION 401. HOW A PERSON BECOMES A MEMBER.

6 (a) A person becomes a member according to the following rules:

7 (1) A person becomes a member when the limited liability company is formed:

8 (i) if the person is the sole person on whose behalf the limited liability
9 company was formed; or

10 (ii) if the limited liability company was formed on behalf of more than one
11 person, in accordance with an agreement among those persons.

12 (2) A person becomes a member after the limited liability company is formed and
13 has had at least one member:

14 (i) as provided in the operating agreement;

15 (ii) as the result of a domestication, conversion or merger under [Article]
16 11 or [TBD – pending META];

17 (iii) under Section 701(a)(4); or

18 (iv) with the consent of all the members.

19 (b) A person may become a member without making or being obligated to make a
20 contribution to the limited liability company or acquiring a transferable interest.

21 **Reporters' Notes**

22 At the November, 2003 meeting, discussion was intense and views divided as to whether
23 this Act should allow “shelf” LLCs. This Draft tries to steer a middle course, recognizing that:
24 (i) it is the filing of a public document that creates the LLC as a legal person, and (ii) LLCs are

1 filed on behalf of one or more persons intending to become members upon formation. To lean
2 more toward the “shelf” LLC approach, subsection (a) could be divided into two subsections,
3 which would read as follows:
4

5 (a) Before a limited liability company has any members, a person becomes a member:

6
7 (i) when the limited liability company is formed, in accordance with an agreement
8 among the persons on whose behalf the limited liability company was formed; or
9

10 (ii) if no agreement exists, with the consent of the majority of persons who signed
11 the initial articles of organization.
12

13 (b) After a limited liability company has had at least one member, a person becomes a
14 member: **[same as clause (2), in the text above]**
15

16 **Subsection (c)**
17
18

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

23 **Reporters’ Notes**

24 **Source** – ULPA (2001) § 501, which took ULLCA § 401 essentially verbatim except that
25 in ULLCA “or” instead of “and” introduces the last phrase.
26
27

28 **SECTION 403. LIABILITY FOR CONTRIBUTIONS.**

29 (a) A person's obligation to make a contribution of money, property, or other benefit to,
30 or to perform services for, a limited liability company is not excused by the person's death,
31 disability, or other inability to perform personally. If a person does not make the required
32 contribution of property or services, the person is obligated at the option of the limited liability

1 company to contribute money equal to the value of that portion of the contribution which has not
2 been made.

3 (b) A creditor of a limited liability company which extends credit or otherwise acts in
4 reliance on an obligation described in subsection (a), and without notice of any compromise
5 under Section 407, may enforce the original obligation.

6 **Reporters' Notes**

7 **Source:** ULLCA § 402, which is taken from RULPA § 502(b), which also gave rise to
8 ULPA (2001) § 502.
9

10 This version differs from ULLCA § 402 in only four respects, none of them substantive.
11 (1) In the first sentence of subsection (a), “make a contribution” replaces “contribute” so that the
12 subsection’s opening phrase uses a defined term. (2) The second sentence of subsection (a)
13 omits the word “stated” immediately before the second occurrence of “contribution” (“value of
14 the stated contribution which has not been made”). There is no apparent referent for this
15 adjective (which appears in the ULLCA version), so it has been deleted. (3) Throughout
16 subsection (a), “person” replaces “member” to indicate that the section applies not only to
17 members but also to persons who have promised contributions and whose membership is
18 conditioned on the making of the promised contribution (or some other event). (4) In subsection
19 (b), consistent with the Style Committee’s current approach, “which” replaces “who” following
20 “creditor of the limited liability company”.
21

22

23 **SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE** 24 **DISSOLUTION.**

25 (a) Any distributions made by a limited liability company before its dissolution and
26 winding up must be in equal shares.

27 (b) A member does not have a right to any distribution before the dissolution and
28 winding up of the limited liability company unless the limited liability company decides to make
29 an interim distribution. A person’s dissociation does not entitle the person to any distribution.

1 (c) A member does not have a right to demand or receive any distribution from a limited
2 liability company in any form other than cash. Except as otherwise provided in Section 709(c), a
3 limited liability company may distribute an asset in kind if each portion of the asset is fungible
4 with each other portion and each member receives a percentage of the asset equal in value to the
5 member's share of distributions.

6 (d) When a member or transferee becomes entitled to receive a distribution, the member
7 or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited
8 liability company with respect to the distribution. However, the limited liability company's
9 obligation to make a distribution is subject to offset for any amount owed to the limited liability
10 company by the member or dissociated member on whose account the distribution is made.

11 **Reporters' Notes**

12 This section is an amalgam of ULLCA § 405 and ULPA (2001) §§ 504 (interim
13 distributions) 505 (no distribution on account of dissociation), 506 (distribution in kind) and 507
14 (right to distribution).

15
16 **Subsection (d)** – The first sentence is probably redundant of Section 405(e) (limitations
17 on distributions; those entitled to distributions at parity with other general unsecured creditors).
18 The same redundancy exists under ULPA (2001) §§ 507 and 508.

21 **SECTION 405. LIMITATIONS ON DISTRIBUTION.**

22 (a) A limited liability company may not make a distribution in violation of the operating
23 agreement.

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

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

1 (2) the limited liability company's total assets would be less than the sum of its
2 total liabilities plus the amount that would be needed, if the limited liability company were to be
3 dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential
4 rights upon dissolution, winding up, and termination of members whose preferential rights are
5 superior to those of persons receiving the distribution.

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

10 (d) Except as otherwise provided in subsection (g), the effect of a distribution under
11 subsection (b) is measured:

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

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

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

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

20 (e) A limited liability company's indebtedness to a member incurred by reason of a
21 distribution made in accordance with this section is at parity with the limited liability company's
22 indebtedness to its general, unsecured creditors.

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

5 (g) If indebtedness is issued as a distribution, each payment of principal or interest on the
6 indebtedness is treated as a distribution, the effect of which is measured on the date the payment
7 is made.

8 **Comment**

9 **Source** – ULPA (2001) § 508, which was derived from ULLCA § 406, which was in turn
10 derived from MBCA § 6.40.

11
12 **Subsection (c)** – This subsection appears to impose a standard of ordinary care, in
13 contrast with the more complicated approach stated in Sections 409 and 410.
14
15

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

17 (a) If a member of a member-managed, or manager of a manager-managed, limited
18 liability company consents to a distribution made in violation of Section 405 and the limited
19 liability company satisfies Section 410 with regard to the member's or manager's giving of
20 consent, the member or manager is personally liable to the limited liability company for the
21 amount of the distribution which exceeds the amount that could have been distributed without
22 the violation.

23 (b) A member or transferee that receives a distribution knowing that the distribution to
24 that member or transferee was made in violation of Section 405 is personally liable to the limited
25 liability company but only to the extent that the distribution received by the member or
26 transferee exceeded the amount that could have been properly paid under Section 405.

1 (c) A person against which an action is commenced under subsection (a) may:

2 (1) implead in the action any other person that is liable under subsection (a) and
3 compel contribution from the person; and

4 (2) implead in the action any person that received a distribution in violation of
5 subsection (b) and compel contribution from the person in the amount the person received in
6 violation of subsection (b).

7 (d) An action under this section is barred if it is not commenced within two years after
8 the distribution.

9 **Reporters' Notes**

10 **Source** – Same derivation as Section 405.

11
12 Query – is it adequately clear that liability under this section is not affected by a person
13 ceasing to be a member, manager or transferee after the time that the liability attaches? Consider
14 Section 102(9) and (10) (defining “manager” and “member” to exclude former managers and
15 former members).
16
17

18 **SECTION 407. MANAGEMENT OF A LIMITED LIABILITY COMPANY**

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

20 (1) Each member has equal rights in the management and conduct of the limited
21 liability company's activities.

22 (2) A difference arising among members as to a matter in the ordinary course of
23 the activities of a limited liability company may be decided by a majority of the members. An
24 act outside the ordinary course of activities of a limited liability company may be undertaken
25 only with the consent of all the members. An amendment to the operating agreement may be
26 made only with the consent of all the members.

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

2 (1) Except as expressly provided in this [act], any matter relating to the activities
3 of the limited liability company may be exclusively decided by the managers.

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

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

8 Subject to subsection (b)(4), an act outside the ordinary course of activities of a limited liability
9 company may be undertaken only with the consent of all the managers.

10 (4) The consent of each member is necessary to:

11 (A) amend the operating agreement;

12 (B) sell, lease, exchange, or otherwise dispose of all, or substantially all,
13 of the limited liability company's property, with or without the good will, other than in the usual
14 and regular course of the limited liability company's activities;

15 (C) **[TBD]**

16 (5) A manager may be chosen at any time by the consent of a majority of the
17 members and remains a manager until a successor has been chosen, unless the manager sooner
18 resigns, is removed, dies or, in the case of a manager that is not an individual, terminates. A
19 manager may be removed at any time by the consent of a majority of the members, and those
20 members need not state or have cause and not need provide the manager with advance notice or
21 an opportunity to be heard. A person need not be a member in order to be a manager, but the
22 dissociation of a member who is also a manager removes the person as a manager. If a person
23 that is both a manager and a member ceases to be a manager, that cessation does not cause the

1 person to dissociate as a member.

2 (c) Action requiring the consent of members under this [act] may be taken without a
3 meeting, and a member may appoint a proxy to consent or otherwise act for the member by
4 signing an appointment record, either personally or by the member's agent.

5 (d) The dissolution of a limited liability company does not affect the application of this
6 Section. However, a person that wrongfully causes dissolution of the limited liability company
7 loses the right to participate in management as a member and a manager.

8 **Reporters' Notes**

9
10 **Source:** ULLCA § 404; ULPA (2001) § 406

11
12 **Subsection (b)(4)** – Query whether the consent of any non-member manager should also
13 be necessary? Other consent requirements may be sprinkled throughout the Act; e.g., consent to
14 mergers under Article 10.

15
16 **Subsection (d)** – Query whether in a manager-managed LLC, a wrongfully dissolving
17 member should lose even the limited rights of a member to participate in management?
18
19

20 **SECTION 408. MEMBER'S AND MANAGER'S RIGHTS TO PAYMENTS AND**
21 **REIMBURSEMENT.**

22 (a) A limited liability company shall reimburse a member of a member-managed limited
23 liability company for payments made and indemnify the member for liabilities incurred in the
24 ordinary course of the business of the limited liability company or for the preservation of its
25 activities or property.

26 (b) A limited liability company shall reimburse a manager of a manager-managed limited
27 liability company for payments made and indemnify the manager for liabilities incurred in the

1 ordinary course of the business of the limited liability company or for the preservation of its
2 activities or property.

3 (c) A limited liability company shall reimburse a member for an advance to the company
4 beyond the amount of contribution the member agreed to make.

5 (d) A payment or advance that gives rise to an obligation of a limited liability company
6 under subsections (a) through (c) constitutes a loan to the limited liability company, which
7 accrues interest from the date of the payment or advance.

8 (e) A member is not entitled to remuneration for services performed for a limited liability
9 company even in the capacity of a manager of a manager-managed limited liability company,
10 except for reasonable compensation for services rendered in winding up the activities of a
11 limited liability company.

12 **Reporters' Notes**

13 **Source:** ULLCA § 403

14 **Subsection (a)** – The indemnification provision will be revised once the Drafting
15 Committee has made at least a preliminary decision with regard to the standards of conduct and
16 liability now provisionally stated in Sections 409 and 410.
17
18
19
20

21 **SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND** 22 **MANAGERS**

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

24 (1) Each member, when discharging its governance responsibility, shall act:

25 (A) in good faith;

26 (B) in a manner the member reasonably believes to be in the best interests
27 of the limited liability company,

1 (C) on the basis of information, including information provided by others,
2 that a person in a like position would reasonably believe to be appropriate under the
3 circumstances, and

4 (D) with the care that a person in a like position would reasonably believe
5 appropriate in the circumstances.

6 (2) Each member, when carrying out its operational responsibilities, shall act in a
7 manner consistent with the duties of a paid agent, whether or not the member is receiving
8 remuneration for those responsibilities.

9 (3) Each member shall:

10 (A) account to the limited liability company and hold as trustee for it any
11 property, profit, or benefit derived by the member in the conduct and winding up of the limited
12 liability company's activities or derived from a use by the member of limited liability company
13 property, including the appropriation of a limited liability company opportunity;

14 (B) refrain from dealing with the limited liability company in the conduct
15 or winding up of the limited liability company's activities as or on behalf of a party having an
16 interest adverse to the limited liability company; and

17 (C) refrain from competing with the limited liability company in the
18 conduct or winding up of the limited liability company's activities before dissolution of the
19 limited liability company.

20 (b) Except as otherwise provided in subsections (c) and (d), in a manager-managed
21 limited liability company the following rules apply.

22 (1) A member does not have any obligation under this section in the member's
23 capacity as a member.

1 (2) The obligations stated in subsection (a) apply to each manager. However, the
2 obligation stated under subsection (a)(3)(C) continues until winding up is completed.

3 (c) To the extent the operating agreement of a manager-managed limited liability
4 company imposes governance responsibility or operational responsibilities on a member that is
5 not a manager, the obligations stated in subsection (a)(1) and (2) apply to that member. To the
6 extent the operating agreement of a manager-managed limited liability company expressly
7 relieves a manager of a specified governance responsibility or operational responsibility, the
8 obligations stated in subsection (a)(1) and (2) do not apply to that manager.

9 (d) A member shall discharge its duties to the limited liability company and the other
10 members under this [act] or under the operating agreement and exercise any rights consistently
11 with the obligation of good faith and fair dealing. A member
12 does not violate this obligation merely because the member's conduct furthers the member's
13 own interest.

14 **Reporters' Notes**

15
16 **Source:** MBCA § 8.30 (considerably streamlined) and NCCUSL's standard provisions
17 on the duty of loyalty.

18
19 At its November, 2003 meeting, at the urging of Commissioner Blackburn, the Drafting
20 Committee decided to try to (i) eschew the "gross negligence" standard of care first promulgated
21 in RUPA and afterwards followed in ULLCA and ULPA (2001); and (ii) incorporate something
22 like the standard of care/standard of liability dichotomy recently adopted in MBCA §§ 8.30 and
23 8.31. Under the MBCA, that dichotomy exists principally for directors and not for officers, *cf.*
24 MBCA 8.42(c) (stating that director standard of liability principles apply to officers if they "have
25 relevance), and those positions reflect categorically different kinds of responsibilities. This
26 section attempts to parallel *functionally* that *positional* distinction by using the defined terms
27 "governance responsibility" and "operational responsibilities."
28

29 This section also differs from the MBCA approach by leaving unaffected the traditional
30 rules for duty of loyalty violations.
31

1 **Subsection (d)** – In RUPA, ULLCA and ULPA (2001), the rule stated in the second
2 sentence applies more broadly – not only to the obligation of good faith and fair dealing but also
3 to duties created by the Act and by the owners’ agreement (i.e., partnership agreement, operating
4 agreement). That broader scope is overbroad, because (i) as to the Act’s duty of loyalty, self-
5 interest is at the core of the wrong, and (ii) an agreement among owners could certainly
6 proscribe self-interested behavior.
7
8

9 **SECTION 410. STANDARDS OF LIABILITY FOR GOVERNANCE**

10 **RESPONSIBILITY**

11 (a) A person is not liable to the limited liability company or any of its members for a
12 breach of the person’s governance responsibilities under Section 409, unless the party asserting
13 liability establishes:

14 (1) that the challenged conduct consisted or was the result of:

15 (A) action not in good faith;

16 (B) a decision

17 (i) that the person did not reasonably believe was in the best
18 interests of the limited liability company; or

19 (ii) as to which the director was not informed to the extent the
20 director should have reasonably believed appropriate in the circumstances; or

21 (C) sustained failure by the person to devote reasonably sufficient time
22 and attention to the person’s governance responsibility, if particular facts and circumstances of
23 significant concern existed which would have alerted a reasonable person in a like position to the
24 need for timely attention and appropriate inquiry; or

25 (D) a breach of the person’s duties under subsection (a)(3); and

1 (2) if the party asserting liability claims damages, as distinguished from
2 disgorgement, rescission, an accounting, a constructive trust or other equitable relief, that the
3 challenged conduct proximately caused harm to the limited liability company or one or more of
4 its members.

5 (b) A member’s right to assert liability for a person’s breach of governance
6 responsibilities is subject to [Article] 9.

7 **Reporters’ Notes**

8
9 **Source:** MBCA § 8.31 (streamlined and simplified).

10 See the discussion in the Reporters’ Notes to Section 409

11
12
13 **Subsection (a)(2)** – Query whether the “as distinguished from” list should also refer to
14 non-damage claims authorized by this Act, e.g., liability under Section 406 for authorizing
15 improper distributions.

16
17 **Subsection (b)** – Article 10 preserves the direct/derivative distinction.
18

19
20 **SECTION 411. RIGHT TO INFORMATION OF MEMBERS, MANAGERS AND**
21 **FORMER MEMBERS.**

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

23 (1) A member may, without having any particular purpose for seeking the
24 information, inspect and copy during regular business hours:

25 (A) in the limited liability company’s designated office, required
26 information; and

27 (B) at a reasonable location specified by the limited liability company, any
28 other records maintained by the limited liability company regarding the limited liability
29 company’s activities and financial condition.

1 (2) The limited liability company shall furnish to each member, and each member
2 shall furnish to each other member:

3 (A) without demand, any information concerning the limited liability
4 company's activities, condition and circumstances which is reasonably required for the proper
5 exercise of the recipient member's rights and duties under the operating agreement or this [act];
6 and

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

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

11 (1) The information rights and obligations stated in subsection (a) apply to the
12 managers instead of the members.

13 (2) On 10 days' demand, made in a record received by the limited liability
14 company, a member may inspect and copy required information during regular business hours in
15 the limited liability company's designated office. The member need not have any particular
16 purpose for seeking the information.

17 (3) During regular business hours and at a reasonable location specified by the
18 limited liability company, a member may obtain from the limited liability company and inspect
19 and copy true and full information regarding the activities, condition and circumstances of the
20 limited liability company as is just and reasonable if:

21 (A) the member seeks the information for a purpose reasonably related to
22 the member's interest as a member;

1 (B) the member makes a demand in a record received by the limited
2 liability company, describing with reasonable particularity the information sought and the
3 purpose for seeking the information; and

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

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

7 (A) the information that the limited liability company will provide in
8 response to the demand;

9 (B) when and where the limited liability company will provide the
10 information; and

11 (C) if the limited liability company declines to provide any demanded
12 information, the limited liability company's reasons for declining.

13 (5) Whenever this [act] or an operating agreement provides for a member to give
14 or withhold consent to a matter, before the consent is given or withheld, the limited liability
15 company shall, without demand, provide the member with all information that is known to the
16 limited liability company and is material to the member's decision.

17 (c) Except as otherwise provided in subsection (d), on 10 days' demand made in a record
18 received by the limited liability company, a person dissociated as a member may have access to
19 whatever information and records the person was entitled to while a member if (i) the
20 information or record pertains to the period during which the person was a member; (ii) the
21 person seeks the information or record in good faith; and (iii) the person satisfies the
22 requirements imposed on a member by subsection (b)(3). The limited liability company shall

1 respond to a demand made pursuant to this subsection in the same manner as provided in
2 subsection (b)(4).

3 (d) If a member dies, Section 504 applies.

4 (e) The limited liability company may impose reasonable restrictions on the use of
5 information obtained under this section, including designating information confidential and
6 imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning
7 the reasonableness of a restriction under this subsection, the limited liability company has the
8 burden of proving reasonableness.

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

11 (g) A member or person dissociated as a member may exercise the rights under this
12 section through an agent or, in the case of an individual under legal disability, a legal
13 representative. Any restriction imposed under subsection (e) or by the operating agreement
14 applies both to the agent or legal representative and the member or person dissociated as a
15 member.

16 (h) The rights stated in this section do not extend to a person as transferee.

17 **Reporters' Notes**

18
19 **Source:** ULPA (2001) §§ 304 and 407.

20
21 **Subsection (e)** – ULPA (2001) does not contain the phrase “designating information
22 confidential and imposing non-disclosure and safeguarding obligations on the recipient.” The
23 addition is to address concerns raised by Bill Callison and Alan Vestal. See J. William Callison
24 & Allan W. Vestal, “They’ve Created a Lamb With Mandibles of Death”: Secrecy, Disclosure,
25 and Fiduciary Duties in Limited Liability Firms, 76 IND. L. J. 271 (2001) and “The Want of a
26 Theory, Again,” ___ Suffolk L. Rev. ___ (forthcoming spring 2004).
27

1 [ARTICLE] 5

2 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

3
4 SECTION 501. MEMBER’S TRANSFERABLE INTEREST.

5 (a) Except as otherwise provided in subsection (c), the only interest of a member which is
6 transferable is the member’s transferable interest. The interest is personal property.

7 (b) If the operating agreement so provides:

8 (1) a transferable interest may be evidenced by a certificate of the interest issued
9 by the limited liability company in record form; and

10 (2) subject to Section 502, the interest represented by the certificate may be
11 transferred by a transfer of the certificate.

12 (c) A member may transfer a right to consent on a matter under the operating agreement
13 or this [act] to another member without obtaining the consent of the other members.

14 Reporters’ Notes

15 Source – This Article most directly follows ULPA (2001), Article 7, because ULPA
16 (2001) reflects the Conference’s most recent thinking on the issues addressed here. However,
17 ULPA (2001), Article 7 is quite similar in substance to ULLCA, Article 5, and both those
18 Articles derive from Article 5 of RUPA.

19
20 This Draft does not include ULLCA § 501(a), which provides: “A member is not a co-
21 owner of, and has no transferable interest in, property of a limited liability company.” However,
22 substantially equivalent language appears in Section 104(a).

23
24 Subsection (b) – As initially drafted, this subsection was taken verbatim from ULLCA §
25 501(c) (with the addition of the phrase “in record form”) and read as follows:

26
27 An operating agreement may provide that a transferable interest may be evidenced by a
28 certificate of the interest issued in record form by the limited liability company and, subject to
29 Section 502, may also provide for the transfer of any interest represented by the certificate.
30

1 The current language implements the salutary suggestions of our liaison to the
2 Committee on Style.

3
4 **Subsection (c)** – At its November, 2003 meeting, the drafting committee decided,
5 consistent with current law, that a member may transfer governance rights to another member
6 without obtaining consent from the other members. Thus, the Act does not itself protect
7 members from “control shifts. This subsection reflects the November, 2003 decision.
8

9
10 **SECTION 502. TRANSFER OF MEMBER’S TRANSFERABLE INTEREST.**

11 (a) A transfer, in whole or in part, of a member’s transferable interest:

12 (1) is permissible;

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

15 (3) does not, as against the other members or the limited liability company, entitle
16 the transferee to:

17 (A) participate in the management or conduct of the limited liability
18 company’s activities;

19 (B) require access to information concerning the limited liability
20 company’s transactions except as otherwise provided in subsection (c); or

21 (C) inspect or copy the required information or the limited liability
22 company’s other records.

23 (b) A transferee has the right to receive, in accordance with the transfer:

24 (1) distributions to which the transferor would otherwise be entitled; and

25 (2) upon the dissolution and winding up of the limited liability company’s
26 activities the net amount otherwise distributable to the transferor.

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

3 (d) Except as otherwise provided in Section 601(a)(4)(B) and (C), upon transfer the
4 transferor retains the rights of a member other than the interest in distributions transferred and
5 retains all duties and obligations of a member.

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

8 (f) A transfer of a member's transferable interest in the limited liability company in
9 violation of a restriction on transfer contained in the operating agreement is ineffective as to a
10 person having notice of the restriction at the time of transfer.

11 (g) A transferee that becomes a member with respect to a transferable interest is liable for
12 the transferor's obligations under Sections 403 and 406. However, the transferee is not liable for
13 obligations unknown to the transferee at the time the transferee became a member.

14 **Reporters' Notes**

15
16 **Subsection (b)** -- Query whether subsection (b)(2) is a subset of subsection (b)(1) and
17 therefore redundant.

18
19 **Subsection (d)** -- Section 601(a)(4)(ii) and (iii) create a risk of dissociation when a
20 member transfers all, or substantially all, of the member's transferable interest.

21
22 **Subsection (e)** -- Query whether "has notice" should be replaced with "receives a
23 notification".

24
25 **Subsection (g)** -- Query whether this transferred liability should include Section 406(a)
26 "decision maker" liability or just Section 406(b) "recipient" liability.
27

1 **SECTION 503. RIGHTS OF JUDGMENT CREDITOR OF MEMBER OR**
2 **TRANSFeree.**

3 (a) On application by any judgment creditor of a member or transferee, the court may
4 charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of
5 the judgment with interest. To the extent so charged, the judgment creditor has only the rights of
6 a transferee. The court may appoint a receiver of the share of the distributions due or to become
7 due to the judgment debtor in respect of the membership and make all other orders, directions,
8 accounts, and inquiries the judgment debtor might have made or which the circumstances of the
9 case may require to give effect to the charging order.

10 (b) A charging order constitutes a lien on the judgment debtor's transferable interest.
11 The court may order a foreclosure upon the interest subject to the charging order at any time.
12 The purchaser at the foreclosure sale has the rights of a transferee.

13 (c) At any time before foreclosure, an interest charged may be redeemed:

14 (1) by the judgment debtor;

15 (2) with property other than limited liability company property, by one or more of
16 the other members; or

17 (3) with limited liability company property, by the limited liability company with
18 the consent of all members whose interests are not so charged.

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

21 (e) This section provides the exclusive remedy by which a judgment creditor of a
22 member or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

23 **Reporters' Notes**

1 RUPA § 504, ULLCA § 504 and ULPA (2001) § 703 are all essentially the same. Given
2 the current controversy in the “asset protection community” concerning charging orders, it
3 would be well to include a Comment here much like the Comment provided for ULPA (2001) §
4 703, as follows:

5
6 **Comment [to ULPA (2001) § 703]**
7

8 This section balances the needs of a judgment creditor of a member or transferee with the
9 needs of the limited liability company and non-debtor members and transferees. The section
10 achieves that balance by allowing the judgment creditor to collect on the judgment through the
11 transferable interest of the judgment debtor while prohibiting interference in the management
12 and activities of the limited liability company.
13

14 Under this section, the judgment creditor of a member or transferee is entitled to a
15 charging order against the relevant transferable interest. While in effect, that order entitles the
16 judgment creditor to whatever distributions would otherwise be due to the member or transferee
17 whose interest is subject to the order. The creditor has no say in the timing or amount of those
18 distributions. The charging order does not entitle the creditor to accelerate any distributions or
19 to otherwise interfere with the management and activities of the limited liability company.
20

21 Foreclosure of a charging order effects a permanent transfer of the charged transferable
22 interest to the purchaser. The foreclosure does not, however, create any rights to participate in
23 the management and conduct of the limited liability company’s activities. The purchaser obtains
24 nothing more than the status of a transferee.
25

26 **Subsection (a)** – The court’s power to appoint a receiver and “make all other orders,
27 directions, accounts, and inquiries the judgment debtor might have made or which the
28 circumstances of the case may require” must be understood in the context of the balance
29 described above. In particular, the court’s power to make orders “which the circumstances may
30 require” is limited to “giv[ing] effect to the charging order.”
31

32 **Example:** A judgment creditor with a charging order believes that the limited liability
33 company should invest less of its surplus in operations, leaving more funds for distributions.
34 The creditor moves the court for an order directing the general partners to restrict re-investment.
35 This section does not authorize the court to grant the motion.
36

37 **Example:** A judgment creditor with a judgment for \$10,000 against a member obtains a
38 charging order against the member’s transferable interest. The limited liability company is duly
39 served with the order. However, the limited liability company subsequently fails to comply with
40 the order and makes a \$3000 distribution to the member. The court has the power to order the
41 limited liability company to turn over \$3000 to the judgment creditor to “give effect to the
42 charging order.”
43

44 The court also has the power to decide whether a particular payment is a distribution,
45 because this decision determines whether the payment is part of a transferable interest subject to

1 a charging order. (To the extent a payment is not a distribution, it is not part of the transferable
2 interest and is not subject to subsection (e). The payment is therefore subject to whatever other
3 creditor remedies may apply.)
4
5

6 **SECTION 504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED**

7 **MEMBER.** If a member dies, the deceased member’s personal representative or other legal
8 representative may exercise the rights of a transferee as provided in Section 502 and, for the
9 purposes of settling the estate, may exercise the rights of a current member under Section 304.

10 **Reporters’ Notes**

11 This language was inserted in ULPA (2001) § 704 at the behest of the representative of
12 the Probate Section of the ABA.
13

1 [ARTICLE] 6

2 MEMBER'S DISSOCIATION

3
4 SECTION 601. EVENTS CAUSING DISSOCIATION .

5 (a) A person does not have a right to dissociate as a member before the termination of the
6 limited liability company.

7 (b) A person is dissociated from a limited liability company upon the occurrence of any
8 of the following events:

9 (1) the limited liability company's having notice of the person's express will to
10 withdraw as a member or on a later date specified by the person;

11 (2) an event agreed to in the operating agreement as causing the person's
12 dissociation;

13 (3) the person's expulsion as a member pursuant to the operating agreement;

14 (4) the person's expulsion as a member by the unanimous consent of the other
15 members if:

16 (A) it is unlawful to carry on the limited liability company's activities
17 with the person as a member;

18 (B) the limited liability company is a manager-managed limited liability
19 company and there has been a transfer of all of the person's transferable interest in the limited
20 liability company, other than:

21 (i) a transfer for security purposes, or

22 (ii) a court order charging the person's interest which has not been
23 foreclosed;

1 (C) the limited liability company is a member-managed limited liability
2 company and there has been a transfer of all or substantially all of the person's transferable
3 interest in the limited liability company, other than:

4 (i) a transfer for security purposes, or

5 (ii) a court order charging the person's interest which has not been
6 foreclosed;

7 (D) the person is a corporation and, within 90 days after the limited
8 liability company notifies the person that it will be expelled as a member because the person has
9 filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to
10 conduct business has been suspended by the jurisdiction of its incorporation, there is no
11 revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct
12 business; or

13 (E) the person is a limited liability company or partnership that has been
14 dissolved and whose business is being wound up;

15 (5) on application by the limited liability company, the person's expulsion as a
16 member by judicial order because:

17 (A) the person engaged in wrongful conduct that adversely and materially
18 affected the limited liability company's activities;

19 (B) the person willfully or persistently committed a material breach of the
20 operating agreement or the person's duties or obligations under Section 409; or

21 (C) the person engaged in conduct relating to the limited liability
22 company's activities which makes it not reasonably practicable to carry on the activities with the
23 person as a member;

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

2 (A) the person's death;

3 (B) if the limited liability company is a member-managed limited liability
4 company,

5 (i) the appointment of a guardian or general conservator for the
6 person; or

7 (ii) a judicial determination that the person has otherwise become
8 incapable of performing the person's duties as a member under the operating agreement;

9 (7) if the limited liability company is member-managed, the person's:

10 (A) becoming a debtor in bankruptcy;

11 (B) execution of an assignment for the benefit of creditors;

12 (C) seeking, consenting to, or acquiescing in the appointment of a trustee,
13 receiver, or liquidator of the person or of all or substantially all of the person's property;

14 (8) in the case of a person that is a trust or is acting as a member by virtue of
15 being a trustee of a trust, distribution of the trust's entire transferable interest in the limited
16 liability company, but not merely by reason of the substitution of a successor trustee;

17 (9) in the case of a person that is an estate or is acting as a member by virtue of
18 being a personal representative of an estate, distribution of the estate's entire transferable interest
19 in the limited liability company, but not merely by reason of the substitution of a successor
20 personal representative;

21 (10) termination of a member that is not an individual, membership, limited
22 liability company, corporation, trust, or estate;

1 (11) the limited liability company’s participation in a domestication, conversion
2 or merger under [Article] 10 or [TBD – pending META], if the limited liability company:

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

4 (B) is the domesticated, converted or surviving entity but, as a result of the
5 domestication, conversion or merger, the person ceases to be a member.

6 **Reporters’ Notes**

7 **Source** – ULLCA § 601; RUPA Section 601; ULPA (2001) §§ 601 and 603.

8
9 This section follows ULPA (2001)’s approach to *limited* partner dissociation except for
10 member-managed limited liability companies. In that context, this section follows RUPA’s and
11 ULPA (2001)’s approach to the dissociation of general partners. Query whether the section
12 should use the organization shown above, in which member-managed provisions are interspersed
13 or, instead, collect all those provisions in a separate subsection.

14
15 Query whether subsection (a) should be relocated to Section 602.
16
17

18 **SECTION 602. MEMBER’S POWER TO DISSOCIATE; WRONGFUL**
19 **DISSOCIATION.**

20 (a) A person has the power to dissociate as a member at any time, rightfully or
21 wrongfully, by express will under Section 601(b)(1).

22 (b) A person’s dissociation is wrongful only if:

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

24 (2) it occurs before the termination of the limited liability company, and:

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

26 (B) the person is expelled as a member by judicial determination under
27 Section 601(b)(5);

1 (C) the limited liability company is member-managed and the person is
2 dissociated under Section 601(b)(7)(A) by becoming a debtor in bankruptcy; or

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

6 (c) A person that wrongfully dissociates is liable to the limited liability company and,
7 subject to Section 901, to the other members for damages caused by the dissociation. The
8 liability is in addition to any other obligation of the member to the limited liability company or
9 to the other members.

10 **Reporters' Notes**

11 **Source** – ULPA (2001) § 603, which is based on RUPA Section 602. ULLCA § 602 is
12 functionally identical in some respects but is not a good overall source, because that section
13 presupposes the term/at-will paradigm.
14
15

16 **SECTION 603. EFFECT OF MEMBER'S DISSOCIATION.**

17 (a) When a person dissociates as a member:

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

20 (2) the person's duty of loyalty as a member [**reserved until the Committee has**
21 **made at least a tentative decision as to the contents of that duty]**

22 (3) the person's duty of care [**reserved until the Committee has made at least a**
23 **tentative decision as to the contents of that duty];**

1 (4) subject to Section 504, [Article] 10, and **[TBD – pending META]**, any
2 transferable interest owned by the person immediately before dissociation in the person’s
3 capacity as a member is owned by the person as a mere transferee;

4 (5) any power the person had in its capacity as a member under Section 301 and
5 304 to bind the limited liability company terminates, but, subject to Sections 103(c) and 604,
6 this termination does not affect the person’s power to bind the limited liability company under
7 law other than this [act].

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

11 **Comment**

12 **Source** – ULPA (2001) § 603, which was drawn from RUPA Section 603(b). ULLCA §
13 603 is functionally identical in some respects but is not a good overall source, because that
14 section presupposes the term/at-will paradigm.

15
16 **Subsection (b)(5)** – A Comment will explain that “other law” includes the agency law
17 doctrine of “lingering apparent authority.” See Restatement (Third) Of Agency § 3.11, comment
18 c (T.D. No. 2, 2001). The statement of dissociation, see Section 604, will be effective to cut off
19 lingering apparent authority.
20
21

22 **SECTION 604. STATEMENT OF DISSOCIATION.**

23 (a) A limited liability company or a person dissociated as a member may deliver for
24 filing in the office of the [Secretary of State] a statement of dissociation stating the name of the
25 limited liability company and that the member is dissociated from the limited liability company.

26
27 **Source:** ULLCA § 704. A statement of dissociation has constructive notice effect under
28 Section 103(c).
29

1 Query: why should a member have the right to file a statement of dissociation, especially
2 in a manager-managed limited liability company?

1 [ARTICLE] 7

2 DISSOLUTION AND WINDING UP

3
4 SECTION 701. EVENTS CAUSING DISSOLUTION .

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

7 (1) an event specified in the operating agreement;

8 (2) the consent of all the members;

9 (3) the passage of 90 days after the limited liability company has notice that its
10 conduct of all or substantially all of its activities is unlawful, unless within that 90 days the
11 illegality is cured;

12 (4) if the limited liability company has had at least one member, the passage of 90
13 days after the limited liability company ceases to have any members, unless within that 90 days
14 the legal representative of the last person to have been a member:

15 (A) consents to become and does become a member, or

16 (B) consents to have another person become a member and that person
17 consents to become and does become a member;

18 (5) on application by a member or a person dissociated as a member, the entry by
19 [appropriate court] of an order dissolving the limited liability company on the grounds that it is
20 not reasonably practicable to carry on the limited liability company's activities in conformity
21 with the articles of organization and the operating agreement; or

22 (6) on application by a member or transferee, the entry by [appropriate court] of
23 an order dissolving the limited liability company on the grounds that the managers or those

1 members in control of the limited liability company have acted, are acting, or will act in a
2 manner that is illegal, fraudulent, or oppressive to the applicant.

3 (b) For the purposes of subsection (a)(6), oppressive conduct has occurred only if the
4 conduct complained of has directly harmed the applicant and:

5 (1) constitutes a material, uncured breach of the operating agreement or of the
6 obligation of good faith and fair dealing stated in Section 409(d); or

7 (2) although not constituting a material, uncured breach under paragraph (1), has
8 substantially defeated an expectation of the applicant which is entitled to protection because the
9 expectation:

10 (A) is not contradicted by any term of the operating agreement nor by the
11 reasonable implication of any term of that agreement;

12 (B) was central to the applicant's decision to become a member of the
13 limited liability company or for a substantial time has been centrally important in the member's
14 continuing membership;

15 (C) was known to other members, which expressly or impliedly
16 acquiesced in it;

17 (D) is consistent with the reasonable expectations of all the members; and

18 (E) is otherwise reasonable under the circumstances.

19 **Reporters' Notes**

20
21 This section comes in part from ULLCA § 801, modified in response to the discussions at
22 the November, 2003 meeting of the Drafting Committee. Consistent with those discussions, the
23 grounds for judicially ordered dissolution are significantly narrowed and there is no language
24 expressly authorizing a court to order lesser remedies than dissolution.
25
26

1 **Subsection (a)(4)** –The approach here follows Delaware. Del. Code Ann. tit. 6, § 18-
2 801(a)(4). See also Minn. Stat. § 322B.80 (allowing the legal representative of the sole member
3 to admit at least one member in order to avoid dissolution). The introductory clause (“if the
4 limited liability company has had at least one member”) is necessary to prevent this provision
5 from applying to a newly created limited liability company.
6

7 An alternative approach would vest the decision to continue in the hands of the
8 transferees. See e.g. Md. Code Ann., Corps & Ass'ns § 4A-604(a)(3) (providing that “if the
9 limited liability company has no members, all of the assignees of members may elect to become
10 members”).
11

12 **Subsection (a)(6)** – The reference to “transferee” is intended to provoke discussion. At
13 the last meeting, the “sense of the meeting” seemed to be that committee members and advisors
14 wished to further explore the transferee rights issue.
15

16 **Transferee Rights** – To date, the drafting committee has given only fleeting
17 consideration to what rights, if any, the Act should accord to transferees, including transferees
18 that are former members. This topic must be understood in context, and the context includes an
19 LLC with perpetual duration and no put right for dissociated members. Further consideration
20 should include at least the following issues: (1) whether the LLC or its members owe any
21 fiduciary duties to transferees; (2) whether the LLC or its members owe an obligation of good
22 faith and fair dealing to transferees; (3) whether transferees should have some modicum of
23 information rights; (4) whether transferees should have some right to seek judicial dissolution;
24 (5) whether a person that dissociates and thereby becomes a transferee should have superior
25 rights to a person that becomes a transferee in some other manner.
26
27

28 **SECTION 702. WINDING UP.**

29 (a) A limited liability company continues after dissolution only for the purpose of
30 winding up its activities.

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

32 (1) may file a statement of dissolution, preserve the limited liability company
33 activities and property as a going concern for a reasonable time, prosecute and defend actions
34 and proceedings, whether civil, criminal, or administrative, transfer the limited liability
35 company’s property, settle disputes by mediation or arbitration, file a statement of termination,
36 and perform other necessary acts; and

1 (2) shall discharge the limited liability company's liabilities, settle and close the
2 limited liability company's activities, and marshal and distribute the assets of the limited liability
3 company.

4 (c) If a dissolved limited liability company has no members, the legal representative of
5 the last person to have been a member may wind up the activities of the limited liability
6 company and has the powers of a member under Section 703(a). If the legal representative
7 declines or fails to wind up the limited liability company's activities, a person may be appointed
8 to do so by the consent of transferees owning a majority of the rights to receive distributions as
9 transferees at the time the consent is to be effective. A person appointed under this subsection:

10 (1) has the powers of a member under Section 703(a); and

11 (2) shall promptly amend the limited liability company's articles of organization
12 to state:

13 (A) that the limited liability company has no members;

14 (B) that the person has been appointed pursuant to this subsection to wind
15 up the limited liability company; and

16 (C) the street and mailing address of the person.

17 (d) On the application of any member, the [appropriate court] may order judicial
18 supervision of the winding up, including the appointment of a person to wind up the dissolved
19 limited liability company's activities, if:

20 (1) a limited liability company does not have member, the legal representative of
21 the last person to have been a member declines or fails to wind up the limited liability
22 company's activities, and within a reasonable time following the dissolution no person has been
23 appointed pursuant to subsection (c); or

1 (2) the applicant establishes other good cause.

2 (e) If a dissolved limited liability company has no members, a transferee may make an
3 application under subsection (d).

4 **Reporters' Notes**

5 **Source** – ULPA (2001) § 803, which was based on RUPA Sections 802 and 803.
6
7

8 **SECTION 703. POWER OF MEMBERS AND MANAGERS TO BIND LIMITED**
9 **LIABILITY COMPANY AFTER DISSOLUTION.**

10 (a) A member of a member-managed, and a manager of a manager-managed, limited
11 liability company binds the limited liability company by an act after dissolution which:

12 (1) is appropriate for winding up the limited liability company's activities; or

13 (2) would have bound the limited liability company under Section 301 before
14 dissolution, if, at the time the other party enters into the transaction, the other party does not
15 have notice of the dissolution.

16 (b) Subject to Section 103(c)(1) and (3), law other than this [act] governs whether a
17 person dissociated as a member binds a member-managed limited liability company through an
18 act occurring after dissolution.

19 **Reporters' Notes**

20 **Subsection (a)** – Source: ULPA (2001) § 804, which was based on RUPA § 804.
21
22

23 **SECTION 704. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
24 **LIABILITY COMPANY.**

1 (a) A dissolved limited liability company may dispose of the known claims against it by
2 following the procedure described in subsection (b).

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

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

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

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

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

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

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

13 (2) in the case of a claim that is timely received but rejected by the dissolved
14 limited liability company, the claimant does not commence an action to enforce the claim against
15 the limited liability company within 90 days after the receipt of the notice of the rejection.

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

18 **Reporters' Notes**

19 **Source** – ULPA (2001) § 806, which was based on ULLCA § 807, which in turn was
20 based on MBCA § 14.06.

21
22 Query whether some definition is needed of “known claims”. For example, what if the
23 limited liability company knows of claim but does not have any contact information for the
24 claimant?
25

1 **SECTION 705. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY**
2 **COMPANY.**

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

6 (b) The notice must:

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

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

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

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

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

20 (2) a claimant whose claim was timely sent to the dissolved limited liability
21 company but not acted on; and

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

1 (d) A claim not barred under this section may be enforced:

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

4 (2) if assets of the limited liability company have been distributed after
5 dissolution, against a member or transferee to the extent of that person's proportionate share of
6 the claim or of the assets distributed to the member or transferee after dissolution, whichever is
7 less, but a person's total liability for all claims under this paragraph does not exceed the total
8 amount of assets distributed to the person after dissolution.

9 **Reporters' Notes**

10 **Source** – ULPA (2001) § 807, which was based on ULLCA § 808, which in turn was
11 based on MBCA § 14.07.

12
13 **Subsection (c)** – Query whether this language sufficiently indicates that a claim that
14 could have been addressed under Section 704 cannot be extinguished under this Section.
15

16
17 **SECTION 706. ADMINISTRATIVE DISSOLUTION.**

18 (a) The [Secretary of State] may dissolve a limited liability company administratively if
19 the limited liability company does not, within 60 days after the due date:

20 (1) pay any fee, tax, or penalty due to the [Secretary of State] under this [act] or
21 other law; or

22 (2) deliver its annual report to the [Secretary of State].

23 (b) If the [Secretary of State] determines that a ground exists for administratively
24 dissolving a limited liability company, the [Secretary of State] shall file a record of the
25 determination and serve the limited liability company with a copy of the filed record.

1 (c) If within 60 days after service of the copy the limited liability company does not
2 correct each ground for dissolution or demonstrate to the reasonable satisfaction of the
3 [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the
4 [Secretary of State] shall administratively dissolve the limited liability company by preparing,
5 signing and filing a declaration of dissolution that states the grounds for dissolution. The
6 [Secretary of State] shall serve the limited liability company with a copy of the filed declaration.

7 (d) A limited liability company administratively dissolved continues its existence but
8 may carry on only activities necessary to wind up its activities and liquidate its assets under
9 Sections 702 and 709 and to notify claimants under Sections 704 and 705.

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

12 **Reporters' Notes**

13 **Source** – ULPA (2001) § 809, which was based on ULLCA §§ 809 and 810. See also
14 RMBCA §§ 14.20 and 14.21.
15
16

17 **SECTION 707. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
18 **DISSOLUTION.**

19 (a) A limited liability company that has been administratively dissolved may apply to the
20 [Secretary of State] for reinstatement within two years after the effective date of dissolution.
21 The application must be delivered to the [Secretary of State] for filing and state:

22 (1) the name of the limited liability company and the effective date of its
23 administrative dissolution;

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

2 and

3 (3) that the limited liability company's name satisfies the requirements of Section

4 108.

5 (b) If the [Secretary of State] determines that an application contains the information
6 required by subsection (a) and that the information is correct, the [Secretary of State] shall
7 prepare a declaration of reinstatement that states this determination, sign, and file the original of
8 the declaration of reinstatement, and serve the limited liability company with a copy.

9 (c) When reinstatement becomes effective, it relates back to and takes effect as of the
10 effective date of the administrative dissolution and the limited liability company may resume its
11 activities as if the administrative dissolution had never occurred.

12 **Reporters' Notes**

13 **Source** – ULPA (2001) § 810, which was based on ULLCA § 811. See also RMBCA
14 Section 14.22.

15 16 17 **SECTION 708. APPEAL FROM REJECTION OF REINSTATEMENT.**

18 (a) If the [Secretary of State] rejects a limited liability company's application for
19 reinstatement following administrative dissolution, the [Secretary of State] shall prepare, sign
20 and file a notice that explains the reason or reasons for rejection and serve the limited liability
21 company with a copy of the notice.

22 (b) Within 30 days after service of the notice of rejection, the limited liability company
23 may appeal from the rejection of reinstatement by petitioning the [appropriate court] to set aside
24 the dissolution. The petition must be served on the [Secretary of State] and contain a copy of the

1 [Secretary of State’s] declaration of dissolution, the limited liability company’s application for
2 reinstatement, and the [Secretary of State’s] notice of rejection.

3 (c) The court may summarily order the [Secretary of State] to reinstate the dissolved
4 limited liability company or may take other action the court considers appropriate.

5 **Reporters’ Notes**

6 **Source** – ULPA (2001) § 811, which was based on ULLCA § 812.

7
8 This section uses “rejection” rather than “denial” (the word used by both ULPA (2001)
9 and ULLCA). The change is to avoid confusion with a “statement of denial” under Section 302.

10
11 **Subsection (c)** – Query why “summarily”.

12 13 **SECTION 709. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED** 14 **LIABILITY COMPANY'S BUSINESS.**

15 (a) In winding up a limited liability company's business, the assets of the limited liability
16 company must be applied to discharge its obligations to creditors, including members that are
17 creditors.

18 (b) Any surplus remaining after the limited liability company complies with subsection
19 (a) must be applied to distribute:

20 (1) to each member, an amount equal to the value of contributions made by the
21 member and not previously returned; and

22 (2) then to all members, an equal share of any surplus still remaining.

23 (c) All distributions made under subsection (b) must be paid in cash.

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

4 **Reporters' Notes**

5 **Source:** ULLCA § 806, restyled.

1 [ARTICLE] 8

2 FOREIGN LIMITED LIABILITY COMPANIES

3 SECTION 801. GOVERNING LAW.

4 (a) The laws of the state or other jurisdiction under which a foreign limited liability
5 company is organized govern:

6 (1) relations among the members of the foreign limited liability company and
7 between the members and the foreign limited liability company, and

8 (2) the liability of members as members for an obligation of the foreign limited
9 liability company.

10 (b) A foreign limited liability company may not be denied a certificate of authority by
11 reason of any difference between the laws of the jurisdiction under which the foreign limited
12 liability company is organized and the laws of this state.

13 (c) A certificate of authority does not authorize a foreign limited liability company to
14 engage in any business or exercise any power that a limited liability company may not engage in
15 or exercise in this state.

16 Reporters' Notes

17 Source - ULPA (2001) § 901, which was based in part on ULLCA §1001.
18 for subsections (b) and (c).
19
20
21

22 SECTION 802. APPLICATION FOR CERTIFICATE OF AUTHORITY.

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

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

3 (2) the name of the state or other jurisdiction under whose law the foreign limited
4 liability company is organized;

5 (3) the street and mailing address of the foreign limited liability company's
6 principal office and, if the laws of the jurisdiction under which the foreign limited liability
7 company is organized require the foreign limited liability company to maintain an office in that
8 jurisdiction, the street and mailing address of the required office; and

9 (4) the name and street and mailing address of the foreign limited liability
10 company's initial agent for service of process in this state.

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

15 **Reporters' Notes**

16 **Source** – ULPA (2001) § 902, which was based on ULLCA § 1002.
17
18

19 **SECTION 803. ACTIVITIES NOT CONSTITUTING TRANSACTING** 20 **BUSINESS.**

21 (a) Activities of a foreign limited liability company which do not constitute transacting
22 business in this state within the meaning of this [article] include:

23 (1) maintaining, defending, and settling an action or proceeding;

1 (2) holding meetings of its members or carrying on any other activity concerning
2 its internal affairs;

3 (3) maintaining accounts in financial institutions;

4 (4) maintaining offices or agencies for the transfer, exchange, and registration of
5 the foreign limited liability company's own securities or maintaining trustees or depositories
6 with respect to those securities;

7 (5) selling through independent contractors;

8 (6) soliciting or obtaining orders, whether by mail or electronic means or through
9 employees or agents or otherwise, if the orders require acceptance outside this state before they
10 become contracts;

11 (7) creating or acquiring indebtedness, mortgages, or security interests in real or
12 personal property;

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

15 (9) conducting an isolated transaction that is completed within 30 days and is not
16 one in the course of similar transactions of a like manner; and

17 (10) transacting business in interstate commerce.

18 (b) For purposes of this [article], the ownership in this state of income-producing real
19 property or tangible personal property, other than property excluded under subsection (a),
20 constitutes transacting business in this state.

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

1 **Reporters' Notes**

2 **Source** – ULPA (2001) § 903, which was based on ULLCA § 1003.
3
4

5 **SECTION 804. FILING OF CERTIFICATE OF AUTHORITY.** Unless the
6 [Secretary of State] determines that an application for a certificate of authority does not comply
7 with the filing requirements of this [act], the [Secretary of State], upon payment of all filing fees,
8 shall file the application, prepare, sign and file a certificate of authority to transact business in
9 this state, and send a copy of the filed certificate, together with a receipt for the fees, to the
10 foreign limited liability company or its representative.

11 **Reporters' Notes**

12 **Source** – ULPA (2001) § 904, which was based on ULLCA § 1004 and RULPA § 903.
13
14

15 **SECTION 805. NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY**
16 **COMPANY.**

17 (a) A foreign limited liability company whose name does not comply with Section 108
18 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in
19 this state, an alternate name that complies with Section 108. A foreign limited liability company
20 that adopts an alternate name under this subsection and then obtains a certificate of authority
21 with the alternate name need not comply with [fictitious name statute]. After obtaining a
22 certificate of authority with an alternate name, a foreign limited liability company shall transact
23 business in this state under the alternate name unless the foreign limited liability company is
24 authorized under [fictitious name statute] to transact business in this state under another name.

1 (b) If a foreign limited liability company authorized to transact business in this state
2 changes its name to one that does not comply with Section 108, it may not thereafter transact
3 business in this state until it complies with subsection (a) and obtains an amended certificate of
4 authority.

5 **Reporters' Notes**

6 **Source** – ULPA (2001) § 905, which was based on ULLCA § 1005.
7
8

9 **SECTION 806. REVOCATION OF CERTIFICATE OF AUTHORITY.**

10 (a) A certificate of authority of a foreign limited liability company to transact business in
11 this state may be revoked by the [Secretary of State] in the manner provided in subsections (b)
12 and (c) if the foreign limited liability company does not:

13 (1) pay, within 60 days after the due date, any fee, tax or penalty due to the
14 [Secretary of State] under this [act] or other law;

15 (2) deliver, within 60 days after the due date, its annual report required under
16 Section 210;

17 (3) appoint and maintain an agent for service of process as required by Section
18 113(b); or

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

21 (b) In order to revoke a certificate of authority, the [Secretary of State] must prepare,
22 sign, and file a notice of revocation and send a copy to the foreign limited liability company's
23 agent for service of process in this state, or if the foreign limited liability company does not

1 appoint and maintain a proper agent in this state, to the foreign limited liability company's
2 designated office. The notice must state:

3 (1) the revocation's effective date, which must be at least 60 days after the date
4 the [Secretary of State] sends the copy; and

5 (2) the grounds for revocation under subsection (a).

6 (c) The authority of the foreign limited liability company to transact business in this state
7 ceases on the effective date of the notice of revocation unless before that date the foreign limited
8 liability company remedies each ground for revocation stated in the notice. If the foreign limited
9 liability company remedies each ground, the [Secretary of State] shall so indicate on the filed
10 notice.

11 **Reporters' Notes**

12 **Source** – ULPA (2001) § 906, which was based on ULLCA § 1006.
13
14

15 **SECTION 807. CANCELLATION OF CERTIFICATE OF AUTHORITY;** 16 **EFFECT OF FAILURE TO HAVE CERTIFICATE.**

17 (a) In order to cancel its certificate of authority to transact business in this state, a
18 foreign limited liability company must deliver to the [Secretary of State] for filing a notice of
19 cancellation. The certificate is canceled when the notice becomes effective under Section 206.

20 (b) A foreign limited liability company transacting business in this state may not
21 maintain an action or proceeding in this state unless it has a certificate of authority to transact
22 business in this state.

23 (c) The failure of a foreign limited liability company to have a certificate of authority to
24 transact business in this state does not impair the validity of a contract or act of the foreign

1 limited liability company or prevent the foreign limited liability company from defending an
2 action or proceeding in this state.

3 (d) A member of a foreign limited liability company is not liable for the obligations of
4 the foreign limited liability company solely by reason of the foreign limited liability company's
5 having transacted business in this state without a certificate of authority.

6 (e) If a foreign limited liability company transacts business in this state without a
7 certificate of authority or cancels its certificate of authority, it appoints the [Secretary of State] as
8 its agent for service of process for rights of action arising out of the transaction of business in
9 this state.

10 **Reporters' Notes**

11 **Source** – ULPA (2001) § 907, which was based on RULPA § 907(d) and ULLCA
12 § 1008.
13
14

15 **SECTION 808. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]
16 may maintain an action to restrain a foreign limited liability company from transacting business
17 in this state in violation of this [article].

18 **Reporters' Notes**

19 **Source** – ULPA (2001) § 908, which was based on RULPA § 908 and ULLCA § 1009.

1 [ARTICLE] 9

2 ACTIONS BY MEMBERS

3
4 SECTION 901. DIRECT ACTION BY MEMBER.

5 (a) Subject to subsection (b), with or without an accounting a member may maintain a
6 direct action against a manager, another member or the limited liability company to enforce the
7 member’s rights and otherwise protect the member’s interests, including rights and interests
8 under the operating agreement or this [act] or arising independently of the membership
9 relationship.

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

13 (c) The accrual of, and any time limitation on, a right of action for a remedy under this
14 section is governed by law other than this [act]. A right to an accounting upon a dissolution and
15 winding up does not revive a claim barred by law.

16 Reporters’ Notes

17 Subsection (a) – Source: ULPA (2001) § 1001(a), which was based on RUPA
18 Section 405(b). The subsection has been somewhat re-styled and the phrase “for legal or
19 equitable relief” has been deleted as unnecessary.

20
21 Subsection (b) – Source: ULPA (2001) § 1001(b). The Comment to that subsection
22 explains:

23
24 In ordinary contractual situations it is axiomatic that each party to a contract has standing
25 to sue for breach of that contract. Within a limited liability company, however, different
26 circumstances may exist. A member does not have a direct claim against another member
27 merely because the other member has breached the operating agreement. Likewise a member’s
28 violation of this Act does not automatically create a direct claim for every other member. To
29 have standing in his, her, or its own right, a member plaintiff must be able to show a harm that

1 occurs independently of the harm caused or threatened to be caused to the limited liability
2 company.
3
4

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

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

11 (2) a demand would be futile.

12 **Reporters' Notes**

13 **Source** – ULPA (2001) § 1002, which was a re-styled version RULPA § 1001.
14

15 The Drafting Committee has not yet discussed whether the direct/derivative distinction
16 should apply in a member-managed limited liability company.
17
18

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

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

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

25 **Reporters' Notes**

26 **Source** – ULPA (2001) § 1003, which was a re-styled version RULPA § 1002.
27
28

1
2
3
4

[ARTICLE] 10

DOMESTICATION, CONVERSION AND MERGER

[reserved pending META]

1 [ARTICLE] 11

2 MISCELLANEOUS PROVISIONS

3
4 **SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
5 applying and construing this Uniform Act, consideration must be given to the need to promote
6 uniformity of the law with respect to its subject matter among states that enact it.

7
8 **SECTION 1102. SEVERABILITY CLAUSE.** If any provision of this [act] or its
9 application to any person or circumstance is held invalid, the invalidity does not affect other
10 provisions or applications of this [act] which can be given effect without the invalid provision or
11 application, and to this end the provisions of this [act] are severable.

12
13 **SECTION 1103. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
14 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal
15 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
16 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
17 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
18 U.S.C. Section 7003(b).

19
20 **SECTION 1104. EFFECTIVE DATE.** This [act] takes effect [effective date].
21

1 **SECTION 1105. REPEALS.** Effective [all-inclusive date], the following acts and parts
2 of acts are repealed: [the state limited liability company Act as amended and in effect
3 immediately before the effective date of this [act]].

4
5 **SECTION 1106. APPLICATION TO EXISTING RELATIONSHIPS.**

6 (a) Before [all-inclusive date], this [act] governs only:

7 (1) a limited liability company formed on or after [the effective date of this [act]];

8 and

9 (2) except as otherwise provided in subsection (c), a limited liability company
10 formed before [the effective date of this [act]] which elects, in the manner provided in its
11 operating agreement or by law for amending the operating agreement, to be subject to this [act].

12 (b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this
13 [act] governs all limited liability companies.

14 (c) With respect to a limited liability company formed before [the effective date of this
15 [act]], the following rules apply except as the members otherwise elect in the manner provided in
16 the operating agreement or by law for amending the operating agreement: **[TBD – this
17 subsection will contain any provisions of ULLCA which should continue to apply
18 preexisting limited liability companies even after the “all-inclusive” date to.]**

19
20 **SECTION 1107. SAVINGS CLAUSE.** This [act] does not affect an action
21 commenced, proceeding brought, or right accrued before this [act] takes effect.