

DRAFT  
FOR DISCUSSION ONLY

~~Updates to~~ **Uniform Unincorporated Organization Acts**  
**(20 )**

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Uniform Law Commission

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~~November 18 – 19, 2022~~[February 24 – 25, 2023](#) Committee Meeting



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By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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~~November 9, 2022~~ [February 21, 2023](#)

## ~~Updates to~~ Uniform Unincorporated Organization Acts (20 )

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1 the UUOA or whether each of the UUOA should be restated in its entirety. There is a good  
2 argument that the amendments being developed are already significant and detailed  
3 enough to justify restating the acts. If that approach is taken, the Chair and Reporters  
4 recommend that the committee adopt the change to “governing jurisdiction.” If the acts are  
5 not restated, the Committee should probably abandon the change to governing  
6 jurisdiction.]

7  
8 (9) “Limited liability partnership”, ~~except in the phrase “foreign limited liability~~  
9 ~~partnership” and in [Article] 11, or “domestic limited liability partnership”~~ means a  
10 partnership that has filed a statement of qualification under Section 901 and does not have a  
11 similar statement in effect in any other jurisdiction.

12 \* \* \*

13 (11) “Partnership”, or “domestic partnership” ~~except in [Article] 11,~~ means an  
14 ~~association of two or more persons to carry on as co-owners a business for profit entity that~~  
15 ~~is~~ formed under this [act] or ~~that becomes subject to~~ the whose internal affairs of which  
16 become governed by this [act] under Section 104 or 110, or [Article] 11 ~~or Section 110.~~ The  
17 ~~term includes~~ terms include a domestic limited liability partnership, but not a foreign limited  
18 liability partnership.

19 \* \* \*

20 (14) “Person” means an individual, ~~business corporation, nonprofit corporation,~~  
21 ~~partnership, limited partnership, limited liability company, [general cooperative~~  
22 ~~association,] limited cooperative association, unincorporated nonprofit association,~~  
23 ~~statutory trust, business trust, common-law business trust,~~ estate, ~~trust, association, joint~~  
24 ~~venture, public corporation,~~ business or nonprofit entity, government or governmental  
25 subdivision, agency, or instrumentality, ~~or any other legal or commercial entity, or anything~~

else any other legal construct that is a person but not an entity under the law of this state.<sup>1</sup>

\* \* \*

\* \* \*

*Legislative Note: An enacting state should review its law generally to make sure anything considered a person under other law that is described only in the new last clause of this definition is appropriate for treatment as a person under the act.*

### Comment

\* \* \*

“Partnership” [(11)]—This definition, combined with Section 202(a), makes clear that a general partnership is a *business* organization. This definition makes no reference to a partnership having partners upon formation, but Section 202(a) does.

Because a partnership is defined as “an entity that is formed under this [act] or the internal affairs of which become governed by this [act],” references in this act to “a partnership” mean a domestic partnership. The more complete term “domestic partnership” is used in several places in this act to highlight the scope of particular provisions. Use of the term “domestic partnership” in those places is not intended to affect the meaning of partnership when it appears elsewhere in the act.

\* \* \*

“Person” [14] – This term is the standard definition used in uniform acts generally, with the exception of the last clause which has been added so that protected series are included in the definition. A protected series under the Uniform Protected Series Act (last amended 2023) is not an entity and thus would not be included absent the addition of the last clause.

\* \* \*

## **SECTION 202. FORMATION OF PARTNERSHIP.**

(a) Except as otherwise provided in subsection (b), the association of two or more

---

<sup>1</sup> This definition has been amended to follow the recently approved revision of the definition of “person” in the ULC Drafting Rules and Style Manual. [See Rule 304\(3\) in the Drafting Rules.](#) The last clause has been added to the new definition so that protected series are included in the definition because a protected series is not an entity and thus would otherwise not be included. The same changes will be made to the definition of “person” in the other individual uniform entity laws. Addition of the final clause raises the question of whether the expanded definition is appropriate in all contexts of the uniform unincorporated entity laws. ~~A different formulation is proposed for use in the Uniform Business Organizations Code, see Issue 18, to make clear that the Code includes all types of entities.~~

1 persons to carry on as co-owners a business for profit forms a partnership, whether or not the  
2 persons intend to form a partnership.

3 (b) An association formed under a statute other than this [act], a predecessor statute, or a  
4 comparable statute of another jurisdiction is not a partnership under this [act], unless the  
5 internal affairs of the association become governed by this [act] under Section 104 or 110,  
6 or [Article] 11.

7 \* \* \*

#### 8 Comment

9 \* \* \*

10 Subsection (b)—This subsection continues the UPA (1914) concept that the general  
11 partnership is the residual form of business association. Accordingly, partnership-like  
12 organizations formed under specially applicable statutes are not within this act. *E.g.*, MONT.  
13 CODE ANN. §§ 35-13-101 to 102 (pertaining to mining partnerships). In addition,  
14 organizations formed under the laws of other jurisdictions are not subject to this act when  
15 formed, but may become subject to this act under Section 104 or 110, or Article 11.

16 \* \* \*

#### 18 SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.

19 \* \* \*

20 ~~(d) If a person holds all the partners' interests in the partnership, all the~~  
21 ~~partnership property vests in that person. The person may sign a record in the name of the~~  
22 ~~partnership to evidence vesting of the property in that person and may file or record the~~  
23 ~~record.~~

1 Issue 2

2 Uniform Partnership Act

3 **SECTION 801. EVENTS CAUSING DISSOLUTION.** A partnership is dissolved,  
4 and its business must be wound up, upon the occurrence of any of the following:

5 (1) in a partnership at will, the partnership knows or has notice of a person's express will  
6 to withdraw as a partner, other than a ~~partner~~ person that has dissociated as a partner under  
7 Section 601(2) through (10), but, if the person has specified a withdrawal date later than the date  
8 the partnership knew or had notice, on the later date;

9 \* \* \*

10 (5) on application by a transferee, the entry by [the appropriate court] of an order  
11 dissolving the partnership on the ground that it is equitable to wind up the partnership business:

12 \* \* \*

13 (B) at any time, if the partnership was a partnership at will at the time of the  
14 transfer or entry of the charging order that gave rise to the transfer; ~~or~~

15 (6) the passage of 90 consecutive days during which the partnership ~~does not have at~~  
16 ~~least two partners~~ has only one partner unless, before the end of the period, one or more  
17 persons are admitted as partners; or

18 (7) the passage of 90 consecutive days during which the partnership has no partners;  
19 unless, before the end of the period:

20 —————(A) consent to admit at least two specified persons as partners  
21 is given by transferees owning the rights to receive a majority of distributions as  
22 transferees at the time the consent is to be effective; and

23 —————(B) at least two ~~specified~~ of the persons named in the consent

1 become partners in accordance with the consent.

2 **SECTION 803. RESCINDING DISSOLUTION.**

3 (a) A partnership may rescind its dissolution, unless a statement of termination applicable  
4 to the partnership has become effective or [the appropriate court] has entered an order under  
5 Section 801(4) or (5) dissolving the partnership.

6 (b) Rescinding dissolution under this section requires:

7 ~~\_\_\_\_\_~~ (1) if the dissolution occurred under Section 801(1), the  
8 affirmative vote or consent of the person whose express will to withdraw as a partner  
9 caused the dissolution;

10 ~~\_\_\_\_\_~~ (2) if the dissolution occurred under Section 801(2), (3), (4), (5),  
11 (6), or (7), the affirmative vote or consent of each partner ~~other than a person whose~~  
12 ~~dissociation caused;~~

13 (3) if the dissolution; occurred under Section 801(4), the affirmative vote or  
14 consent of each partner;

15 (4) if the dissolution occurred under Section 801(5), the affirmative vote or  
16 consent of each partner and each applicant transferee;

17 ~~\_\_\_\_\_~~ (5) if the dissolution occurred under Section 801(6), the  
18 affirmative vote or consent of:

19 (A) the remaining partner; and

20 (B) at least one person that becomes a partner after the dissolution;

21 (6) if the dissolution occurred under Section 801(7):

22 (A) consent to admit at least two specified persons as partners is given  
23 by transferees owning the rights to receive a majority of distributions as transferees at the

1 time dissolution is to be effective; and

2 (B) at least two of the persons named in the consent are partners in  
3 accordance with the consent; and

4 ~~(2)~~ (37) if the partnership has delivered to the [Secretary of State] for filing a  
5 statement of dissolution and:

6 \_\_\_\_\_(A) the statement has not become effective, delivery  
7 to the [Secretary of State] for filing of a statement of withdrawal under Section 115 applicable to  
8 the statement of dissolution; or

9 \_\_\_\_\_(B) the statement of dissolution has become  
10 effective, delivery to the [Secretary of State] for filing of a statement of rescission stating the  
11 name of the partnership and that dissolution has been rescinded under this section.

12 \_\_\_\_\_(c) If a partnership rescinds its dissolution:

13 \_\_\_\_\_(1) the partnership resumes carrying on its business as if  
14 dissolution had ~~never~~ not occurred;

15 \_\_\_\_\_(2) subject to paragraph (3), ~~any~~ liability ~~incurred by the~~  
16 **partnership of a person for an act occurring** after the dissolution and before the rescission has  
17 become effective is determined as if dissolution had never occurred; and

18 \_\_\_\_\_(3) the rights of a third party arising out of conduct in reliance on  
19 the dissolution before the third party knew or had notice of the rescission may not be adversely  
20 affected.

Comment

\* \* \*

**Subsections (b)(1) Subsection (b)**—The requirement of unanimous consent in subsection (b)((2), (3), and (4) protects any vested rights or reliance by partners. However, the partnership agreement may vary this provision. Subsection (b)(3) includes all of the plaintiff partners.

\* \* \*



1 Issue 3

2 Uniform Partnership Act

3 **SECTION 504. CHARGING ORDER.**

4 (a) On application by a judgment creditor ~~of~~ to enforce a judgment against a partner or  
5 ~~transferee~~ other holder of a transferable interest in a domestic partnership or foreign  
6 partnership, a court may enter a charging order against the transferable interest of the judgment  
7 debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a  
8 judgment debtor's transferable interest and requires the domestic partnership or foreign  
9 partnership to pay over to the person to which the charging order was issued any distribution  
10 that otherwise would be paid to the judgment debtor.

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

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

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

16 (c) ~~The following rules apply to foreclosure of a lien against a transferable interest~~  
17 ~~subject to a charging order:~~

18 ~~(1)~~ Upon a showing by a judgment creditor that distributions ~~by a domestic~~  
19 ~~partnership~~ under a charging order will not pay the judgment debt within a reasonable time,  
20 ~~the:~~

21 (1) The court may foreclose the lien and order the sale of the transferable interest  
22 in a domestic partnership.

23 (2) The court may foreclose ~~at the~~ lien ~~against a~~ and order the sale of the

1 transferable interest in a foreign partnership if the law of the jurisdiction of formation of  
2 the partnership allows foreclosure. The foreclosure and sale must be conducted under the  
3 law of this state.

4 ~~(3d)~~ The purchaser at the foreclosure sale ~~under paragraph (1) or (2)~~subsection (c)  
5 obtains only the transferable interest, does not thereby become a partner, and is subject to  
6 Section 503.

7 ~~(d)~~ (e) At any time before ~~foreclosure~~ completion of a sale under subsection (c), the  
8 partner or transferee whose transferable interest is subject to a charging order under subsection  
9 (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of  
10 the satisfaction with the court that issued the charging order.

11 ~~(e)~~ (f) At any time before foreclosure under subsection (c), ~~a~~ the domestic partnership  
12 or foreign partnership or one or more partners whose transferable interests are not subject to the  
13 charging order may pay to the judgment creditor the full amount due under the judgment and  
14 thereby succeed to the rights of the judgment creditor, including the charging order.

15 ~~(f)~~ (g) This [act] does not deprive any partner or transferee of the benefit of any  
16 exemption law applicable to the transferable interest of the partner or transferee.

17 ~~(g)~~ (h) This section provides the exclusive remedy by which a person seeking in the  
18 capacity of a judgment creditor to enforce a judgment against a partner or ~~transferee~~ other  
19 holder of a transferable interest in a domestic partnership or foreign partnership may  
20 satisfy the judgment from the judgment debtor's transferable interest.

## 21 Comment

22 The charging order concept dates back to the English Partnership Act of 1890 and in the  
23 United States has been a fundamental part of law of unincorporated business organizations since  
24 1914. See UPA (1914) § 28. As much a remedy limitation as a remedy, the charging order is the  
25 sole method by which a person acting as judgment creditor of a partner or ~~transferee~~ other

1 holder of a transferable interest in a **domestic** partnership or foreign partnership can  
2 extract value from the partner's or ~~transferee's~~ other person's ownership interest in a  
3 partnership. See the comment to Subsection (g).

4  
5 Under this section, the judgment creditor of a partner or ~~transferee~~ other holder of a  
6 transferable interest in a **domestic** partnership or foreign partnership is entitled to a  
7 charging order against the relevant transferable interest. While in effect, that order entitles the  
8 judgment creditor to whatever distributions would otherwise be due to the partner or ~~transferee~~  
9 other person whose interest is subject to the order. However, the judgment creditor has no say in  
10 the timing or amount of those distributions. The charging order does not entitle the judgment  
11 creditor to accelerate any distributions or to otherwise interfere with the management and  
12 activities of the partnership.

13  
14 By its terms, this section ~~does not apply to~~ applies to both domestic and foreign  
15 partnerships. ~~See Section 102(11) (defining “partnership” to mean “an association of two or~~  
16 ~~more persons to carry on as co-owners a business for profit formed under this [act]”)~~  
17 ~~(emphasis added). “Partnership” is defined in Section 102(11) to mean “an entity that is~~  
18 ~~formed under this [act] or becomes subject to the internal affairs of which become governed~~  
19 ~~by this [act]” and, thus, references in this section to “a partnership” mean a domestic~~  
20 ~~partnership. The more complete term “domestic partnership” is used in subsection~~  
21 ~~(e) several places in this section to highlight the scope of this section, and to emphasize in~~  
22 ~~subsection (c)(1) the distinction in that subsection between the rule applicable to domestic~~  
23 ~~partnerships under subsection (c)(1) and the similar, but more limited, rule applicable to~~  
24 ~~foreign partnerships under subsection (c)(2). Use of the term “domestic partnership” in~~  
25 ~~subsection (e) this section is not intended to change the meaning of partnership as defined in~~  
26 ~~Section 102(11) when it appears elsewhere in the [act].~~

27  
28 See also Subsection (c)(2) addresses the availability of foreclosure of a lien against a  
29 transferable interest in a foreign partnership in a different way than the court did in Fannie  
30 Mae v. Heather Apartments Ltd. ~~P'ship~~P'ship, A13-0562, 2013 WL 6223564, at \*6 (Minn. Ct.  
31 App. Dec. 2, 2013) (considering the remedies available to a judgment creditor with respect to the  
32 judgment debtor's interest in a Cook Islands LLC; rejecting the debtor's argument that the  
33 creditor's “only remedy is to obtain a charging order under” the Minnesota LLC statute;  
34 explaining that “this argument fails because that statute only applies to Minnesota limited  
35 liability companies” which that statute “defines . . . as ‘a limited liability company, other than a  
36 foreign limited liability company, organized or governed by this chapter’”) (emphasis added)  
37 (statutory citations omitted). Foreclosure of a lien against a transferable interest in a foreign  
38 partnership will be available if the law of the jurisdiction of formation of the partnership  
39 allows foreclosure. If the foreign jurisdiction allows foreclosure, the rules and procedures  
40 for the conduct of the foreclosure by the court that entered the charging order will be  
41 governed by the law of the state in which the court sits.

42 \* \* \*

43  
44  
45 Subsection (a)—The phrase “judgment debtor” encompasses both partners and  
46 ~~transferees~~ other holders of a transferable interest. A charging order is available against

1 **the holder of a transferable interest regardless of whether the holder received the**  
2 **transferable interest in a transfer. For example, if a person is dissociated as a partner, the**  
3 **person may continue to hold a transferable interest and that interest will be available to**  
4 **satisfy the claim of a judgment ~~debtor~~ creditor of the person dissociated as a partner.**

5  
6 The lien **of a charging order** pertains only to a distribution, which excludes “amounts  
7 constituting reasonable compensation for present or past service or payments made in the  
8 ordinary course of business under a bona fide retirement plan or other bona fide benefits  
9 program.” Section 102(4)(B). A judgment creditor that wishes to levy on such amounts should  
10 use the appropriate creditor’s remedy, such as garnishment (which may be subject to exemptions  
11 or exclusions not relevant to a charging order). Cf. PB Real Estate, Inc. v. Dem II Props., 719  
12 A.2d 73, 76 (Conn. Ct. App. 1998) (rejecting the contention of an LLC’s two members that  
13 “payments of \$28,000 to each of them” should be treated “as expenses for wages” rather than as  
14 distributions).

15  
16 \* \* \*

17  
18 Subsection (c)—The phrase “that distributions under the charging order will not pay the  
19 judgment debt within a reasonable ~~period of~~ time” comes from case law. See, e.g., Nigri v. Lotz,  
20 453 S.E.2d 780, 783 (Ga. Ct. App. 1995); Stewart v. Lanier Park Med. Office Bldg., Ltd., 578  
21 S.E.2d 572, 574 (Ga. Ct. App. 2003) (“Judicial sale may be appropriate where . . . it is apparent  
22 that distributions under the charging order will not pay the judgment debt within a reasonable  
23 amount of time.”). A purchaser at a foreclosure sale obtains only the very limited rights of a  
24 transferee under Section 503 and is in some ways more vulnerable and less powerful than the  
25 holder of a charging order. After foreclosure and sale, Subsection (b) no longer applies. More  
26 generally, the court is no longer involved in the matter. For the vulnerability of a transferee, see  
27 Sections 503(a)(3) comment; 107(b), comment.

28  
29 **Subsection ~~(e)~~(3)d) – This provision applies to a foreclosure involving a transferable**  
30 **interest in either a domestic or foreign partnership. Even if the law of the jurisdiction of**  
31 **formation of a foreign partnership permits a purchaser in a foreclosure sale to obtain the**  
32 **entire interest of the partner whose interest is being foreclosed, a foreclosure sale under the**  
33 **[act] will result in the purchaser only acquiring a transferable interest. For a purchaser to**  
34 **obtain the entire partnership interest, the foreclosure sale would need to be conducted**  
35 **under the law of the jurisdiction of formation.**

36  
37 **Subsection ~~(d)~~ (e)—This provision allows the judgment debtor to end the charging order**  
38 **without need for a hearing by satisfying the judgment before the sale of the transferable**  
39 **interest has been completed. When title to the transferable interest has transferred to the**  
40 **purchaser in the foreclosure sale the judgment debtor’s right to end the charging order**  
41 **terminates.**

42  
43 **Subsection ~~(e)~~ (f)—Traditionally, charging order provisions referred to the possibility of**  
44 **“redeeming” an interest subject to a charging order. \* \* \***

45  
46 **Subsection ~~(f)~~ ~~(\*)~~ (\*) (g)—This subsection preserves otherwise applicable exemptions but**

1 does not create any. In re Foos, 405 B.R. 604, 609 (Bankr. N. D. Ohio 2009) (interpreting the  
2 comparable provision in UPA (1997) and stating that “it is clear that [the provision] does not  
3 create an exemption”).

4  
5 Subsection ~~(g)~~ (h)—This subsection does not override Uniform Commercial Code,  
6 Article 9, which may provide different remedies for a secured creditor acting in that capacity.  
7 \* \* \*

## 8 9 **Uniform Limited Liability Company Act**

### 10 **SECTION 503. CHARGING ORDER.**

11 (a) On application by a judgment creditor of a member or transferee ~~other holder of a~~  
12 ~~transferable interest in a~~ domestic limited liability company or foreign limited liability  
13 company, a court may enter a charging order against the transferable interest of the judgment  
14 debtor for the unsatisfied amount of the judgment. Except as otherwise provided in subsection  
15 ~~(f)~~ (g), a charging order constitutes a lien on a judgment debtor’s transferable interest and requires  
16 the domestic limited liability company or foreign limited liability company to pay over to the  
17 person to which the charging order was issued any distribution that otherwise would be paid to  
18 the judgment debtor.

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

- 21 (1) appoint a receiver of the distributions subject to the charging order, with the  
22 power to make all inquiries the judgment debtor might have made; and  
23 (2) make all other orders necessary to give effect to the charging order.

24 (c) ~~The following rules apply to foreclosure of a lien against a transferable interest~~  
25 ~~subject to a charging order:~~

26 ~~(1)~~ Upon a showing by a judgment creditor that distributions ~~by a domestic limited~~  
27 ~~liability company~~ under a charging order will not pay the judgment debt within a reasonable

time, ~~the~~:

(1) The court may foreclose the lien and order the sale of the transferable interest in a domestic limited liability company.

(2) The court may foreclose ~~at the~~ lien ~~against a~~ and order the sale of the transferable interest in a foreign limited liability company if the law of the jurisdiction of formation of the company allows foreclosure. The foreclosure and sale must be conducted under the law of this state.

(3d) Except as otherwise provided in subsection ~~(f)~~ (g), the purchaser at the foreclosure sale under ~~paragraph (1) or (2)~~ subsection (c) obtains only the transferable interest, does not thereby become a member, and is subject to Section 502.

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

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

~~(f)~~ (g) If a court orders foreclosure of a charging order lien against the transferable interest of a sole member of a domestic limited liability company or foreign limited liability company:

(1) the court shall confirm the sale;

(2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;

(3) the purchaser thereby becomes a member; and

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

~~(g)~~ (h) This [act] does not deprive any member or transferee of the benefit of any exemption law applicable to the transferable interest of the member or transferee.

~~(h)~~ (i) This section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a member or ~~transferee~~ other holder of a transferable interest in a domestic limited liability company or foreign limited liability company may satisfy the judgment from the judgment debtor's transferable interest.

#### Comment

\* \* \*

By its terms, this section ~~does not apply to~~ applies to both domestic and foreign limited liability companies. ~~See Section 102(8) (defining "[l]imited liability company" to mean "an entity formed under this [act] or which becomes subject to this [act]" (emphasis added); see also "Limited liability company" is defined in Section 102(8) to mean "an entity that is formed under this [act] or becomes subject to this [act]"<sup>2</sup> and, thus, references in this section to "a limited liability company" mean a domestic limited liability company. The more complete term "domestic limited liability company" is used in several places in this section to highlight the scope of this section, and to emphasize in subsection (c) ~~to emphasize the distinction in that subsection~~ the difference between the rule applicable to domestic limited liability companies under subsection (c)(1) and the similar, but more limited, rule applicable to foreign limited liability companies under subsection (c)(2). Use of the term "domestic ~~partnership~~ limited liability company" in ~~subsection (c)~~ this section is not intended to change the meaning of ~~partnership~~ limited liability company as defined in Section 102(8) when it appears elsewhere in the ~~act~~ act.~~

~~Subsection (c)(2)~~ Subsection (c)(2) addresses the availability of foreclosure against a foreign limited liability partnership in a different way than the court did in *Fannie Mae v. Heather Apartments Ltd. P'ship*, A13-0562, 2013 WL 6223564, at \*6 (Minn. Ct. App. Dec. 2, 2013) (considering the remedies available to a judgment creditor with respect to the judgment debtor's interest in a Cook Islands LLC; rejecting the debtor's argument that the creditor's "only remedy

<sup>2</sup> This quotation will need to be reviewed because the definition may change.

1 is to obtain a charging order under” [the Minnesota LLC statute]; explaining that “this argument  
2 fails because that statute only applies to Minnesota limited liability companies” which that  
3 statute “defines . . . as ‘a limited liability company, other than a foreign limited liability  
4 company, organized or governed by this chapter’”) (emphasis added) (statutory citations  
5 omitted). **Foreclosure will be available against a transferable interest in a foreign limited  
6 liability company if the law of the jurisdiction of formation of the limited liability company  
7 allows foreclosure. If the foreign jurisdiction allows foreclosure, the rules and procedures  
8 for the conduct of the foreclosure by the court that entered the charging order will be  
9 governed by the law of the state in which the court sits.**

10  
11 \* \* \*

12  
13 Subsection (c)—The phrase “that distributions under the charging order will not pay the  
14 judgment debt within a reasonable ~~period of~~ time” comes from case law. See, e.g., Stewart v.  
15 Lanier Park Med. Office Bldg., Ltd., 578 S.E.2d 572, 574 (Ga. Ct. App. 2003) (“Judicial sale  
16 may be appropriate where . . . it is apparent that distributions under the charging order will not  
17 pay the judgment debt within a reasonable amount of time.”); Nigri v. Lotz, 453 S.E.2d 780, 783  
18 (Ga. Ct. App. 1995). ). A purchaser at a foreclosure sale obtains only the very limited rights of a  
19 transferee under Section 502 and is in some ways more vulnerable and less powerful than the  
20 holder of a charging order. After foreclosure and sale, Subsection (b) no longer applies. More  
21 generally, the court is no longer involved in the matter. For the vulnerability of a transferee, see  
22 Section 107(b), comment.

23  
24 **Subsection ~~(e)~~(3)(d) – This provision applies to a foreclosure involving a transferable  
25 interest in either a domestic or foreign limited liability company. Even if the law of the  
26 jurisdiction of formation of a foreign limited liability company permits a purchaser in a  
27 foreclosure sale to obtain the entire interest of the partner whose interest is being  
28 foreclosed, a foreclosure sale under the [act] will result in the purchaser only acquiring a  
29 transferable interest, except as provided in subsection ~~(f)~~(g) with respect to single member  
30 limited liability companies. For a purchaser to obtain the entire interest of a member in a  
31 multi-member limited liability company, the foreclosure sale would need to be conducted  
32 under the law of the jurisdiction of formation.**

33  
34 **\* \* \* Subsection ~~(d)~~ (e)— This provision allows the judgment debtor to end the charging  
35 order without need for a hearing by satisfying the judgment before the sale of the  
36 transferable interest has been completed. When title to the transferable interest has  
37 transferred to the purchaser in the foreclosure sale the judgment debtor’s right to end the  
38 charging order terminates.**

39  
40 **Subsection ~~(e)~~ (f)—Traditionally, charging order provisions referred to the possibility of  
41 “redeeming” an interest subject to a charging order. \* \* \***

42  
43 **Subsection ~~(f)~~ (g)**

44 **Subsection ~~(f)~~**—The charging order remedy—and, more particularly, the exclusiveness of  
45 the remedy—protect the “pick your partner” principle. That principle is inapposite when a  
46 limited liability company has only one member. The exclusivity of the charging order remedy



1 was never intended to protect a judgment debtor, but rather only to protect the interests of the  
2 judgment debtor's co-owners.

3  
4 Put another way, the charging order remedy was never intended as an "asset protection"  
5 device for judgment debtors. See *Olmstead v. F.T.C.*, 44 So. 3d 76, 83 (Fla. 2010) (recognizing  
6 "the full scope of a judgment creditor's rights with respect to a judgment debtor's freely alienable  
7 membership interest in a single-member LLC"); *In re Albright*, 291 B.R. 538, 540 (Bankr. D.  
8 Colo. 2003) (holding that, "[b]ecause there are no other members in the LLC, . . . the Debtor's  
9 bankruptcy filing effectively assigned her entire membership interest in the LLC to the  
10 bankruptcy estate, and the Trustee obtained all her rights, including the right to control the  
11 management of the LLC"). Accordingly, when a charging order against an LLC's sole member is  
12 foreclosed, the member's entire ownership interest is sold and the buyer replaces the judgment  
13 debtor as the LLC's sole member.

14  
15 **If the law of the jurisdiction of formation of a foreign limited liability company**  
16 **permits foreclosure, a foreclosure proceeding may be brought under the [act] as provided**  
17 **in subsection (c)(2). The rule in subsection (e)(3d) that a purchaser acquires only a**  
18 **transferable interest in a foreclosure sale does not apply in the case of a single member**  
19 **foreign limited liability company because subsection (e)(3d) defers to the rule in subsection**  
20 **(f) in that case.**

21  
22 ~~**This subsection was added during the Harmonization Project but not for the**~~  
23 ~~**purposes of harmonization. The subsection**~~ **Subsection (fg)** addresses an issue that does not  
24 exist with partnerships; neither a general nor a limited partnership can continue perpetually in  
25 existence with only one partner. See *ULPA* (2001) (Last Amended 2013) § 801(a)(5) (stating  
26 that dissolution is caused upon "the passage of 90 consecutive days during which the partnership  
27 has only one partner"); *UPA* (1997) (Last Amended 2013) § 801(6) (stating that dissolution is  
28 caused upon "the passage of 90 consecutive days during which the partnership does not have at  
29 least two partners").

30  
31 Subsection (g) (h)—This subsection preserves otherwise applicable exemptions but does  
32 not create any. In re Foos, 405 B.R. 604, 609 (Bankr. N.D. Ohio 2009) (interpreting the  
33 comparable provision in UPA (1997) and stating, "it is clear that [the provision] does not create  
34 an exemption").

35  
36 Subsection (h) (i)—This subsection does not override Uniform Commercial Code,  
37 Article 9, which may provide different remedies for a secured creditor acting in that capacity.

38 \* \* \*

1 Issue 4

2 Uniform Partnership Act

3 **SECTION 1101. -DEFINITIONS.** {Note that there is an unrelated change to § 1101  
4 under Issue 11.}

5 ~~In~~ (a) Except as provided in subsections (b) and (c), in ~~In~~ this [article]:

6 \* \* \*

7 (3) “Conversion” means a transaction authorized by:

8 (A) [Part] 4; or

9 (B) a similar law of another jurisdiction, however the transaction is  
10 denominated, ~~that if~~:

11 (i) ~~the transaction~~ involves a single entity; and

12 (ii) ~~one effect of which is that~~ the entity becomes a different  
13 type of entity when a ~~publicly filed~~ public organic record becomes effective.

14 \* \* \*

15 (10) “Domestication” means a transaction authorized by:

16 (A) [Part] 5; or

17 (B) a similar law of another jurisdiction, however the transaction is  
18 denominated, ~~that if~~:

19 (i) ~~the transaction~~ involves a single entity; ~~and~~

20 (ii) ~~one effect of which is that~~ the transaction does not change  
21 the entity’s type; and

22 (iii) the internal affairs of the entity become governed by the  
23 law of a different jurisdiction when a ~~publicly filed~~ public organic record becomes effective.

1           \* \* \*

2                   (17) “Interest Exchange” means a transaction authorized by:

3                           (A) [Part] 3; or

4                           (B) a similar law of another jurisdiction, however the transaction is  
5 denominated, one effect of which is that all of one or more classes or series of interests of an  
6 entity are acquired by another entity when a ~~publicly filed~~public organic record becomes  
7 effective.

8           \* \* \*

9                   (20) “Merger” means a transaction authorized by:

10                           (A) [Part] 2; or

11                           (B) a similar law of another jurisdiction, however the transaction is  
12 denominated, under which two or more entities are combined into one of ~~those~~the entities  
13 or a newly created entity when a ~~publicly filed~~public organic record becomes effective.

14           \* \* \*

15                   (b) ~~If a provision~~A reference in this [article] ~~refers~~ to an entity or type of entity, ~~the~~  
16 ~~reference~~ includes a domestic and foreign entity, unless the ~~provision~~reference refers  
17 expressly only to a domestic entity or foreign entity.

18                   (c) A term used in this [article] to refer to a party to, documentation for, or other  
19 matter relating to a conversion, domestication, interest exchange, or merger has a  
20 corresponding meaning under the law of ~~any~~a foreign jurisdiction applicable to the  
21 transaction.

22                                           Comment

23           \* \* \*

1        Subsection (c) – Some states use different terms to refer to the types of transactions  
2 authorized in this article. For example, Delaware uses the terms “transfer” and  
3 “continuance,” as well as the term “domestication” to refer to a transaction in which a  
4 Delaware limited liability company becomes a limited liability company under the law of a  
5 foreign country. 6 Del. Code § 18-213. Similarly, Delaware uses the term “conversion” to  
6 refer to a transaction in which a Delaware limited liability company becomes a limited  
7 liability company under the law of another state. 6 Del. Code § 18-216. Those transactions  
8 under Delaware law would all be considered a “domestication” under Part 5.  
9

10       When a foreign jurisdiction uses a different name for a transaction that has a  
11 similar substantive effect as a transaction under this article, other terms used in this article  
12 with respect to that type of transaction have corresponding meanings. For example, Part 5  
13 requires the filing of a certificate of domestication, while Delaware refers to the document  
14 as a certificate of transfer (if the company is domesticating to another country) or a  
15 certificate of conversion (if the company is domesticating to another state).  
16

17       When the definitions in subsection (a) of conversion, domestication, interest  
18 exchange and merger refer to a transaction under the law of a foreign jurisdiction  
19 “however the transaction is denominated,” those provisions should be applied broadly. The  
20 law of the foreign jurisdiction may authorize a transaction that includes two or more  
21 transactions that this article treats separately, or the law of the foreign jurisdiction may  
22 authorize two or more transactions that this article encompasses within one transaction. In  
23 both cases, the transactions under the foreign law are intended to be included in the  
24 terminology of this article.

1 Issue 5

2 Uniform Limited Liability Company Act

3 **SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND**  
4 **MANAGERS.**

5 \* \* \*

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

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

10 (A) in the conduct or winding up of the company's activities and affairs;

11 (B) from a use by the member of the company's property; or

12 (C) from the appropriation ~~of a company opportunity before the~~  
13 dissolution of the company of a company opportunity;

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

17 (3) to refrain from competing with the company before the dissolution of the  
18 company in the conduct of the company's activities and affairs ~~before the dissolution of the~~  
19 ~~company~~.

20 \* \* \*

21 Comment

22 \* \* \*

23 Subsection (b)(1)(C) – This act does not specify what constitutes “a company  
24 opportunity,” but ample case law exists. See, e.g., Ebenezer United Methodist Church v.

1 Riverwalk Development Phase, II, LLC, 45 A.3d 883, 887 (Md. App. 2012) (discussing the  
2 “interest or reasonable expectancy test”); In re McCook Metals, L.L.C., 319 B.R. 570, 596  
3 (Bkrcty. N.D.Ill. 2005) (discussing the “line of business test”).  
4

5 This duty ~~continues through winding up, although in that context the scope of~~  
6 ~~company opportunities inevitably narrows. ends when the company is dissolved. The duty~~  
7 ~~may be violated, however, by wrongfully causing dissolution with the intention of~~  
8 ~~appropriating a company opportunity following dissolution because in that case the~~  
9 ~~conduct of the member will have begun before dissolution.~~  
10

11 In most, if not all, situations, usurping a company opportunity also breaches the duty not  
12 to compete, Paragraph (b)(3), but not *vice versa*.  
13

14 \* \* \*

1 Issues 6 and 7

2 Uniform Partnership Act

3 **SECTION 110. APPLICATION TO EXISTING RELATIONSHIPS.**

4 \* \* \*

5 ~~(d) With respect to a partnership formed before [the effective date of this [act]],~~  
6 ~~Section 806(b), (c), and (d) does not apply, and all partnership accounts must be settled and~~  
7 ~~distributions made to each partner in winding up in the manner required immediately~~  
8 ~~before [the effective date of this [act]], except as otherwise provided in the partnership~~  
9 ~~agreement.~~

10 **SECTION 401.- PARTNER'S RIGHTS AND DUTIES.**

11 (a) ~~Each partner is entitled to an equal share of the partnership distributions and,~~  
12 ~~except in the case of a limited liability partnership, is chargeable with a share of the~~  
13 ~~partnership losses in proportion to the partner's share of the distributions. (Reserved.)~~

14 (b) A partnership shall reimburse a partner for any payment made by the partner in the  
15 course of the partner's activities on behalf of the partnership, if the partner complied with this  
16 section and Section 409 in making the payment.

17 (c) A partnership shall indemnify and hold harmless a person with respect to any claim or  
18 demand against the person and any debt, obligation, or other liability incurred by the person by  
19 reason of the person's former or present capacity as a partner, if the claim, demand, debt,  
20 obligation, or other liability does not arise from the person's breach of this section or Section 407  
21 or 409.

22 (d) In the ordinary course of its business, a partnership may advance reasonable expenses,  
23 including attorney's fees and costs, incurred by a person in connection with a claim or demand

1 against the person by reason of the person's former or present capacity as a partner, if the person  
2 promises to repay the partnership if the person ultimately is determined not to be entitled to be  
3 indemnified under subsection (c).

4 (e) A partnership may purchase and maintain insurance on behalf of a partner against  
5 liability asserted against or incurred by the partner in that capacity or arising from that status  
6 even if, under Section 105(c)(7), the partnership agreement could not eliminate or limit the  
7 person's liability to the partnership for the conduct giving rise to the liability.

8 (f) A partnership shall reimburse a partner for an advance to the partnership beyond the  
9 amount of capital the partner agreed to contribute.

10 (g) A payment or advance made by a partner which gives rise to a partnership obligation  
11 under subsection (b) or (f) constitutes a loan to the partnership which accrues interest from the  
12 date of the payment or advance.

13 **SECTION 405. -SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE**  
14 **DISSOLUTION.**

15 (a) Any distribution made by a partnership before its dissolution and winding up must be  
16 in equal shares among partners, except to the extent necessary to comply with a transfer effective  
17 under Section 503 or charging order in effect under Section 504.

18 (b) Subject to Section 701, a person has a right to a distribution before the dissolution and  
19 winding up of a partnership only if the partnership decides to make an interim distribution.

20 (c) A person does not have a right to demand or receive a distribution from a partnership  
21 in any form other than money. Except as otherwise provided in Section 806, a partnership may  
22 distribute an asset in kind only if each part of the asset is fungible with each other part and each  
23 person receives a percentage of the asset equal in value to the person's share of distributions.



(d) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

**SECTION 806. -DISPOSITION OF ASSETS IN WINDING UP; WHEN CONTRIBUTIONS REQUIRED.**

(a) In winding up its business, a partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.

(b) After a partnership complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under Section 504:

(1) to each person owning a transferable interest that reflects contributions made and not previously returned an amount equal to the value ~~of the unreturned contributions, in an amount, which when added to all previous distributions with respect to that transferable interest under Section 405 and this paragraph (1), equals the sum of the contributions to the partnership made by holders of that transferable interest;~~<sup>3</sup> at the time of contribution of the unreturned contributions; and

(2) among persons owning transferable interests in proportion to their respective

---

<sup>3</sup> -Rewording of this paragraph as follows to be discussed:

(1) to each person owning a transferable interest that reflects contributions made and not previously returned an amount equal to the value of the unreturned contributions, in an amount that equals:

(A) the sum of the contributions to the partnership made by holders of that transferable interest; minus

(B) the sum of all previous distributions with respect to that transferable interest under Section 405 and this paragraph (1); and

rights to share in distributions immediately before the dissolution of the partnership.

(c) If a partnership's assets are insufficient to satisfy all its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the partnership was not a limited liability partnership, the following rules apply:

(1) Each person that was a partner when the obligation was incurred and that has not been released from the obligation under Section 703(c) ~~and~~ or (d) shall contribute to the partnership for the purpose of enabling the partnership to satisfy the obligation. -The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of a partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. -The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of a partner in effect for each of those other persons when the obligation was incurred.

(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph ~~(4)~~.

~~(4) A contribution or additional contribution due under paragraph (1), (2), or~~

~~(3) must be made:~~

~~(A) as provided in the partnership agreement with respect to contributions required by paragraph (1), (2), or (3); or<sup>4</sup>~~

---

<sup>4</sup>-Rewording of this subparagraph as follows to be discussed:

~~(B) if the partnership agreement does not provide how a contribution or additional contribution under paragraph (1), (2), or (3) must be made, in proportion to the right of a person to receive distributions under subsection (b)(2)<sup>5</sup> when the unsatisfied obligation subject to discharge under subsection (a) was incurred.~~

(d) A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)~~(1) or (2)~~ necessitated the additional contribution. ~~An additional contribution under subsection (c)(2) or (3) is not an obligation of the partnership and is not a contribution subject to return under subsection (b)(1).<sup>6</sup>~~ A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(e) If a partnership does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value ~~amount~~at the time of contribution of the respective unreturned contributions.

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

### Comment

\* \* \*

Subsection (b)—For the most part, this subsection states default rules. For example, partnership agreements often provide for different distribution rights upon liquidation than during operations. However, distributions under this subsection (or otherwise under the partnership agreement) are subject to Section 504 (charging orders). As to the extent the partnership agreement can be amended to affect the distribution rights of persons already transferees, see Section 107(b).

---

~~(A) in accordance with the partnership agreement to the extent the partnership agreement provides how additional contributions will be made to satisfy claims of creditors and these persons make the required contributions; or~~

~~<sup>5</sup>Reference to subsection (b)(2) to be considered further. Alternative approaches include (i) in proportion to distributions under Subsection (b)(1), and (ii) in proportion to how prior contributions to the partnership were made.~~

~~<sup>6</sup>The addition of this sentence to be considered further.~~

1        Subsection (b)(1) – Distributions made prior to dissolution of a partnership  
2 normally are not considered a return of contributions for purposes of this subsection.  
3 Instead, subject to agreements among the partners, course of conduct and other evidence of  
4 intent, only those distributions made prior to dissolution that have been made in  
5 proportion to how contributions were made to the partnership would be treated as returns  
6 of contributions.

7  
8        Subsection (c)—This section applies obligation by obligation, because a person—qua  
9 partner or person dissociated as a partner—is required to contribute to the partnership to satisfy a  
10 partnership obligation only if, when the obligation was incurred: (i) the person was a partner; and  
11 (ii) the partnership was not an LLP. See Section 306(b), (c). As for when a partnership obligation  
12 is incurred, see Section 306(b) and (c), comments. Section 703(c) and (d) provide independent  
13 ways in which a person dissociated as a partner may be released from liability for a debt,  
14 obligation, or other liability of the partnership.

15  
16        The allocation of contribution obligations parallels the default rule stated in Section  
17 401(a) (providing that, “except in the case of a limited liability partnership, [each partner]  
18 is chargeable with a share of the partnership losses in proportion to the partner’s share of  
19 the profits”). The partnership agreement can change the allocation rules in this section inter se  
20 partners and persons dissociated as partners but cannot prejudice the rights of non-partner  
21 creditors.

22  
23        \* \* \*

24        **SECTION 901. -STATEMENT OF QUALIFICATION.**

25        \* \* \*

26        (g) A partnership may become a limited liability partnership ~~simultaneously withat~~  
27 the ~~time of its formation of the partnership under Section 202(a), if:~~

28                (1) all persons that have agreed to become initial partners in the partnership  
29 agree that the partnership will become a limited liability partnership ~~simultaneously withat~~  
30 the ~~time of its formation of the partnership;~~ and

31                (2) on the date of ~~the~~ formation of the partnership under Section 202(a):  
32                        (A) the partnership delivers to the [Secretary of State] for filing a  
33 statement of qualification under subsection (c); and

34                        (B) the statement of qualification includes a statement that the

- 1 partnership ~~becomes~~ has become a limited liability partnership ~~simultaneously with~~ at the
- 2 time of its formation ~~of the partnership~~.

1 Issue 9

2 Uniform Partnership Act

3 **SECTION 807.- KNOWN CLAIMS AGAINST DISSOLVED LIMITED**  
4 **LIABILITY PARTNERSHIP.**

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

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

10 (1) state that the partnership was a limited liability partnership at the time of  
11 its dissolution;

12 (2) identify the date ~~on which~~ the dissolved partnership became a limited  
13 liability partnership;

14 (3) specify the information required to be included in a claim;

15 (2) (4) state that a claim must be in writing and provide a mailing address to  
16 which the claim is to be sent;

17 (3) (5) state the deadline for receipt of a claim, which may not be less than 120  
18 days after the date the notice is received by the claimant; and

19 (4) (6) state that ~~the~~ a claim for an obligation incurred by the partnership  
20 while it is a limited liability partnership will be barred if not received by the deadline; ~~and.~~

21 (5) ~~unless the partnership has been throughout its existence a limited liability~~  
22 ~~partnership, state that the barring of a claim against the partnership will also bar any~~  
23 ~~corresponding claim against any partner or person dissociated as a partner which is based~~

~~on Section 306.~~

(c) A claim against a dissolved limited liability partnership **for an obligation incurred by the partnership while it is a limited liability partnership** is barred if the requirements of subsection (b) are met and:

\* \* \*

Comment

Source—Added during the Harmonization Project, this section is derived almost verbatim from Model Business Corporation Act section 14.06.

If the procedures in this section are followed properly by a partnership, a claim incurred by the partnership while it is a limited liability partnership will be barred upon the completion of those procedures, meaning that the claim can no longer be brought at that point. A claim against a partnership incurred by the partnership while it was not a limited liability partnership will be subject to the other provisions of this act governing the liability of the partnership and its partners, as well as any applicable statute of limitations.

Subsection (b)(5)—For additional information on when a claim against a partnership is barred, see Section 810, comment.

**SECTION 808.- OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY PARTNERSHIP.**

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

(b) A notice under subsection (a) must:

(1) be:

(A) published at least once in a newspaper of general circulation in the [county] in this state in which the dissolved limited liability partnership's principal office is located or, if the principal office is not located in this state, in the [county] in which the office of the partnership's registered agent is or was last located; or

1 (B) posted conspicuously for at least 30 days on the dissolved  
2 partnership's website;

3 (2) state that the partnership was a limited liability partnership at the time of  
4 its dissolution;

5 (3) identify the date on which the dissolved partnership became a limited  
6 liability partnership;

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

9 (3) (5) state that a claim against the partnership for an obligation incurred by  
10 the partnership while it is a limited liability partnership is barred unless an action to enforce  
11 the claim is commenced not later than three years after publication of the notice; ~~and~~

12 ~~(4) unless the partnership has been throughout its existence a limited liability~~  
13 ~~partnership, state that the barring of a claim against the partnership will also bar any~~  
14 ~~corresponding claim against any partner or person dissociated as a partner which is based~~  
15 ~~on Section 306.~~

16 (c) If a dissolved limited liability partnership publishes a notice in accordance with  
17 subsection (b), the claim for an obligation incurred by the partnership while ~~it is a limited~~  
18 liability partnership of each of the following claimants is barred unless the claimant  
19 commences an action to enforce the claim against the partnership not later than three years after  
20 the publication date of the notice:

21 (1) a claimant that did not receive notice in a record under Section 807;

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

23 and



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

(d) A claim not barred under this section or Section 807 may be enforced:

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

(2) except as otherwise provided in Section 809, if assets of the partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; **and**

**(3) against any person liable on the claim under Sections 306, 703, and 805.**

~~SECTION 810. LIABILITY OF PARTNER AND PERSON DISSOCIATED AS PARTNER WHEN CLAIM AGAINST PARTNERSHIP BARRED. If a claim against a dissolved partnership is barred under Section 807, 808, or 809, any corresponding claim under Section 306, 703, or 805 is also barred.~~

1 **Issue 10**

2 **Uniform Limited Partnership Act**

3 **~~Alternative A~~**

4 **SECTION 1001. GOVERNING LAW.**

5 (a) The law of the jurisdiction of formation of a foreign limited partnership governs:

6 (1) the internal affairs of the partnership;<sup>7</sup> and

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

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

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

13 (c) Registration of a foreign limited partnership to do business in this state does not  
14 authorize the foreign partnership to engage in any business or exercise any power<sup>8</sup> that a limited  
15 partnership may not engage in or exercise in this state.

16 **Alternative B**

17 **SECTION 1001. GOVERNING LAW.**

18 (a) The law of the jurisdiction of formation of a foreign limited partnership governs:

19 (1) the internal affairs of the partnership;

20 (2) the liability of a partner as partner for a debt, obligation, or other liability of

---

<sup>7</sup> Note to Drafting Committee: Should we use “foreign partnership” rather than “partnership” throughout the provisions on foreign partnerships?

<sup>8</sup> Note to Drafting Committee: Do we think that the creation of series is the exercise of a power? If yes (or possibly yes), what do we do about this provision? Should we include the amendments to Section 1001(c) in Alternatives B and C to recognize the power to create foreign series?

1 the partnership; and

2 (3) the liability under this [act] of a series, ~~protected series, protected cell,~~  
3 segregated account, or similar part of a structure that associates or otherwise segregates  
4 assets, liabilities, and partners among various parts of the structure, however the part is  
5 denominated,<sup>9</sup> of the partnership; and

6 (4) if the partnership has ~~implemented~~ established and used a structure  
7 described in paragraph (3):

8 (A) the liability of the partnership for a ~~debt, obligation, or other~~  
9 liability of a part of the structure;

10 (B) the liability of one part of the structure for a ~~debt, obligation, or~~  
11 other liability of another part; and

12 (C) the ~~liabilities~~ liability of ~~the partners~~ a partner as partner for a  
13 ~~debt, obligation, or other liability of the partnership and of the partners associated with~~  
14 ~~a~~any part of the structure.

15 \* \* \*

16 (c) Registration of a foreign limited partnership to do business in this state does not  
17 authorize the foreign partnership to engage in any business or exercise any power that a limited  
18 partnership may not engage in or exercise in this state, other than establishment and use of a  
19 structure described in subsection (a)(3).

20 Alternative C

---

<sup>9</sup> The laws of a number of United States jurisdictions permit the use of a structure called “series” in which a part of the assets, liabilities, and interest holders of an entity are associated together and kept separate from similar associations of other assets, liabilities, and interest holders of the entity. Paragraph (3) has been expanded to reflect that the various statutes authorizing the use of series do not all use a single accepted term for the concept. See also Issue 13.

1        **SECTION 1001. GOVERNING LAW.**

2        (a) The law of the jurisdiction of formation of a foreign limited partnership governs:

3                (1) the internal affairs of the partnership;

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

6                (3) ~~the liability of a series of the partnership~~ except as provided in Sections  
7 1001B and 1001C, the liability under this [act] of:

8                        (A) a protected series of the partnership;

9                        (B) the partnership for a debt, obligation, or other liability of a  
10 protected series;

11                        (C) one protected series of the partnership for a debt, obligation, or  
12 other liability of another protected series; and

13                        (D) a partner as partner for a debt, obligation, or other liability of any  
14 protected series.

15        \* \* \*

16        (c) Registration of a foreign limited partnership to do business in this state does not  
17 authorize the foreign partnership to engage in any business or exercise any power that a limited  
18 partnership may not engage in or exercise in this state, other than the creation and use of a  
19 protected series.

20        **SECTION 1001A. DEFINITIONS. In Sections 1001, 1001B, and 1001C:**

21        (1) “Enforcement date” means 12:01 a.m. on the date on which a claimant first serves  
22 process on a foreign series limited partnership or a protected series of a foreign series limited  
23 partnership, in an action seeking to enforce a claim against an asset of the limited partnership  
24 or a protected series by attachment, levy, or the like.

1       (2) “Foreign series limited partnership” means a foreign limited partnership that has at  
2 least one protected series.

3       (3) “Incurrence date” means the date on which a foreign series limited partnership, or a  
4 protected series of a foreign series limited partnership, incurred the liability giving rise to a  
5 claim that a claimant seeks to enforce.

6       (4) “Non-associated asset” means an asset of a protected series as to which the  
7 protected series has not created and does not maintain records that state the name of the  
8 protected series and describe the asset with sufficient specificity to permit a disinterested,  
9 reasonable individual to:

10       (A) identify the asset and distinguish it from any other asset of the protected  
11 series, any asset of the limited partnership, and any asset of any other protected series of  
12 the limited partnership;

13       (B) determine when and from what person the protected series acquired the  
14 asset or how the asset otherwise became an asset of the protected series; and

15       (C) if the protected series acquired the asset from the limited partnership or  
16 another protected series of the limited partnership, determine any consideration paid, the  
17 pavor, and the payee.

18       (5) “Protected series” means a series, protected series, protected cell, segregated  
19 account, or similar part of a structure that associates or otherwise segregates assets,  
20 liabilities, and partners among various parts of the structure, however the part is  
21 denominated, of a foreign limited partnership.

22       SECTION 1001B. CLAIM SEEKING TO DISREGARD LIMITATION OF  
23 LIABILITY. If a claim seeks to disregard a limitation of liability applicable to a foreign  
24 series limited partnership or a protected series of a foreign series limited partnership and

1 the claimant is a resident of this state or doing business or registered to do business in this  
2 state, or the claim is to establish or enforce a liability arising under the law of this state or  
3 from an act or omission in this state:

4 (1) Except as otherwise provided in paragraph (2), a claim seeking to disregard the  
5 limitation of liability is governed by the principles of law and equity, including a principle  
6 providing a right to a creditor or holding a person liable for a debt, obligation, or other  
7 liability of another person, that would apply if each protected series of the foreign limited  
8 partnership were a domestic limited partnership formed separately from the foreign  
9 limited partnership that created the protected series and distinct from any other protected  
10 series of the foreign limited partnership.

11 (2) The failure of a foreign limited partnership or protected series to observe  
12 formalities relating to the exercise of its powers or management of its activities and affairs  
13 is not a ground to disregard a limitation of liability under Section 1001(a)(2) or (a)(3)(D),  
14 but may be a ground to disregard a limitation of liability under Section 1001(a)(3)(A), (B),  
15 or (C).

#### 16 SECTION 1001C. ENFORCEMENT AGAINST NON-ASSOCIATED ASSET.

17 (a) If a claim against a foreign series limited partnership or a protected series of a  
18 foreign series limited partnership has been reduced to judgment, in addition to any other  
19 remedy provided by law or equity, the judgment may be enforced in accordance with the  
20 following rules:

21 (1) A judgment against the limited partnership may be enforced against an  
22 asset of a protected series of the limited partnership if the asset:

23 (A) was a non-associated asset of the protected series on the

1 incurrence date; or

2 (B) is a non-associated asset of the protected series on the enforcement  
3 date.

4 (2) A judgment against a protected series may be enforced against an asset of  
5 the limited partnership if the asset:

6 (A) was a non-associated asset of the limited partnership on the  
7 incurrence date; or

8 (B) is a non-associated asset of the limited partnership on the  
9 enforcement date.

10 (3) A judgment against a protected series may be enforced against an asset of  
11 another protected series of the limited partnership if the asset:

12 (A) was a non-associated asset of the other protected series on the  
13 incurrence date; or

14 (B) is a non-associated asset of the other protected series on the  
15 enforcement date.

16 (b) In addition to any other remedy provided by law or equity, if a claim against a  
17 foreign series limited partnership or a protected series has not been reduced to a judgment  
18 and law other than this [act] permits a prejudgment remedy by attachment, levy, or the  
19 like, the court may apply subsection (a) as a prejudgment remedy.

20 (c) In a proceeding under this section, the party asserting that an asset is or was an  
21 associated asset of a foreign series limited partnership or protected series has the burden of  
22 proof on the issue.

23 (d) This section applies to a non-associated asset of a foreign series limited

partnership or protected series if:

(1) the asset is real or tangible property located in this state; and

(2) the claimant:

(A) is a resident of this state or doing business or registered to do business in this state; or

(B) the claim under this section is to enforce a judgment or seek a pre-judgment remedy, pertaining to a liability arising from law of this state other than this [act] or an act or omission in this state.

#### End of Alternatives

*Legislative Note: A number of states permit use of a structure called “series” in which part of the assets, liabilities, and interest holders of an entity are associated together and kept separate from similar associations of other assets, liabilities, and interest holders of the entity. A state that authorizes a series structure provides separate liability shields that protect one series and the interest holders that own an interest in that series from the liabilities of other series and the parent entity.*

*Subsection (a)(3) in Alternative A previously provided that the law of the jurisdiction of formation of a foreign limited partnership governs the liability of a series of the foreign limited partnership. That provision has been deleted in Alternative A because it effectively validated the use of series by a limited partnership in the domestic state instead of allowing the domestic state to decide whether it should validate the special series liability shields of a foreign limited partnership even though the state was not prepared at the time to amend its limited partnership law to validate series expressly.*

*If a state wishes to defer to the law of the jurisdiction of formation of a foreign limited partnership that uses a series structure, without permitting the use of series by domestic partnerships, it can do so using either Alternative B or C. Alternative B validates the use of series by a foreign limited partnership and defers to the law of foreign jurisdiction for the application of series liability shields. Alternative C defers to the law of the foreign jurisdiction, but imposes the restrictions found in Sections 402 and 404 of the Uniform Protected Series Act that protect creditors in the domestic state.*

#### Comment

This act does not provide for the law that will govern a “series” of a foreign limited partnership of the asset-partitioning type (as contemplated by Del. Code. Ann. tit. 6, § 17-218 (West 2014)). For an explanation of how the asset-partitioning concept of series differs



1 from the rules applicable to a non-series limited partnership, see Section 1131, comment.

2  
3 Subsection (a)—This subsection provides that the laws of the jurisdiction of formation of  
4 a foreign limited partnership, rather than the laws of this state, govern both the internal affairs of  
5 the limited partnership and the liability of its partners for the obligations of the limited  
6 partnership. A partnership agreement cannot change this provision. Section 105(c)(18).

7  
8 This subdivision parallels Section 104 (pertaining to the governing law for domestic  
9 limited partnerships). See Section 104, cmt.

10  
11 Subsection (a)(3)—This act does not provide for series of the asset-partitioning type  
12 (as contemplated by Del. Code. Ann. tit. 6, § 17-218 (West 2014)). However, under this  
13 provision, the law of this state will respect the “internal shields” created under the series  
14 provisions of another jurisdiction’s limited partnership statute. This provision does not  
15 address the myriad of other unsettled issues pertaining to series.

16  
17 For an explanation of how the asset-partitioning concept of series differs from the  
18 traditional concept, see Section 1131, comment.

19  
20 Subsections (b) and (c)—These sections together make clear that, although a foreign  
21 entity may not be denied registration simply because of a difference between the laws of its  
22 jurisdiction of formation and the laws of this state, the foreign limited partnership “may not  
23 engage in any activity or exercise any power a limited partnership may not engage in or exercise  
24 in this state.” Subsection (c).

25  
26 **SECTION 1101. DEFINITIONS.** In this [article]:

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

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

31 \* \* \*

32 {Note: In addition to the proposed changes to § 1001, the references above to “series of  
33 interests” in § 1101 are the only other place in ULPA where this issue is implicated. Similar  
34 references appear in the fundamental transaction provisions of the UUOA generally.}

35  
36 **Comment**

37  
38 \* \* \*

39  
40 “Acquired entity” [(1)]—This definition recognizes that an interest exchange may

1 involve only the acquisition of a particular “class” or “series” of interests in an entity. Model  
2 Business Corporation Act section 6.01 does not expressly define “classes” or “series.” Because  
3 the interests of members in an unincorporated business organization often tend to be distinctive,  
4 it may be that each member’s interest will comprise a separate class or series. For an explanation  
5 of a new and different meaning of the word “series,” see Section 1131, introductory comment.  
6 The term “acquired entity” does not encompass series under that new meaning.  
7

8 “Acquiring entity” [(2)]—An “acquiring entity” is an entity that acquires the interests of  
9 the acquired entity in an interest exchange governed by Part 3 of this article.  
10

11 \* \* \*

## 12 **SECTION 1131. INTEREST EXCHANGE AUTHORIZED.**

13 \* \* \*

### 14 **Comment**

15 An interest exchange is the same type of transaction as the share exchange provided for  
16 in section 11.03 of the Model Business Corporation Act. The effect of an interest exchange is  
17 that: (i) the separate existence of the acquired entity is not affected; and (ii) the acquiring entity  
18 acquires all of the interests of one or more classes or series of the acquired entity. An interest  
19 exchange also allows an indirect acquisition through the use of consideration in the exchange  
20 that is not provided by the acquiring entity (e.g., consideration from another or related entity).  
21

22 Neither share exchanges nor interest exchanges are universally recognized in either  
23 corporation or unincorporated entity laws. The effect of an interest exchange can be achieved  
24 through a triangular merger in which the acquiring entity forms a new subsidiary and the  
25 acquired entity is then merged into the new subsidiary. Part 3 allows the interest exchange to be  
26 accomplished directly in a single step, rather than indirectly through the triangular merger route.  
27

28 The “series” referenced in Subsection (a) are not the series contemplated by the Uniform  
29 Statutory Entity Trust Act §§ 401-405 and some LLC statutes. See, e.g., Del. Code Ann. tit. 6, §  
30 18-215 (2012); 805 ILL. COMP. STAT. 180/37-40 (2012). Instead, in this context “series” refers  
31 to a subset of a class of interests, which is a meaning commonly found in corporation law. See,  
32 e.g., MBCA § 6.02. Specific provisions authorizing classes and series are less common in  
33 unincorporated entity law but do exist. See, e.g., MINN. STAT. § 322B.155 (2012). In any  
34 event, a partnership agreement certainly has the power to create classes and series as  
35 contemplated by this section.  
36

37 \* \* \*

1 Uniform Limited Liability Company Act

2 SECTION 901. GOVERNING LAW.

3 (a) The law of the jurisdiction of formation of a foreign limited liability company  
4 governs:

5 (1) the internal affairs of the company<sup>10</sup>;  
6 (2) the liability of a member as member and a manager as manager for a debt,  
7 obligation, or other liability of the company; and  
8 (3) ~~the liability of a series of the company~~ except as provided in Sections 901B  
9 and 901C, the liability of:

10 (A) a protected series of the company;  
11 (B) the company for a debt, obligation, or other liability of a protected  
12 series of the company;  
13 (C) one protected series of the company for a debt, obligation, or  
14 other liability of another protected series of the company; and  
15 (D) a member as member for a debt, obligation, or other liability of  
16 any protected series of the company.

17 \* \* \*

18 (c) Registration of a foreign limited liability company to do business in this state does not  
19 authorize the foreign company to engage in any activities and affairs or exercise any power that a  
20 limited liability company may not engage in or exercise in this state, other than the  
21 establishment and use of a protected series.

22 SECTION 901A. DEFINITIONS. In Sections 901, 901B, and 901C:

---

<sup>10</sup> Note to Drafting Committee: Should we use “foreign company” rather than “company” throughout the provisions on foreign companies?

1 (1) “Enforcement date” means 12:01 a.m. on the date on which a claimant first  
2 serves process on a foreign series limited liability company or a protected series of a foreign  
3 series limited liability company, in an action seeking to enforce a claim against an asset of  
4 the company or a protected series by attachment, levy, or the like.

5 (2) “Foreign series limited liability company” means a foreign limited liability  
6 company that has established one or more protected series.

7 (3) “Incurrence date” means the date on which a foreign series limited liability  
8 company, or a protected series of a foreign series limited liability company, incurred the  
9 liability giving rise to a claim that a claimant seeks to enforce.

10 (4) “Non-associated asset” means an asset of a protected series as to which the  
11 protected series has not created and does not maintain records that state the name of the  
12 protected series and describe the asset with sufficient specificity to permit a disinterested,  
13 reasonable individual to:

14 (A) identify the asset and distinguish it from any other asset of the protected  
15 series, any asset of the company, and any asset of any other protected series of the  
16 company;

17 (B) determine when and from what person the protected series acquired the  
18 asset or how the asset otherwise became an asset of the protected series; and

19 (C) if the protected series acquired the asset from the company or another  
20 protected series of the company, determine any consideration paid, the payor, and the  
21 payee.

22 (5) “Protected series” means a series, protected series, protected cell, segregated  
23 account, or similar part of a structure that associates or otherwise segregates assets,

1 liabilities, and members among various parts of the structure, however the part is  
2 denominated, of a foreign series limited liability company.

3 SECTION 901B. CLAIM SEEKING TO DISREGARD LIMITATION OF  
4 LIABILITY. If a claim seeks to disregard a limitation of liability applicable to a foreign  
5 series limited liability company or a protected series of a foreign series limited liability  
6 company and the claimant is a resident of this state or doing business or registered to do  
7 business in this state, or the claim is to establish or enforce a liability arising under the law  
8 of this state or from an act or omission in this state:

9 (1) Except as otherwise provided in paragraph (2), a claim seeking to disregard the  
10 limitation of liability is governed by the principles of law and equity, including a principle  
11 providing a right to a creditor or holding a person liable for a debt, obligation, or other  
12 liability of another person, that would apply if each protected series of the foreign series  
13 limited liability company were a domestic company formed separately from the foreign  
14 company that created the protected series and distinct from any other protected series of  
15 the foreign company.

16 (2) The failure of a foreign series limited liability company or protected series to  
17 observe formalities relating to the exercise of its powers or management of its activities and  
18 affairs is not a ground to disregard a limitation of liability under Section 901(a)(2) or  
19 (a)(3)(D), but may be a ground to disregard a limitation of liability under Section  
20 901(a)(3)(A), (B), or (C).

21 SECTION 901C. ENFORCEMENT AGAINST NON-ASSOCIATED ASSET.

22 (a) If a claim against a foreign series limited liability company or a protected series  
23 of a foreign series limited liability company has been reduced to judgment, in addition to

1 any other remedy provided by law or equity, the judgment may be enforced in accordance  
2 with the following rules:

3 (1) A judgment against the company may be enforced against an asset of a  
4 protected series of the company if the asset:

5 (A) was a non-associated asset of the protected series on the  
6 incurrence date; or

7 (B) is a non-associated asset of the protected series on the enforcement  
8 date.

9 (2) A judgment against a protected series may be enforced against an asset of  
10 the company if the asset:

11 (A) was a non-associated asset of the company on the incurrence date;  
12 or

13 (B) is a non-associated asset of the company on the enforcement date.

14 (3) A judgment against a protected series may be enforced against an asset of  
15 another protected series of the company if the asset:

16 (A) was a non-associated asset of the other protected series on the  
17 incurrence date; or

18 (B) is a non-associated asset of the other protected series on the  
19 enforcement date.

20 (b) In addition to any other remedy provided by law or equity, if a claim against a  
21 foreign series limited liability company or a protected series has not been reduced to a  
22 judgment and law other than this [act] permits a prejudgment remedy by attachment, levy,  
23 or the like, the court may apply subsection (a) as a prejudgment remedy.

1 (c) In a proceeding under this section, the party asserting that an asset is or was an  
2 associated asset of a foreign series limited liability company or protected series has the  
3 burden of proof on the issue.

4 (d) This section applies to a non-associated asset of a foreign series limited liability  
5 company or protected series if:

6 (1) the asset is real or tangible property located in this state; and

7 (2) the claimant is a resident of this state or doing business or registered to do  
8 business in this state, or the claim under this section is to enforce a judgment or seek a pre-  
9 judgment remedy, pertaining to a liability arising from law of this state other than this  
10 [act] or an act or omission in this state.

11 *Legislative Note: This section assumes that the state has not adopted the Uniform*  
12 *Protected Series Act. If the state has enacted that act, (i) the terminology in this section should*  
13 *be revised for consistency with the Uniform Protected Series Act, and (ii) Sections 901A, 901B,*  
14 *and 901C should be deleted.*

#### 15 Comment

16  
17 Subsection (a)—This subsection provides that the laws of the jurisdiction of formation of  
18 a foreign limited liability company, rather than the laws of this state, govern both the internal  
19 affairs of the foreign LLC and the liability of its members and managers for the obligations of  
20 the LLC. An operating agreement cannot change this provision. Section 105(c)(15).

21  
22 This subdivision parallels Section 104 (pertaining to the governing law for domestic  
23 LLCs). See the comment to Section 104.

24  
25 Subsection (a)(3)—The LLC statutes of several states authorize limited liability  
26 companies to have asset-partitioning series. According to those statutes, if series are properly  
27 created, a debt, obligation, or liability associated with the property of a particular series is  
28 enforceable only against property of that series, and not against the property of the LLC  
29 generally or any other series thereof.

30  
31 This act does not provide for asset-partitioning series. However, under this provision, the  
32 law of this state will respect the “internal shields” created under the series provisions of another  
33 jurisdiction’s limited liability company statute, **subject to certain restrictions taken from the**  
34 **Uniformed Protected Series Act (last amended 2023) which protect certain in-state**  
35 **creditors.** This provision does not address the myriad of other unsettled issues pertaining to

1 series **which are addressed comprehensively in the Uniform Protected Series Act.**

2  
3 For an explanation of how the asset-partitioning concept of series differs from the  
4 traditional concept, see Section 1031, comment.

5  
6 Subsections (b) and (c)—These sections together make clear that, although a foreign  
7 limited liability company may not be denied registration simply because of a difference between  
8 the laws of its jurisdiction of formation and the laws of this state, the foreign limited liability  
9 company “may not engage in any activity or exercise any power that a limited liability company  
10 may not engage in or exercise in this state.”



1 Issue 11

2 Uniform Partnership Act

3 **SECTION 1101.- DEFINITIONS.** In this [article]: {Note that there are other changes  
4 to § 1101 under Issue 4.}

5 \* \* \*

6 [(30) “Protected agreement” means:

7 (A) a record evidencing indebtedness and any related agreement in effect on [~~the~~  
8 ~~effective date of this [act]~~ insert date-certain];

9 (B) an agreement that is binding on an entity on [~~the effective date of this [act]~~  
10 insert date-certain];

11 (C) the organic rules of an entity in effect on [~~the effective date of this [act]~~  
12 insert date-certain]; or

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

15 *Legislative Note: If the state chooses to use the concept of protected agreements, the*  
16 *date that should be inserted in this definition is the date on which conversions, domestications,*  
17 *and interest exchanges were first authorized by the law of the state. If those three types of*  
18 *~~transaction~~transactions were not all ~~first authorized at effective on the same time~~date, the state*  
19 *should decide whether to use (i1) different dates based on when each type of transaction was*  
20 *first authorized, (ii2) a single date, which could be the first date on which any of the three*  
21 *~~transactions was first authorized, or (iii) some other3) another date.~~*

22 \* \* \*

24 **Comment**

25 \* \* \*

26 “Protected agreement” [(30)]—The term “protected agreement” refers to evidences of  
27 indebtedness and agreements binding on the entity or any of its governors or interest holders that  
28 are unpaid or executory in whole or in part on the **effective date of certain stated in** the act **as**  
29 **enacted**. Thus, a revolving line of credit from a bank to a corporation would constitute a

protected agreement even if advances were not made until after the ~~effective date of the act~~ **stated**. Likewise, a partnership agreement in effect under this act or a predecessor to this act is a “protected agreement.”

**The purpose of the protected agreement concept is to protect persons that agreed to contracts or organic rules before conversions, domestications, and interest exchanges are authorized by the state and thus did not think to consider the consequences of the limited partnership engaging in one of those transactions. If To protect those persons, the concept of a protected agreement looks at whether the agreement has provisions that apply if an entity merges the limited partnership is a party to a merger. If that is the case, those the provisions regarding mergers will also apply if the entity limited partnership enters into an interest exchange, conversion, or domestication even though the agreement does not mention those other types of transactions. See Sections 1131(c) (interest exchange), 1141(c) (conversion), 1151(c) (domestication).**

**The underlying theory, although something of a blunt instrument, assumes that because conversions, domestications, and interest exchanges are similar to mergers, and their result can be accomplished through the use of a merger, it is appropriate to assume that the parties would want the same rules to apply to all of the transactions. Because protected agreements are only intended to operate in the context of contracts and organic rules adopted when conversions, domestications, and interest exchanges are not authorized under state law, once the state permits those transactions, the protected agreement concept is no longer needed with respect to contracts and organic rules first adopted after the transactions are available.**

**A contract or organic rule that includes a provision applying to a merger of the entity that makes the contract or organic rule a protected agreement will lose the status of a protected agreement after the provision applying to a merger is amended after the date stated in this section. See Sections 1131(c) (interest exchange), 1141(c) (conversion), and 1151(c) (domestication).**

\* \* \*

#### **SECTION 1131. -INTEREST EXCHANGE AUTHORIZED.**

\* \* \*

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

1        **Legislative Note: See the Legislative Note to § 1101.**

2        **SECTION 1141.- CONVERSION AUTHORIZED.**

3        \* \* \*

4        [(c) If a protected agreement contains a provision that applies to a merger of a domestic  
5        partnership but does not refer to a conversion, the provision applies to a conversion of the  
6        partnership as if the conversion were a merger until the provision is amended after [~~the effective~~  
7        ~~date of this {act}~~ insert date ~~certain~~].]

8        **Legislative Note: See the Legislative Note to ~~§~~Section 1101.**

9        **SECTION 1151.- DOMESTICATION AUTHORIZED.**

10       \* \* \*

11       [(c) If a protected agreement contains a provision that applies to a merger of a domestic  
12       limited liability partnership but does not refer to a domestication, the provision applies to a  
13       domestication of the limited liability partnership as if the domestication were a merger until the  
14       provision is amended after [~~the effective date of this {act}~~ insert date ~~certain~~].]

15       **Legislative Note: See the Legislative Note to ~~§~~Section 1101.**

1 Issue 13

2 Uniform Protected Series Act

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

4 \* \* \*

5 (4) “Foreign protected series” means a part of an arrangement, configuration, or other  
6 structure established by a foreign limited liability company ~~which has attributes comparable to a~~  
7 ~~protected series established under this [act]. The term applies whether or not the law under~~  
8 ~~which the foreign company is organized refers to “protected series”~~ that associates assets,  
9 liabilities, and interest holders among various parts of the structure, however a part of the  
10 entity foreign company is denominated under the organic law of the entity.<sup>11</sup> foreign company  
11 and whether or not the law uses the term “protected series”.

12 \* \* \*

13 SECTION 602.- PROTECTED SERIES MAY NOT BE PARTY TO ENTITY  
14 TRANSACTION. ~~A~~ Except as provided in Sections 605(2), 606(2), and 607(1), a protected  
15 series may not:

16 (1) ~~be an acquiring, acquired, converting, converted, merging, or surviving entity;~~  
17 (2) ~~participate in a domestication; or~~  
18 (3) ~~be a party to or be formed, organized, established, or created in a transaction~~  
19 ~~substantially like a merger, interest exchange, conversion, or domestication.~~

20 be a party to, result from, or be formed, organized, established, or created in<sup>12</sup>, or result  
21 from by:

22 (1) a conversion, domestication, interest exchange, or merger under:

---

<sup>11</sup> See the footnote to Issue 10.

<sup>12</sup> Should this be “by”? This question is relevant in other sections as well.

**(A) this [act]; or**

**(B) the law of a foreign jurisdiction, however the transaction is denominated**

**under that law; or**

(2) a transaction with the substantive effect of a conversion, domestication, interest exchange, or merger under the law of this state or a foreign jurisdiction.

### Comment

The protected series is still novel, and this act is the first to comprehensively address the multitude of issues raised by the construct. Juxtaposing protected series with entity transactions raises a plethora of additional issues. ~~For example, during the Drafting Committee's discussions of this subject, a commissioner created a set of Power Point slides diagramming 11 possible merger transactions involving protected series. Adding conversions, domestications, and interest exchanges would have added countless more permutations.~~

The Drafting Committee decided to move slowly in this area and to provide a very narrow channel for entity transactions involving protected series. As its first step in creating the narrow channel, the Committee rejected allowing a protected series itself to be a party to any entity transaction.

**Paragraphs (1) and (2)— Paragraph (1) prohibits a protected series from being a party to or being formed, organized, established, or created in, or resulting from a transaction under Article 10 of the Uniform Limited Liability Company Act (2006) (Last Amended 2013) or similar laws of other jurisdictions. Jurisdiction is defined in Section 102 of the Uniform Limited Liability Company Act and “means the United States, a state, a foreign country, or a political subdivision of a foreign country.” Thus, a protected series is prohibited from participating in transactions under the law of a foreign country or political subdivision thereof such as a state or province.**

**Paragraph (2) prohibits a protected series from participating in transactions with the substantive effect of a transaction referred to in paragraph (1). For example, the assignment of all the assets of a protected series to another entity and the assumption by that entity of all the liabilities of a protected series has the substantive effect of a merger of the protected series into the other entity, and thus is prohibited by paragraph (2).** ~~Section 1001 defines the terms listed in Paragraph (1) but with regard to domestications refers to a domesticating or domesticated limited liability company. Hence the need for Paragraph (2).~~

**SECTION 603. -RESTRICTION ON ENTITY TRANSACTION INVOLVING  
~~PROTECTED~~ SERIES LIMITED LIABILITY COMPANY.** A series limited liability

company may not be:

~~(1) an acquiring, acquired, converting, converted, domesticating, or domesticated~~  
~~entity; or~~

~~(2) except as otherwise provided in Section 604, a party to or the surviving company of a merger.~~

(1) a party to, ~~result from,~~ or be formed, organized, established, ~~or created in, or~~  
~~result from~~by:

**(A) a conversion, domestication, or interest exchange under:**

**(i) this [act]; or**

**(ii) the law of a foreign jurisdiction, however the transaction is denominated under that law; or**

**(B) a transaction with the substantive effect of a conversion, domestication,**  
**or interest exchange; under the law of this state or a foreign jurisdiction; or**

**(2) except as provided in Section 604, a party to or the surviving company of:**

**(A) a merger under:**

**(i) this [act]; or**

**(ii) the law of a foreign jurisdiction, however a merger is denominated**  
**under that law; or**

**(B) a transaction with the same substantive effect as a merger; under the law**  
**of this state or a foreign jurisdiction.**

### Comment

In service of the “narrow channel” discussed in the comment to Section 602, this section precludes a participation of a series limited liability company in an entity transaction except as is strictly delineated in Section 604 **with respect to a merger**. However, this **provision section** does not preclude a series limited liability company: (i) being involved in a triangular merger as the non-party; or (ii) as the non-party to such a merger, providing consideration in the form of interests in one of the protected series of the company. (If the consideration involves making a

1 person an associated member of the protected series, the person must be a member of the series  
2 limited liability company or become one as a result of the merger. Section 302(a).)

3  
4 **The manner in which a protected series may be affected by a merger of ~~its~~the series**  
5 **limited liability company of which it is a part is specified in Sections 605(2), 606(2), and**  
6 **607(1).**

1 **Issue 14**

2 **Uniform Business Organizations Code**

3 **SECTION 1-701. RESERVATION OF POWER TO AMEND OR REPEAL.** The

4 [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all  
5 domestic and foreign entities subject to this [act] are governed by the amendment or repeal.

6 **Comment**

7 Provisions similar to this section have their genesis in *Trustees of Dartmouth College v.*  
8 *Woodward*, 17 U.S. (4 Wheat) 518 (1819), which held that the United States Constitution  
9 prohibited the application of newly enacted statutes to existing corporations while suggesting the  
10 efficacy of a reservation of power similar to this section. This section is a generalized form of the  
11 type of provision found in many entity organic laws, the purpose of which is to avoid any  
12 possible argument that an entity has contractual or vested rights in any specific statutory  
13 provision of its organic law and to ensure that the state may in the future modify its entity  
14 statutes as it deems appropriate and require existing entities to comply with the statutes as  
15 modified.

16  
17 All public organic ~~documents~~ **records** of domestic entities organized under the Code and  
18 the registration of foreign entities under Part 5 of Article 1 of the Code are subject to the  
19 reservation of power set forth in this section. Further, entities formed or registered under earlier  
20 statutes superseded by the Code that contained a reservation of power are also subject to the  
21 reservation of power in this section and bound by subsequent amendments to the Code.



1 **Issue 15**

2 **Uniform Business Organizations Code**

3 **SECTION 1-201. -ENTITY FILING REQUIREMENTS.**

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

6 (1) The entity filing must be required or permitted by this [act].

7 (2) The entity filing must be physically delivered in written form unless and to the  
8 extent the [Secretary of State] permits electronic delivery of entity filings.

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

12 (4) ~~The~~ **Except as provided in Section 1-210,<sup>13</sup> the** entity filing must be signed  
13 by or on behalf of a person authorized or required under this [act] to sign the filing.

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

17 \* \* \*

---

<sup>13</sup> Section 1-210 provides:

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

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

- (1) the person to sign the record;
- (2) the person to deliver the record to the [Secretary of State] for filing; or
- (3) the [Secretary of State] to file the record unsigned.

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

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

1 Issue 16

2 Model Entity Transactions Act

3 **SECTION 107. -REFERENCE TO EXTERNAL FACTS.**

4 **(a)** A plan may refer to facts ascertainable outside the plan if the manner in which the  
5 facts will operate upon the plan is specified in the plan. The facts may include the occurrence of  
6 an event or a determination or action by a person, whether or not the event, determination, or  
7 action is within the control of a party to the transaction.

8 **(b)** The following provisions ~~of~~in a record delivered to the [Secretary of State] for  
9 filing under this [act] ~~or a plan delivered for filing instead of a statement~~ may not be made  
10 dependent on facts outside the record ~~or plan~~:

11 **(1)** the name and address of ~~any~~an person;

12 **(2)** the registered office of ~~any~~an entity;

13 **(3)** the registered agent of ~~any~~an entity;

14 ~~(4)~~**(4)** any required statement of the number of authorized interests and  
15 designation of each class or series of interests of a business corporation;

16 **(5)** the effective date of ~~a~~the record ~~delivered to the [Secretary of State] for~~  
17 ~~filing; and~~

18 **(6)** any required statement of the date on which the underlying transaction  
19 was approved or the manner in which the approval was given.

20 **SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE OF MERGER.**

21 **\* \* \***

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

of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [act] to a statement of merger refer to the plan of merger filed under this subsection.

(e) (Reserved).

[Note to UUOA Drafting Committee: This same change will be made to META Sections 305, 405, and 505. This same change will also be needed in each of the individual UUOA fundamental transaction provisions.]

\* \* \*

## Uniform **Limited** Partnership Act

### **SECTION 1105. REFERENCE TO EXTERNAL FACTS.**

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

**(b)** The following provisions ~~of~~<sup>in</sup> a record delivered to the [Secretary of State] for filing under this [article]<sup>14</sup> ~~or a plan delivered for filing instead of a statement~~ may not be made dependent on facts outside the record ~~or plan~~:

(1) the name and address of ~~an~~<sup>any</sup> person;

(2) the registered office of ~~an~~<sup>any</sup> entity;

(3) the registered agent of ~~an~~<sup>any</sup> entity;

~~(4)~~<sup>(4)</sup> any required statement of the number of authorized interests and

<sup>14</sup> ~~Article 11 of UPA deals with fundamental transactions. The scope of Section 1105 is limited to provisions in a plan or in a filing relating to a fundamental transaction. Should we include the ability to rely on external facts in the certificate of limited partnership? Presumably we don't think that is necessary for other public organic documents, such as a certificate of organization for an LLC, but should we make an exception for limited partnerships because the certificate of limited partnership was previously required to state the economic terms of the partnership?~~

1 designation of each class or series of interests of a business corporation;

2 (5) the effective date of the record ~~delivered to the [Secretary of State] for~~  
3 ~~filing~~; and

4 (6) any required statement of the date on which the underlying transaction  
5 was approved or the manner in which the approval was given.

**Comment**

This section is based on, but more concise than, section 1.20(k) of the Model Business Corporation Act.

1 Issue 17

2 Uniform Business Organizations Code

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

5 (a) ~~The~~ Except as provided in subsection (f), the [Secretary of State] shall file an entity  
6 filing delivered to the [Secretary of State] for filing which satisfies this [Code]. The duty of the  
7 [Secretary of State] under this section is ministerial.

8 \* \* \*

9 (d) If the [Secretary of State] refuses to file an entity filing, the person that submitted the  
10 filing may petition [the appropriate court] to compel its filing. The filing and the explanation of  
11 the [Secretary of State] of the refusal to file must be attached to the petition. The court may  
12 decide the matter in a summary proceeding<sup>+5</sup> and may order the [Secretary of State] to file  
13 the entity filing or take other appropriate action with respect to the filing.

14 \* \* \*

15 (f) The [Secretary of State] may refuse to file an entity filing if the [Secretary of  
16 State] reasonably believes the entity filing:

17 (1) is being filed fraudulently; or

18 (2) may be used to accomplish a fraudulent or unlawful purpose.

19 **Comment**

20 1. Filing duty in general.

21  
22 Under this section the filing office is required to file an entity filing if it “satisfies this  
23 [Code]” (i.e., both this article and the article that constitutes the organic law of the entity, as well  
24 as Article 2 if the entity filing relates to a transaction under that article). The purpose of this  
25 language is to limit the discretion of the filing office to a ministerial role in reviewing the  
26 contents of entity filings. The one exception is an entity filing that is described in subsection

---

<sup>+5</sup> ~~Compare the change to UPA Section 117(d) immediately below.~~

1 (f) where the Secretary of State is authorized to refuse to file an entity filing if there is a  
2 reasonable belief that the entity filing is being filed fraudulently or for a fraudulent,  
3 criminal, or unlawful purpose. If the entity filing submitted is in the form prescribed and  
4 contains the information required by Section 1-201 and the other applicable provision of the  
5 Code, the filing office must file it. Consistently with this approach, subsection (a) states  
6 explicitly that the filing duty of the filing office is ministerial and subsection (e) provides that the  
7 filing of an entity filing by the filing office does not affect the validity or invalidity of any  
8 provision contained in the filing and does not create any presumption with respect to any  
9 provision. Persons adversely affected by provisions in an entity filing may test their validity in a  
10 proceeding appropriate for that purpose. A presumption should not be drawn about the validity of  
11 the provision from the fact that the filing office accepted the entity filing for filing.

12 \* \* \*

13  
14 **6. Power of the court to review ~~the rejection of a filing~~ a refusal to file.**

15  
16 **Inherent in Subsection (d) confirms that the power of the court to decide whether an**  
17 **entity filing should be accepted by the Secretary of State for filing ~~is~~ includes the inherent**  
18 **power to take other action or award other relief with respect to the filing that the court**  
19 **considers appropriate. An example of other relief a court might order is preserving as the**  
20 **filing date the date on which the entity filing was first delivered to the Secretary of State,**  
21 **even though that date is outside the normal time in which the Secretary of State would**  
22 **ordinarily treat the date of delivery as the filing date.**

23  
24 **If the Secretary of State refuses to file an entity filing under subsection (f), the**  
25 **refusal may be challenged under subsection (d).**

26  
27 **Uniform Partnership Act**

28 **SECTION 117. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF**  
29 **REFUSAL TO FILE; DELIVERY OF RECORD BY [SECRETARY OF STATE].**

30 \* \* \*

31  
32  
33 **(a) ~~The~~ Except as provided in subsection (g), the [Secretary of State] shall file a record**  
34 **delivered to the [Secretary of State] for filing which satisfies this [act]. The duty of the**  
35 **[Secretary of State] under this section is ministerial.**

36 \* \* \*

37 (d) If the [Secretary of State] refuses to file a record, the person that submitted the record

1 may petition [the appropriate court] to compel filing of the record. The record and the  
2 explanation of the [Secretary of State] of the refusal to file must be attached to the petition. The  
3 court may decide the matter in a summary proceeding **and may order the [Secretary of State]**  
4 **to file the record or take other appropriate action with respect to the filing**~~that the court~~  
5 ~~considers appropriate.~~

6 \* \* \*

7 **(g) The [Secretary of State] may refuse to file a record for filing if the [Secretary of**  
8 **State] reasonably believes the record:**

9 **(1) is being filed fraudulently; or**

10 **(2) may be used to accomplish a fraudulent, criminal, or unlawful purpose.**

#### 11 **Comment**

12  
13 **Subsection (a)—Under this subsection the filing office is required to file a record if it**  
14 **“satisfies this [act].” The purpose of this language is to limit the discretion of the filing office to a**  
15 **ministerial role in reviewing the contents of records. The one exception is a record that is**  
16 **described in subsection (g) where the Secretary of State is authorized to refuse to file a**  
17 **record if there is a reasonable belief that the record is being filed fraudulently or for a**  
18 **fraudulent, criminal, or unlawful purpose.** If the record submitted is in the form prescribed,  
19 contains the information required by this act, and the appropriate filing fee is tendered, the filing  
20 office must file the record. Consistent with this approach, this subsection states explicitly that the  
21 filing duty of the filing office is ministerial. See Subsection (e) (pertaining to presumptions not  
22 created).

23 \* \* \*

24  
25  
26 **Subsection (d) – This subsection confirms that the power of the court to decide**  
27 **whether a record should be accepted by the Secretary of State for filing includes the**  
28 **inherent power to take other action or award other relief with respect to the filing that the**  
29 **court considers appropriate. An example of other relief a court might order is preserving as**  
30 **the filing date the date on which the record was first delivered to the Secretary of State,**  
31 **even though that date is outside the normal time in which the Secretary of State would**  
32 **ordinarily treat the date of delivery as the filing date.**

33  
34 **If the Secretary of State refuses to file a record under subsection (g), the refusal may**  
35 **be challenged under subsection (d).**

36 \* \* \*



1 Issue 18

2 Uniform Business Organizations Code

3 SECTION 1-102. -DEFINITIONS.

4 (a) In this [act] ~~[article]~~ and ~~[Article] 2,~~ except as otherwise provided in definitions  
5 of the same terms in other [articles] of this [act]:

6  
7 \* \* \*

8 (10) “Entity”:

9 (A) means:

10 (i) a business corporation;

11 (ii) a nonprofit corporation;

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

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

14 (v) a limited liability company, including a series limited liability

15 company;

16 [(vi) a general cooperative association;]

17 (vii) a limited cooperative association;

18 (viii) an unincorporated nonprofit association;

19 (ix) a statutory trust, including a series trust, business trust, or common-

20 law business trust; or

21 (x) any other person that has:

22 (I) a legal existence separate from any interest holder of that

23 person; or

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

(B) does not include:

(i) an individual;

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

(iii) an association or relationship that is not listed in subparagraph (A) and is not a partnership under the rules stated in Section 3-202(c) or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a series, protected series, protected cell, segregated account, or similar part of an arrangement, configuration, or other structure established by an entity that associates assets, liabilities, and interest holders among various parts of the structure, however a part of the entity is denominated under the organic law of the entity; or, unless the organic law provides that a part of the structure is an entity; or

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

\* \* \*

(18) "Governing jurisdiction" means the jurisdiction whose law includes the organic law of an entity.<sup>16</sup>

~~(18)~~(19) "Governor" means: \* \* \*

~~(19)~~(20) "Interest" means: \* \* \*

~~(20)~~(21) "Interest holder" means: \* \* \*

---

<sup>16</sup> See Note to Style Committee in Issue 1.

1 (21)-(22) “Jurisdiction”, used to refer to a political entity, means the United States, a  
2 state, a foreign country, or a political subdivision of a foreign country.

3 (22) “Jurisdiction of formation” means the jurisdiction whose law includes the  
4 organic law of an entity.

5 \* \* \*

6 (32) “Organic law” means the law of an entity’s governing jurisdiction of formation  
7 governing that governs the internal affairs of the entity.

8 \* \* \*

9 (34) “Person” means an individual, estate, business ~~corporation~~, or nonprofit  
10 ~~corporation~~ entity, government or governmental subdivision, agency, or instrumentality,  
11 other legal entity, or anything else that is a person under the law of this state. The term  
12 includes a, partnership, limited partnership, limited liability company, protected series or  
13 other structure described in paragraph (10)(B)(v), [general cooperative association,]  
14 ~~limited cooperative association, unincorporated nonprofit association, statutory trust,~~  
15 ~~business trust, or common law business trust, estate, trust, association, joint venture,~~  
16 ~~public corporation, government or governmental subdivision, agency, or instrumentality,~~  
17 ~~or any other legal or commercial entity.~~ entity, government or governmental subdivision,  
18 agency, or instrumentality, other legal entity, or any other legal construct that is a person  
19 but not an entity under the law of this state.

20 \* \* \*

21 (b) If a provision A reference in this [article] or [Article] 2 ~~refers~~ to an entity or type  
22 ~~of entity, the reference~~ includes a domestic and foreign entity, unless the ~~provision~~ reference  
23 refers expressly only to a domestic, entity or foreign, or both entity.

1 Legislative Note:

2 If the state uses a term other than one of the terms in subsection (a)(10)(B)(v) to refer  
3 to the series concept, that term should be added.

4  
5 Subsection (a)(10)(B)(v) treats a series as not being a separate entity; unless the  
6 relevant organic law provides that a series is an entity. If the law of the state treats a series as  
7 an entity, subsection (a)(10)(B)(v) a domestic series should be moved added to the list of entities  
8 in subsection (a)(10)(A). In addition, subsection (a)(10)(B)(v) should be limited to series  
9 created under organic laws that treat them as not being an entity.

10  
11 **Comment**

12 \* \* \*

13 “Entity.” [(10)] – This definition determines the overall scope of the Code.

14  
15 This definition is intended to include all forms of private organizations, regardless of  
16 whether organized for profit, and artificial legal persons other than those excluded by paragraphs  
17 ~~(B)(i)-(v)~~ **(B)(i)-(vi)**.

18  
19 This definition does not exclude regulated entities such as public utilities, banks and  
20 insurance companies. If any of those types of entities is organized under a separate statute, the  
21 state must decide whether that statute should be one of the spokes of the Code. If the statute is  
22 not included in the Code, entities formed under it will be automatically excluded from this article  
23 by Section 1-103. But in that case, a separate decision must be made as to whether to permit  
24 entities formed under it to participate in transactions under Article 2. Particular types of entities  
25 may also be excluded from the Code by listing them in optional Section 1-106.

26  
27 Trusts with a predominantly donative purpose and charitable trusts are subject generally  
28 to the Uniform Trust Code (Last Amended 2010) and have been excluded from the definition of  
29 “entity,” thus excluding them from the Code. Trusts that carry on a business, however, such as a  
30 Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or  
31 statutory business trusts are “entities.”

32  
33 The laws of a number of United States jurisdictions permit the use of a structure  
34 called “series” in which a part of the assets, liabilities, and interest holders of an entity are  
35 associated together and kept separate from similar associations of other assets, liabilities,  
36 and interest holders of the entity. A defining characteristic of such a structure is that it  
37 provides internal or horizontal shields that protect the assets of one series from the  
38 creditors of the entity and the creditors of any other series. Paragraphs (A)(v) and (ix)  
39 confirm that a limited liability company or statutory trust that is authorized to create series  
40 is included in the broader category of those types of entities.

41  
42 Section 6 of the Uniform Unincorporated Nonprofit Association Act (2008) (Last  
43 Amended 2013) (UUNAA) (§ 7-106 of the Code) gives an unincorporated nonprofit association

1 the power to acquire an estate in real property and thus an unincorporated nonprofit association  
2 organized in a state that has adopted that act will be an “entity.” At common law, an  
3 unincorporated nonprofit association was not a legal entity and did not have the power to acquire  
4 real property. Most states that have not adopted the UUNAA have nonetheless modified the  
5 common law rule, but states that have not adopted the UUNAA should analyze whether they  
6 should modify the definition of “entity” to add an express reference to unincorporated nonprofit  
7 associations.

8  
9 There is some question as to whether a partnership subject to the Uniform Partnership Act  
10 (1914) (1914 UPA) is an entity or merely an aggregation of its partners. That question has been  
11 resolved by Section 3-201, which makes clear that a general partnership is an entity with its own  
12 separate legal existence. Section 8 of the 1914 UPA gives partnerships subject to it the power to  
13 acquire estates in real property and thus such a partnership will be an “entity.” As a result, all  
14 general partnerships will be “entities” regardless of whether the state in which they are organized  
15 has adopted the 1997 UPA.

16  
17 Paragraph (B) (i) of this definition excludes a sole proprietorship from the concept of  
18 “entity.”  
19

20 Paragraph (B)(iii) of this definition excludes from the concept of an “entity” any form of  
21 co-ownership of property or sharing of returns from property that is not a partnership under  
22 Section 3-202(c) or Section 7 of the 1914 UPA. In that connection, 3-202(c) provides in part:

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

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

27 (2) The sharing of gross returns does not by itself establish a partnership, even if the  
28 persons sharing them have a joint or common right or interest in property from which the  
29 returns are derived.  
30

31 A virtually identical provision appears in Section 7(3)-(4) of the 1914 UPA.  
32

33 Paragraph (B)(iv) of this definition excludes decedent’s estates for the same policy reason  
34 as trusts with a predominantly donative purpose and charitable trusts.  
35

36 **Paragraph (B)(v) provides that a series is not an entity unless the organic law of the**  
37 **series provides that a series is an entity. On the other hand, paragraph (A) confirms that**  
38 **an entity that uses the series concept is itself always an entity.- Because there is not a single**  
39 **term that is universally used for the series concept, paragraph (B)(v) lists all of the**  
40 **commonly recognized terms and also accommodates other terms that may be used to refer**  
41 **to the series concept.**  
42

43 Paragraph ~~(B)(v)~~ **(B)(vi)** excludes governmental subdivisions, agencies, and  
44 instrumentalities because they are not properly within the scope of the Code.  
45

46 Limited liability partnerships and limited liability limited partnerships are “entities”

1 because they are general partnerships and limited partnerships, respectively, that have made the  
2 additional required election claiming LLP or LLLP status. A limited liability partnership is not,  
3 therefore, a separate type of entity from the underlying general partnership, nor is a limited  
4 liability limited partnership a separate type of entity from the underlying limited partnership that  
5 has elected limited liability partnership status.

6  
7 \* \* \*

1 Issue 19

2 Model Entity Transactions Act (when enacted outside  
3 the Uniform Business Organizations Code)

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

5 \* \* \*

6 (3) “Approve” means, in the case of an entity, for its governors and interest holders to  
7 take whatever steps are necessary under the entity’s organic rules, organic law, and other law to:

8 (A) propose a transaction subject to this [act];

9 (B) adopt and approve the terms and conditions of the transaction; and

10 (C) conduct any required proceedings or otherwise obtain any required votes or  
11 consents of the governors or interest holders.

12 \* \* \*

13 **SECTION 403. APPROVAL OF CONVERSION.**

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

15 (1) ~~by~~ in the case of a domestic converting entity:

16 (A) ~~in accordance~~ compliance with the requirements, if any, in its  
17 organic law and organic rules for approval of a conversion;

18 (B) if its organic law or organic rules do not provide for approval of a  
19 conversion, ~~in accordance~~ compliance with the requirements, if any, in its organic law and  
20 organic rules for approval of:

21 (i) in the case of an entity that is not a business corporation or  
22 limited cooperative association, a merger, as if the conversion were a merger;

23 (ii) in the case of a business corporation, a merger requiring  
24 approval by a vote of the interest holders of the business corporation, as if the conversion were

1 that type of merger; or

2 (iii) in the case of a limited cooperative association, a transaction  
3 under this [article]; or

4 (C) **the affirmative vote or consent** by all of the interest holders of the  
5 entity entitled to vote on or consent to any matter if:

6 (i) in the case of any entity that is not a business corporation or  
7 limited cooperative association, neither its organic law nor organic rules provide for approval of  
8 a conversion or a merger; or

9 (ii) in the case of a limited cooperative association, neither its  
10 organic law nor organic rules provide for approval of a conversion or a transaction under this  
11 [article]; and

12 (2) ~~action, in~~ a record, ~~confirming in some fashion~~ **acknowledging acceptance**  
13 **of interest holder liability** by each interest holder of a domestic converting entity ~~which that~~  
14 **has not affirmatively voted for or consented to the conversion and** will have interest holder  
15 liability for debts, obligations, and other liabilities that are incurred after the conversion becomes  
16 effective, unless, in the case of an entity that is not a business or nonprofit corporation:<sup>17</sup>

17 (A) the organic rules of the entity provide in a record for the approval of a  
18 conversion or a merger in which some or all of its interest holders become subject to interest  
19 holder liability by the vote or consent of fewer than all the interest holders; and

20 (B) the interest holder voted for or consented in a record to that provision  
21 of the organic rules or became an interest holder after the adoption of that provision.

---

<sup>17</sup> This exemption of corporations has been deleted from the Model Entity Transactions Act Article of the Uniform Business Organizations Code on the theory that if corporations are included in the Code the issue of the effect of consent to a transaction giving rise to interest holder liability will be dealt with in Sections 2-607 and 2-608.



1       \* \* \*

2       **Uniform Business Organizations Code (Model Entity Transactions Act Article)**

3       **SECTION 2-102. DEFINITIONS.**

4       (a) In this [article]:

5       \* \* \*

6               (3) “Approve” means, in the case of an entity, for its governors and interest  
7 holders to take whatever steps are necessary under the entity’s organic rules, organic law, and  
8 other law to:

9                       (A) propose a transaction subject to this [article];

10                      (B) adopt and approve the terms and conditions of the transaction; and

11                      (C) conduct any required proceedings or otherwise obtain any required  
12 votes or consents of the governors or interest holders.

13       \* \* \*

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

16               (15) “Plan of conversion” means a plan under Section 2-402.

17               (16) “Plan of domestication” means a plan under Section 2-502.

18               (17) “Plan of interest exchange” means a plan under Section 2-302.

19               (18) “Plan of merger” means a plan under Section 2-202.

20       \* \* \*

21       **(c) Terms used in this [article] that are not defined in this [article], but are defined in**  
22 **the organic law of an entity, have the meanings given to them in ~~that~~the organic law ~~when~~**  
23 **~~used in this [article].~~**

1           **SECTION 2-403. APPROVAL OF CONVERSION.**

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

3                   (1) by a domestic converting entity:

4                           ~~(A) in accordance with the requirements, if any, in its organic rules for~~  
5 ~~approval of a conversion of [Part] 6;~~

6                           ~~(B) if its organic rules do not provide for approval of a conversion, in~~  
7 ~~accordance with the requirements, if any, in its organic law and organic rules for approval~~  
8 ~~of:~~

9                                   ~~(i) in the case of an entity that is not a business corporation or~~  
10 ~~limited cooperative association, a merger, as if the conversion were a merger;~~

11                                   ~~(ii) in the case of a business corporation, a merger requiring~~  
12 ~~approval by a vote of the interest holders of the business corporation, as if the conversion~~  
13 ~~were that type of merger;~~

14                                   ~~(iii) in the case of a limited cooperative association, a~~  
15 ~~transaction under this [part] or~~

16                           ~~(C) by all of the interest holders of the entity entitled to vote on or~~  
17 ~~consent to any matter if:~~

18                                   ~~(i) in the case of any entity that is not a business corporation or~~  
19 ~~limited cooperative association, neither its organic law nor organic rules provide for~~  
20 ~~approval of a conversion or a merger; or~~

21                                   ~~(ii) in the case of a limited cooperative association, neither its~~  
22 ~~organic law nor organic rules provide for approval of a conversion or a transaction under~~  
23 ~~this [part]; and~~

(2) in a record, by each interest holder of a domestic converting entity ~~which that~~  
**has not affirmatively voted for or consented to the conversion and** will have interest holder  
liability for debts, obligations, and other liabilities that are incurred after the conversion becomes  
effective, unless, ~~in the case of an entity that is not a business or nonprofit corporation:~~

(A) the organic rules of the entity provide in a record for the approval of a  
conversion or a merger in which some or all of its interest holders become subject to interest  
holder liability by the vote or consent of fewer than all the interest holders; and

(B) the interest holder voted for or consented in a record to that provision  
of the organic rules or became an interest holder after the adoption of that provision.

(b) A conversion of a foreign converting entity is not effective unless it is approved by the  
foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

*~~Legislative Note: The analysis of approval requirements in the Legislative Note to  
Section 2-303 should also be undertaken with respect to conversions.~~*

## **[Part] 6**

### **APPROVAL REQUIREMENTS**

#### **SECTION 2-601. APPROVAL BY GENERAL PARTNERSHIP.**

**Except as provided in the organic rules of a domestic partnership, a plan is not  
effective unless it has been approved by all the partners of the partnership entitled to vote  
on or consent to any matter.**

[Source: UPA § 1123(a)(1).]

#### **SECTION 2-602. APPROVAL BY LIMITED PARTNERSHIP.**

**Except as provided in the organic rules of a domestic limited partnership, a plan is  
not effective unless it has been approved by all the partners of the partnership entitled to  
vote on or consent to any matter.**

1 [Source: ULPA § 1123(a)(1).]

2 **SECTION 2-603. APPROVAL BY LIMITED LIABILITY COMPANY.**

3 **Except as provided in the organic rules of a domestic limited liability company, a**  
4 **plan is not effective unless it has been approved by all the members of the company entitled**  
5 **to vote on or consent to any matter.**

6 [Source: ULLCA § 1023(a)(1).]

7 **SECTION 2-604. APPROVAL BY LIMITED COOPERATIVE ASSOCIATION.**

8 **(a) For a limited cooperative association to approve a plan, the plan must be**  
9 **approved by a majority of the board of directors, or a greater vote if required by the**  
10 **organic rules, and the board shall call a members meeting to consider the plan, hold the**  
11 **meeting not later than 90 days after approval of the plan by the board, and mail or**  
12 **otherwise transmit or deliver in a record to each member:**

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

15 **(2) a recommendation that the members approve the plan, or if the board**  
16 **determines that because of a conflict of interest or other circumstances it should not make a**  
17 **favorable recommendation, the basis for ~~that~~the determination;**

18 **(3) a statement of any condition of the board's submission of the plan to the**  
19 **members; and**

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

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

23 **(1) at least two-thirds of the voting power of members present at a members**

1 meeting called under subsection (a); and

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

5 (c) The organic rules may provide that the required vote under subsection (b)(1) is:

6 (1) a different fraction that is not less than a majority of members voting at  
7 the meeting;

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

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

10 (d) The vote required under subsections (b) and (c) to approve a plan may not be  
11 less than the vote required for the members of the limited cooperative association to amend  
12 the articles of organization.

13 (e) A member's consent in a record to a plan must be delivered to the limited  
14 cooperative association before delivery to the [Secretary of State] for filing of articles of  
15 merger, interest exchange, conversion, or domestication if, as a result of the merger, interest  
16 exchange, conversion, or domestication, the member will have interest holder liability for  
17 debts, obligations, or other liabilities that are incurred after the transaction becomes  
18 effective.

19 (f) The voting requirements for districts, classes, or voting groups under Section 6-  
20 404 apply to approval of a transaction under this [article].

21 [Source: ULCAA § 518. Cf. ULCAA § 1623(a). Sections 518 and 1623 will need to be  
22 deleted in their entirety.]

23 SECTION 2-605. APPROVAL BY UNINCORPORATED NONPROFIT  
24 ASSOCIATION.

1       Except as provided in the organic rules of a domestic unincorporated nonprofit  
2 association, a plan is not effective unless it has been approved by the nonprofit association  
3 by all the members of the nonprofit association entitled to vote on or consent to any matter.

4       [Source: UUNAA § 31(c)(3). UUNAA only authorizes mergers, although it permits a  
5 merger with any entity that is authorized by law to merge with an unincorporated  
6 nonprofit association.. Because interest exchanges, conversions, and domestications may be  
7 accomplished using a merger, this section follows the same pattern as used for other  
8 unincorporated organizations.]  
9

10       SECTION 2-606. APPROVAL BY STATUTORY TRUST ENTITY.

11       Except as provided in the organic rules of a domestic statutory trust, a plan is not  
12 effective unless it has been approved by the trust by all the beneficial owners of the trust  
13 entitled to vote on or consent to any matter.

14       [Source: USTEA § 923(a)(1).]

15       SECTION 2-607. APPROVAL BY BUSINESS CORPORATION.

16       (a) . . .

17       *Legislative Note: ~~When adding~~ A state that adds business corporations to ~~the~~ this Code,*  
18 *~~the state~~ should transfer from its business corporation law to this section the requirements for*  
19 *approval of a merger by a business corporation, generalized to apply to all fundamental*  
20 *transactions. This section should include any applicable requirements for approval by the*  
21 *board of directors of fundamental transactions. Many business corporation laws have more*  
22 *varied requirements for approval of ~~mergers~~ a merger than they do for approval of other types*  
23 *of fundamental transactions, such as special requirements for approving short-form mergers.*  
24 *~~Those rules~~ Rules for approving ~~mergers~~ a merger that should not apply to ~~other types~~ another*  
25 *type of fundamental ~~transaction~~ transaction should be limited in scope to apply only to*  
26 *~~mergers~~ a merger.*  
27

28       SECTION 2-608. APPROVAL BY NONPROFIT CORPORATION.

29       (a) . . .

30       *Legislative Note: ~~When adding~~ A state that adds nonprofit corporations to ~~the~~ this Code,*  
31 *~~the state~~ should transfer from its nonprofit corporation law to this section the requirements for*  
32 *approval of a merger by a nonprofit corporation, generalized to apply to all fundamental*  
33 *transactions. This section should include any applicable requirements for approval by the*  
34 *board of directors of fundamental transactions.*

1 Issue 20

2 Model Entity Transactions Act

3 **SECTION 104. -REQUIRED NOTICE OR APPROVAL.**

4 (a) ~~A~~ If a domestic or foreign entity ~~that~~ is required to give notice to, or obtain the  
5 approval of, a governmental agency or officer of this state to be a party to a merger, and the  
6 applicable statutes or regulations do not specifically deal with an interest exchange,  
7 conversion, or domestication, the entity must give the notice or obtain the approval to be a  
8 party to an interest exchange, conversion, or domestication.

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

17 (c) ~~A~~ Subject to the express terms of the will or other instrument of donation,  
18 subscription, or conveyance, a bequest, devise, gift, grant, or promise contained in a the will or  
19 other instrument ~~of donation, subscription, or conveyance which is made to a merging entity~~  
20 ~~that is not the surviving entity; and which takes effect or remains payable after the merger;~~  
21 made in trust or otherwise, ~~made~~ before, simultaneously with, or after a transaction under  
22 this [act], to or for a charitable corporation or unincorporated entity with that has a  
23 charitable purpose that and is not the subject of surviving entity in the transaction, inures to

1 the surviving entity if it is a charitable corporation or unincorporated entity ~~with~~that has a  
2 charitable purpose, ~~subject to the express terms of the will or other instrument.~~

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



1 Issue 21

2 Model Entity Transactions Act

3 **[SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.**

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

5 (1)

6 (2)

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

8 ~~(1)~~

9 Alternative A

10 [~~(1)~~ that is prohibited by [Section 602 or 603 of the Uniform Protected Series

11 Act ~~(last amended 2023)~~] ~~;~~ or]

12 [~~(2)~~]

13 Alternative B

14 [~~(1)~~ in which a series entity or a series, protected series, protected cell,

15 segregated account, or similar part of an arrangement, configuration, or other structure

16 established by a series entity that associates assets, liabilities, and interest holders among

17 various parts of the structure, however a part of the entity is denominated under the

18 organic law of the entity, is to be a party to, ~~result from,~~ or be formed, organized,

19 established, or created ~~in, or result from~~by

20 (A) a conversion, domestication, interest exchange, or merger under~~;~~

21 ~~(A)~~ this [act]~~;~~ or

22 ~~(B)~~ the law of a foreign jurisdiction, however the transaction is

23 denominated under that law~~;~~ or

(B) that has the substantive effect of a conversion, domestication, interest exchange, or merger under the law of this state or a foreign jurisdiction; or

~~(2).~~ [(3)]

#### End of Alternatives

**Legislative Note:** This section provides an optional way to exclude certain types of entities or transactions.

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

*Nonprofit entities may participate in transactions under this act with for profit entities, subject to compliance with Section 104. If a state desires, however, to exclude entities with a charitable purpose or to exclude other types of entities from the scope of the act, that may be done by referring to those entities in subsection (a).*

#### ~~Subsection (b)(1)~~

There are two alternative approaches to the issue in subsection (b)(1). Alternative A refers to the prohibitions in Sections 602 and 603 of the Uniform Protected Series Act as a reminder that a protected series or series limited liability company is restricted from participating in transactions such as those authorized by this act. ~~Even if a~~ A state that has enacted the Uniform Protected Series Act should enact Alternative A. If the state does not authorize the creation of protected series, it should consider whether to prohibit a foreign ~~protected series from engaging in transactions under this act. If it wishes to do so, it ~~can use~~~~ the second alternative in subsection (b)(1).—should enact Alternative B.

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

#### **SECTION 201. -MERGER AUTHORIZED.**

(a) Except as otherwise provided in this section, by complying with this [article]:

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

(2) two or more foreign entities may merge into a domestic surviving entity created in the merger.

\* \* \*

## Comment

The merger transaction authorized by this act involves the combination of one or more domestic entities with or into one or more other domestic or foreign entities. It also contemplates the consolidation of two or more foreign entities into a single domestic surviving entity **created in the transaction**. Upon the effective date of the merger, all the assets and liabilities of the constituent entities vest in the surviving entity as a matter of law. As such, mergers require the existence of at least two separate entities before the transaction and only one entity may survive the merger. If independent existence of the constituent entities is desired following the conclusion of the transaction, a restructuring transaction other than a merger must be used to accomplish the transfer of assets and liabilities.

Subsection (a). Subsection (a)(1) states the general rule that subject to subsection (c) one or more domestic entities may merge with or into a domestic or foreign surviving entity. The surviving entity may be one of the merging entities (either domestic or foreign) or a new entity (again, either domestic or foreign) created by the merger. Subsection (a)(2) provides that two or more foreign entities may merge into a domestic surviving entity created in the merger so long as the requirements of subsection (b) are met. ~~The transaction described in subsection (a)(2)~~A merger in which the surviving entity is created in the merger was often described in older statutes as a consolidation. Section 102(45) defines a surviving entity as “the entity that continues in existence after or is created by a merger” and thus a merger under article 2 includes a consolidation in which a new surviving entity is created in the transaction.

\* \* \*

1 Issue 22

2 Model Entity Transactions Act

3 **SECTION 202. PLAN OF MERGER.**

4 (a) A domestic entity may become a party to a merger under this [article] by approving a  
5 plan of merger. The plan must be in a record and contain:

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

8 (2) **if as to the surviving entity, its name, jurisdiction of formation, and type**  
9 **of entity, and whether** the surviving entity is to be created in the merger, ~~a statement to that~~  
10 ~~effect and the entity's name, jurisdiction of formation, and type of entity;~~

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

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

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

16 (B) its private organic rules that are, or are proposed to be, in a record;

17 (5) if the surviving entity is to be created in the merger:

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

19 (B) the full text of its private organic rules that are proposed to be in a  
20 record;

21 (6) the other terms and conditions of the merger; and

22 (7) any other provision required by the law of a merging entity's jurisdiction of  
23 formation or the organic rules of a merging entity.

\* \* \*

### Comment

Subsection (a) – The requirements for the plan of merger are set forth in subsection (a). They are similar to plan of merger provisions in corporation statutes. See Model Business Corporation Act § 11.02(c). The requirements stated in ~~this~~ subsection (a) are mandatory.

Subsection (a)(1) – Subsection (a)(1) requires that the plan of merger identify the **merging entities parties to the merger. Section 102(24) defines a merging entity as “an entity that is a party to a merger and exists immediately before the merger becomes effective.”** The name of a merging entity as it appears in the plan of merger will be its name in its jurisdiction of formation. See the comment to Section 205(b)(1) and (2).

**Subsection (a)(2) – Separately from the identification of the merging entities in subsection (1)(1), the plan of merger is also required by subsection (a)(2) to identify the surviving entity. The surviving entity may either be one of the merging entities identified in subsection (a)(1) or a new entity created in the merger. The information described in subsection (a)(2) is not only required for a surviving entity created in the merger, but also for a surviving entity that is also a merging entity. If a merging entity is the surviving entity, the information required by subsection (a)(2) will reflect the effects of the merger on the merging entity and may differ from the information provided in response to subsection (a)(1).**

\* \* \*

1 **Issue 23**

2 ~~The CLC notes that META requires approval of a “plan of merger,” but in one~~  
3 ~~provision (META § 204(b)(2)) META speaks of approval of a “merger.”~~  
4 ~~Correcting that inappropriate usage is an easy fix, but it raises a second issue.~~  
5 ~~META § 203 requires approval of the plan of merger, but that section is titled~~  
6 ~~“approval of merger.” We should consider changing the title of META § 203~~  
7 ~~if we change META § 204(b)(2). These issues also appear in other chapters of~~  
8 ~~META, and presumably in the unincorporated entity acts.~~  
9

10 **Model Entity Transactions Act**

11 **SECTION 203. -APPROVAL OF PLAN OF MERGER.**

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

13 \* \* \*

14 **SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

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

17 (b) A domestic merging entity may approve an amendment of a plan of merger:

18 (1) in the same manner as the plan was approved, if the plan does not provide for  
19 the manner in which it may be amended; or

20 (2) by its governors or interest holders in the manner provided in the plan, but an  
21 interest holder that was entitled to vote on or consent to approval of the ~~plan of merger~~ plan is  
22 entitled to vote on or consent to any amendment of the plan that will change:

23 (A) the amount or kind of interests, securities, obligations, money, other  
24 property, rights to acquire interests or securities, or any combination of the foregoing, to be  
25 received by the interest holders of any party to the plan;

26 (B) the public organic record, if any, or private organic rules of the  
27 surviving entity that will be in effect immediately after the merger becomes effective, except for

- 1 changes that do not require approval of the interest holders of the surviving entity under its
- 2 organic law or organic rules; or
- 3 (C) any other terms or conditions of the plan, if the change would
- 4 adversely affect the interest holder in any material respect.
- 5 \* \* \*

1 **Issue 24**

2 ~~The CLC points out that the required contents of a statement of merger in~~  
3 ~~META § 205 are not as clear as they could be with respect to a surviving~~  
4 ~~entity that exists before the merger. The unclarity arises because META only~~  
5 ~~requires the identification of parties to a merger that are not the survivor. This~~  
6 ~~change will probably need to be made in the unincorporated entity acts.~~

7  
8 **Model Entity Transactions Act**

9 **SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE OF MERGER.**

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

12 (b) A statement of merger must contain:

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

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

16 \* \* \*



1 Comment

2 \* \* \*

3 Subsection (b)(1) and (2) – The names of foreign entities set forth in the statement of  
4 merger will generally be their names in their jurisdiction of formation, except that if a foreign  
5 entity has been required to adopt a different name in order to register to do business in the  
6 adopting state, the foreign qualification or registration statute will likely require that when the  
7 entity does business in the adopting state it must use the name adopted for purposes of  
8 registering to do business. Engaging in a merger under this article will be part of the business  
9 done by the entity in the state and the name of the entity set forth in the statement of merger will  
10 thus need to be the name under which the entity has registered to do business. Use of the name  
11 under which the entity has registered to do business will allow the records in the filing office to  
12 associate the registration of the entity to do business with the statement of merger.

13  
14 If one of the merging entities is also the surviving entity, it will appear in the  
15 statement of merger under both subsection (b)(1) and (2). Where there is no change to the  
16 information about the surviving entity in subsection (b)(2), the information in subsection  
17 (b)(2) will be redundant. But where the information changes as a result of the merger, or  
18 where the surviving entity is created by the merger, the information required in subsection  
19 (b)(1) and (2) will make the public record clearer.

20  
21 \* \* \*

1 Issue ~~Issue~~ 25

2 The ~~CLC~~ points out that “proceeding” is defined in Hub § 1-102 to include “a  
3 civil action, arbitration, mediation, administrative proceeding, criminal  
4 prosecution, and investigatory action.” The result is that an unregistered  
5 entity doing business in the state is precluded from maintaining an arbitration,  
6 mediation, or investigation in the state. The MBCA in contrast limits the  
7 penalty for not registering to a bar on bringing a court proceeding.  
8

9 25

10 Uniform Business Organizations Code

11 **SECTION 1-502. REGISTRATION TO DO BUSINESS IN THIS STATE.**

12 (a) A foreign filing entity or foreign limited liability partnership may not do business in  
13 this state until it registers with the [Secretary of State] under this [article].

14 (b) A foreign filing entity or foreign limited liability partnership doing business in this  
15 state may not maintain an action or proceeding in anya court of this state unless it is registered  
16 to do business in this state.

17 \* \* \*

**Issue 26**

~~Now that the CTA is law, we should consider what the Code requires in an annual report. The MBCA requires the names and business addresses of the directors and officers of a corporation, which is more than Code § 1-213 requires. The MBCA also requires a brief description of the corporation's business—which the reporter personally would not include.~~

**~~SECTION 1-213. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF STATE].~~**

~~(a) A domestic filing entity, domestic limited liability partnership, or registered foreign entity shall deliver to the [Secretary of State] for filing [an annual] [a biennial] report that states:~~

~~(1) the name of the entity and its jurisdiction of formation;~~

~~(2) the name and street and mailing addresses of the entity's registered agent in this state;~~

~~(3) the street and mailing addresses of the entity's principal office; and~~

~~(4) the name of at least one governor.~~ No changes will be proposed regarding the information that must be included in an annual report.

1	<u>Issue 27</u>
2	<u>Uniform Business Organizations Code</u>
3	
4	<u>* * *</u>

Issue 27

~~The CLC points out that there is no way for a foreign entity that registers under an alternate name to change that name.~~

**SECTION 1-504.- AMENDMENT OF FOREIGN REGISTRATION STATEMENT.**

A registered foreign entity shall sign and deliver to the [Secretary of State] for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the entity or the alternate name adopted under Section 1-506(a);

\* \* \*

1 **Issue 28**

2 ~~The CLC suggests the following clarification.~~

3 **Uniform Business Organizations Code**

4 **SECTION 1-506. NONCOMPLYING NAME OF FOREIGN ENTITY.**

5 (a) A foreign filing entity or foreign limited liability partnership whose name does not  
6 comply with Section 1-301 for an entity of its type may not register to do business in this state  
7 until it adopts, for the purpose of doing business in this state, an alternate name that complies  
8 with Section 1-301. A foreign entity that registers under an alternate name under this subsection  
9 need not comply with [this state's assumed or fictitious name statute] **with respect to the**  
10 **alternate name**. After registering to do business in this state with an alternate name, a foreign  
11 entity shall do business in this state under:

12 \* \* \*

## Issue 29

The CLC notes that the META definitions of “conversion” and “domestication” do not apply to the UBOC, but those terms (or cognate terms) are used in the UBOC. In some ways, this is a variation on the issue of how different states may use those terms with different meanings. The following changes rewrite provisions of the Hub to avoid using those terms. Another approach could be to include the META definitions in the Hub. See Issues 18 and 19 which deal with related issues.

Also marked below is a separate change proposed by the CLC to UBOC § 1-510(a)(5) which makes for a clearer set of information in the records of the Secretary of State.

### **~~SECTION 1-508. WITHDRAWAL DEEMED ON CONVERSION CHANGE TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.~~**

~~A registered foreign entity that **converts to any becomes another** type of domestic filing entity or **to a domestic limited liability partnership** is deemed to have withdrawn its registration on the effective date of the **conversion change**.~~

### **~~SECTION 1-509. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.~~**

~~(a) A registered foreign entity that has dissolved and completed winding up or has **converted to a become a type of** domestic or foreign nonfiling entity other than a limited liability partnership shall deliver a statement of withdrawal to the [Secretary of State] for filing.~~

~~The statement must be signed by the **dissolved or converted** entity and state:~~

~~(1) in the case of a foreign entity that has completed winding up:~~

~~(A) its name and jurisdiction of formation; and~~

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

~~(2) in the case of a foreign entity that has **converted to a become a type of**~~

~~domestic or foreign nonfiling entity other than a limited liability partnership:~~

~~(A) the name of the **converting** foreign entity and its jurisdiction of formation;~~

~~(B) the type of nonfiling entity **to which it has converted** it has become and its jurisdiction of formation;~~

~~(C) that it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf; and~~

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

~~(b) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign filing entity was registered to do business in this state may be made pursuant to Section 1-412.~~

## Uniform Business Organizations Code

### SECTION 1-102. DEFINITIONS.

(a) In this [Code], except as otherwise provided in definitions of the same terms in other articles of this [Code]:

\* \* \*

(b) The definitions in Section 2-102(a) apply to this [article].

### **SECTION 1-510. TRANSFER OF REGISTRATION.**

(a) If a registered foreign entity merges into a nonregistered foreign entity or converts to a ~~becomes another type of~~ foreign entity required to register with the [Secretary of State] to do business in this state, the foreign entity shall deliver to the [Secretary of State] for filing an application for transfer of registration. The application must be signed by the surviving or



converted entity and state:

(1) the name of the registered foreign entity before the merger or conversion

change;

(2) the type of entity it was before the merger or conversion change;

(3) the name of the applicant entity and, if the name does not comply with Section 1-301, an alternate name adopted pursuant to Section 1-506(a);

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

(5) the following information regarding the applicant entity, ~~if different than the information for the foreign entity before the merger or conversion.~~<sup>18</sup>

(A) the street and mailing addresses of the principal office of the entity and, if the law of the entity's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(B) the information required pursuant to Section 1-404(a).

(b) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in this state is transferred without interruption to the entity into which it has merged or to which it has been converted the entity into which it has changed.

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<sup>18</sup> ~~This deletion avoids the need to consult the records of the Secretary of State with respect to the formerly registered entity because all of the needed information will appear in the new filing.~~

1 **Issue 30**

2 Both the Model Business Corporation Act and the Model Nonprofit  
3 Corporation Act include a provision that a foreign entity that has registered to  
4 do business under a prior statute replaced by the current law does not need to  
5 re-register. A reason to make this change is the reference in UBOC § 1-502(a)  
6 to registration “under this [article].” Such a provision in the UBOC would  
7 read as follows:  
8

9 **Uniform Business Organizations Code**

10 **SECTION 1-502. REGISTRATION TO DO BUSINESS IN THIS STATE.**

11 ~~(a)~~ **(a) A Except as provided in subsection (f), a** foreign filing entity or foreign limited  
12 liability partnership may not do business in this state until it registers with the [Secretary of  
13 State] under this [article].

14 \* \* \*

15 **(f) A foreign filing entity or foreign limited liability partnership registered or**  
16 **authorized to do business in this state on ~~the~~ effective date of this [article]subsection] is**  
17 **subject to this [code], is deemed to be registered to do business in this state, and is not**  
18 **required to deliver to the [Secretary of State] for filing a foreign registration statement**  
19 **under this [article].**

1 Issue 31

2 Uniform Business Organizations Code

3 SECTION 1-602. PROCEDURE AND EFFECT.

4 \* \* \*

5 (e) The administrative dissolution of a domestic filing entity does not subject its  
6 governors to standards of conduct or liabilities different from those applicable under its  
7 organic law and organic rules before the administrative dissolution.

8 Uniform Limited Liability Company Act

9 SECTION 708. ADMINISTRATIVE DISSOLUTION.

10 \* \* \*

11 (f) The administrative dissolution of a limited liability company does not subject its  
12 members or managers to standards of conduct or liabilities different from those applicable  
13 under this [act] and its organic rules before the administrative dissolution.