

D R A F T
FOR DISCUSSION ONLY

Uniform Unincorporated Organization Acts (20__)

Uniform Law Commission

June 14, 2023 Informal Session



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Uniform Unincorporated Organization Acts (20__)

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1 term includes a domestic limited liability partnership but not a foreign limited liability
2 partnership.

3 * * *

4 (14) “Person” means an individual, ~~business corporation, nonprofit corporation,~~
5 ~~partnership, limited partnership, limited liability company, [general cooperative~~
6 ~~association,] limited cooperative association, unincorporated nonprofit association,~~
7 ~~statutory trust, business trust, common-law business trust,~~ estate, ~~trust, association, joint~~
8 ~~venture, public corporation,~~ business or nonprofit entity, government or governmental
9 subdivision, agency, or instrumentality, or ~~any~~ other legal ~~or commercial~~ entity. The term
10 includes a protected series, however denominated, of an entity if the protected series is
11 established under law that limits, or limits if conditions specified under law are satisfied,
12 the ability of a creditor of the entity or of another protected series of the entity to satisfy a
13 claim from assets of the protected series.

14 * * *

15 Comment

16 * * *

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

20
21 Because a partnership is defined as “an entity that is formed under this [act] or the
22 internal affairs of which become governed by this [act],” references in this act to “a
23 partnership” mean a domestic partnership. The more complete term “domestic
24 partnership” is used in several places in this act to highlight the scope of particular
25 provisions. Use of the term “domestic partnership” in those places is not intended to affect
26 the meaning of partnership when it appears elsewhere in the act.

27 * * *

28
29
30 “Person” [14] – This term is the standard definition used in uniform acts generally,

1 including the optional last sentence of the standard definition dealing with protected series.

2
3 * * *

4 **SECTION 202. FORMATION OF PARTNERSHIP.**

5 (a) Except as otherwise provided in subsection (b), the association of two or more
6 persons to carry on as co-owners a business for profit forms a partnership, whether or not the
7 persons intend to form a partnership.

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

12 * * *

13 **Comment**

14 * * *

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

21
22 * * *

23 **SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.**

24 * * *

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

1 **Uniform Business Organizations Code**

2 **SECTION 1-102. DEFINITIONS.** In this [act], except as otherwise provided in
3 definitions of the same terms in other articles of this [act]:

4 * * *

5 **(18) “Governing jurisdiction” means the jurisdiction whose law includes the organic**
6 **law of an entity.**

7 ~~(18)~~ **(19)** “Governor” means: * * *

8 ~~(19)~~ **(20)** “Interest” means: * * *

9 ~~(20)~~ **(21)** “Interest holder” means: * * *

10 ~~(21)~~ **(22)** “Jurisdiction”, used to refer to a political entity, means the United States, a state, a
11 foreign country, or a political subdivision of a foreign country.

12 ~~(22) “Jurisdiction of formation” means the jurisdiction whose law includes the organic~~
13 ~~law of an entity.~~

14 * * *

15 (32) “Organic law” means the law of an entity’s **governing** jurisdiction ~~of formation~~
16 **governing that governs** the internal affairs of the entity.

17 * * *

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 (A) after the expiration of the term or completion of the undertaking, if the
13 partnership was for a definite term or particular undertaking at the time of the transfer or entry of
14 the charging order that gave rise to the transfer; or

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

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

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

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

1 time the consent is to be effective; and

2 (B) at least two of the persons named in the consent become partners in
3 accordance with the consent.

4 **SECTION 803. RESCINDING DISSOLUTION.**

5 (a) A partnership may rescind its dissolution, unless:

6 (1) a statement of termination applicable to the partnership has become effective
7 or ;

8 (2) [the appropriate court] has entered an order under Section 801(4) or (5)
9 dissolving the partnership; or

10 (3) the dissolution occurred under Section 801(6) or (7) because the
11 conditions for avoiding dissolution in those provisions were not satisfied.

12 (b) Rescinding dissolution under this section requires:

13 (1) if the dissolution occurred under:

14 (A) Section 801(1), the affirmative vote or consent of the person
15 whose express will to withdraw as a partner caused the dissolution;

16 (B) Section 801(2), (3), or (4), the affirmative vote or consent of each
17 partner; or

18 (C) Section 801(5), the affirmative vote or consent of each partner and
19 each applicant transferee; and

20 (2) if the partnership has delivered to the [Secretary of State] for filing a statement
21 of dissolution and:

22 (A) the statement has not become effective, delivery to the [Secretary of
23 State] for filing of a statement of withdrawal under Section 115 applicable to the statement of

dissolution; or

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

(c) If a partnership rescinds its dissolution:

(1) the partnership resumes carrying on its business as if dissolution had ~~never~~ **not** occurred;

(2) subject to paragraph (3), ~~any~~ liability ~~incurred by the partnership of a~~ **person for an act occurring** after the dissolution and before the rescission has become effective is determined as if dissolution had ~~never~~ **not** occurred; and

(3) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely 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 102. DEFINITIONS.** In this [act]:

4 * * *

5 (23) “Transferable interest” means the right, as initially owned by a person in the
6 person’s capacity as a partner, to receive distributions from a **domestic partnership or foreign**
7 partnership, whether or not the person remains a partner or continues to own any part of the
8 right. The term applies to any fraction of the interest, by whomever owned.

9 * * *

10 **SECTION 504. CHARGING ORDER.**

11 (a) On application by a judgment creditor ~~of~~ **to enforce a judgment against** a partner or
12 ~~transferee~~ **other holder of a transferable interest in a domestic partnership or foreign**
13 **partnership**, a court may enter a charging order against the transferable interest of the judgment
14 debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a
15 judgment debtor’s transferable interest and requires the **domestic** partnership **or foreign**
16 **partnership** to pay over to the person to which the charging order was issued any distribution
17 that otherwise would be paid to the judgment debtor.

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

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

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

23 (c) Upon a showing **by a judgment creditor** that distributions under a charging order

1 will not pay the judgment debt within a reasonable time,~~the~~;

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

4 **(2) The court may foreclose the lien and order the sale of the transferable**
5 **interest in a foreign partnership if the law of the governing jurisdiction of the partnership**
6 **allows foreclosure. The foreclosure and sale must be conducted under the law of this state.**

7 **(d)** The purchaser at the foreclosure sale **under subsection (c)** obtains only the
8 transferable interest, does not thereby become a partner, and is subject to Section 503.

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

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

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

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

23 **Comment**

1 The charging order concept dates back to the English Partnership Act of 1890 and in the
2 United States has been a fundamental part of law of unincorporated business organizations since
3 1914. See UPA (1914) § 28. As much a remedy limitation as a remedy, the charging order is the
4 sole method by which a person acting as judgment creditor of a partner or ~~transferee~~ **other**
5 **holder of a transferable interest in a domestic partnership or foreign partnership** can
6 extract value from the partner's or ~~transferee's~~ **other person's** ownership interest in a
7 partnership. See the comment to Subsection (g).

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

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

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

46 * * *

1 Subsection (a)—The phrase “judgment debtor” encompasses both partners and
2 ~~transferees~~ **other holders of a transferable interest. A charging order is available against**
3 **the holder of a transferable interest regardless of whether the holder received the**
4 **transferable interest in a transfer. For example, if a person is dissociated as a partner, the**
5 **person may continue to hold a transferable interest and that interest will be available to**
6 **satisfy the claim of a judgment creditor of the person dissociated as a partner.**
7

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

17 * * *

18
19
20 Subsection (c)—The phrase “that distributions under the charging order will not pay the
21 judgment debt within a reasonable ~~period of~~ time” comes from case law. See, e.g., Nigri v. Lotz,
22 453 S.E.2d 780, 783 (Ga. Ct. App. 1995); Stewart v. Lanier Park Med. Office Bldg., Ltd., 578
23 S.E.2d 572, 574 (Ga. Ct. App. 2003) (“Judicial sale may be appropriate where . . . it is apparent
24 that distributions under the charging order will not pay the judgment debt within a reasonable
25 amount of time.”). A purchaser at a foreclosure sale obtains only the very limited rights of a
26 transferee under Section 503 and is in some ways more vulnerable and less powerful than the
27 holder of a charging order. After foreclosure and sale, Subsection (b) no longer applies. More
28 generally, the court is no longer involved in the matter. For the vulnerability of a transferee, see
29 Sections 503(a)(3) comment; 107(b), comment.
30

31 **Subsection (d) – This provision applies to a foreclosure involving a transferable**
32 **interest in either a domestic or foreign partnership. Even if the law of the governing**
33 **jurisdiction of a foreign partnership permits a purchaser in a foreclosure sale to obtain the**
34 **entire interest of the partner whose interest is being foreclosed, a foreclosure sale under the**
35 **[act] will result in the purchaser only acquiring a transferable interest. For a purchaser to**
36 **obtain the entire partnership interest, the foreclosure sale would need to be conducted**
37 **under the law of the governing jurisdiction.**
38

39 Subsection ~~(d)~~ **(e)**—This provision allows the judgment debtor to end the charging order
40 without need for a hearing **by satisfying the judgment before the sale of the transferable**
41 **interest has been completed. When the transferable interest has transferred to the**
42 **purchaser in the foreclosure sale, the judgment debtor’s right to end the charging order**
43 **terminates.**
44

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

1 Subsection ~~(f)~~ **(g)**—This subsection preserves otherwise applicable exemptions but does
2 not create any. In re Foos, 405 B.R. 604, 609 (Bankr. N. D. Ohio 2009) (interpreting the
3 comparable provision in UPA (1997) and stating that “it is clear that [the provision] does not
4 create an exemption”).

5
6 Subsection ~~(g)~~ **(h)**—This subsection does not override Uniform Commercial Code,
7 Article 9, which may provide different remedies for a secured creditor acting in that capacity.
8 * * *

9 10 **Uniform Limited Liability Company Act**

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

12 * * *

13 (24) “Transferable interest” means the right, as initially owned by a person in the
14 person’s capacity as a member, to receive distributions from a **domestic limited liability**
15 **company or foreign** limited liability company, whether or not the person remains a member or
16 continues to own any part of the right. The term applies to any fraction of the interest, by
17 whomever owned.

18 * * *

19 **SECTION 503. CHARGING ORDER.**

20 (a) On application by a judgment creditor ~~of~~ **to enforce a judgment against** a member or
21 ~~transferee~~ **other holder of a transferable interest in a domestic limited liability company or**
22 **foreign limited liability company**, a court may enter a charging order against the transferable
23 interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise
24 provided in subsection (g), a charging order constitutes a lien on a judgment debtor’s transferable
25 interest and requires the **domestic** limited liability company **or foreign limited liability**
26 **company** to pay over to the person to which the charging order was issued any distribution that
27 otherwise would be paid to the judgment debtor.

28 (b) To the extent necessary to effectuate the collection of distributions pursuant to a

1 charging order in effect under subsection (a), the court may:

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

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

5 (c) Upon a showing by a judgment creditor that distributions under a charging order
6 will not pay the judgment debt within a reasonable time, ~~the~~:

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

9 (2) The court may foreclose the lien and order the sale of the transferable
10 interest in a foreign limited liability company if the law of the governing jurisdiction of the
11 company allows foreclosure. The foreclosure and sale must be conducted under the law of
12 this state.

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

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

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

1 including the charging order.

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

5 (1) the court shall confirm the sale;

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

8 (3) the purchaser thereby becomes a member; and

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

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

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

17 Comment

18 * * *

19
20 By its terms, this section ~~does not apply to~~ **applies to both domestic and** foreign
21 limited liability companies. ~~See Section 102(8) (defining "[l]imited liability company" to~~
22 ~~mean "an entity formed under this [act] or which becomes subject to this [act]" (emphasis~~
23 ~~added); see also "Limited liability company" is defined in Section 102(8) to mean "an entity~~
24 ~~that is formed under this [act] or becomes subject to this [act]"² and, thus, references in~~
25 ~~this section to "a limited liability company" mean a domestic limited liability company. The~~
26 ~~more complete term "domestic limited liability company" is used in several places in this~~
27 ~~section to highlight the scope of this section, and to emphasize in subsection (c) the~~
28 ~~difference between the rule applicable to domestic limited liability companies under~~
29 ~~subsection (c)(1) and the similar, but more limited, rule applicable to foreign limited~~

² This quotation will need to be reviewed because the definition may change.

1 **liability companies under subsection (c)(2). Use of the term “domestic limited liability**
2 **company” in this section is not intended to change the meaning of limited liability company**
3 **as defined in Section 102(8) when it appears elsewhere in the act.**
4

5 **Subsection (c) (2) addresses the availability of foreclosure against a foreign limited**
6 **liability partnership in a different way than the court did in** Fannie Mae v. Heather
7 Apartments Ltd. P’ship, A13-0562, 2013 WL 6223564, at *6 (Minn. Ct. App. Dec. 2, 2013)
8 (considering the remedies available to a judgment creditor with respect to the judgment debtor’s
9 interest in a Cook Islands LLC; rejecting the debtor’s argument that the creditor’s “only remedy
10 is to obtain a charging order under” [the Minnesota LLC statute]; explaining that “this argument
11 fails because that statute only applies to Minnesota limited liability companies” which that
12 statute “defines . . . as ‘a limited liability company, other than a foreign limited liability
13 company, organized or governed by this chapter’”) (emphasis added) (statutory citations
14 omitted). **Foreclosure will be available against a transferable interest in a foreign limited**
15 **liability company if the law of the governing jurisdiction of the limited liability company**
16 **allows foreclosure. If the foreign jurisdiction allows foreclosure, the rules and procedures**
17 **for the conduct of the foreclosure by the court that entered the charging order will be**
18 **governed by the law of the state in which the court sits.**
19

20 * * *

21
22 Subsection (c)—The phrase “that distributions under the charging order will not pay the
23 judgment debt within a reasonable ~~period of~~ time” comes from case law. See, e.g., Stewart v.
24 Lanier Park Med. Office Bldg., Ltd., 578 S.E.2d 572, 574 (Ga. Ct. App. 2003) (“Judicial sale
25 may be appropriate where . . . it is apparent that distributions under the charging order will not
26 pay the judgment debt within a reasonable amount of time.”); Nigri v. Lotz, 453 S.E.2d 780, 783
27 (Ga. Ct. App. 1995).). A purchaser at a foreclosure sale obtains only the very limited rights of a
28 transferee under Section 502 and is in some ways more vulnerable and less powerful than the
29 holder of a charging order. After foreclosure and sale, Subsection (b) no longer applies. More
30 generally, the court is no longer involved in the matter. For the vulnerability of a transferee, see
31 Section 107(b), comment.
32

33 **Subsection (d) – This provision applies to a foreclosure involving a transferable**
34 **interest in either a domestic or foreign limited liability company. Even if the law of the**
35 **governing jurisdiction of a foreign limited liability company permits a purchaser in a**
36 **foreclosure sale to obtain the entire interest of the partner whose interest is being**
37 **foreclosed, a foreclosure sale under the [act] will result in the purchaser only acquiring a**
38 **transferable interest, except as provided in subsection (g) with respect to single member**
39 **limited liability companies. For a purchaser to obtain the entire interest of a member in a**
40 **multi-member limited liability company, the foreclosure sale would need to be conducted**
41 **under the law of the jurisdiction of formation.**
42

43 Subsection ~~(d)~~ **(e)**— This provision allows the judgment debtor to end the charging order
44 without need for a hearing **by satisfying the judgment before the sale of the transferable**
45 **interest has been completed. When the transferable interest has transferred to the**
46 **purchaser in the foreclosure sale, the judgment debtor’s right to end the charging order**

1 terminates.

2
3 Subsection ~~(e)~~ **(f)**—Traditionally, charging order provisions referred to the possibility of
4 “redeeming” an interest subject to a charging order. * * *

5
6 Subsection ~~(f)~~ **(g)**—The charging order remedy—and, more particularly, the
7 exclusiveness of the remedy—protect the “pick your partner” principle. That principle is
8 inapposite when a limited liability company has only one member. The exclusivity of the
9 charging order remedy was never intended to protect a judgment debtor, but rather only to
10 protect the interests of the judgment debtor’s co-owners.

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

22
23 **If the law of the governing jurisdiction of a foreign limited liability company**
24 **permits foreclosure, a foreclosure proceeding may be brought under the [act] as provided**
25 **in subsection (c)(2). The rule in subsection (d) that a purchaser acquires only a transferable**
26 **interest in a foreclosure sale does not apply in the case of a single member foreign limited**
27 **liability company because subsection (d) defers to the rule in subsection (f) in that case.**

28
29 ~~This subsection was added during the Harmonization Project but not for the~~
30 ~~purposes of harmonization. The subsection~~ **Subsection (g)** addresses an issue that does not
31 exist with partnerships; neither a general nor a limited partnership can continue perpetually in
32 existence with only one partner. See ULP (2001) (Last Amended 2013) § 801(a)(5) (stating
33 that dissolution is caused upon “the passage of 90 consecutive days during which the partnership
34 has only one partner”); UPA (1997) (Last Amended 2013) § 801(6) (stating that dissolution is
35 caused upon “the passage of 90 consecutive days during which the partnership does not have at
36 least two partners”).

37
38 Subsection ~~(g)~~ **(h)**—This subsection preserves otherwise applicable exemptions but does
39 not create any. In *re Foos*, 405 B.R. 604, 609 (Bankr. N.D. Ohio 2009) (interpreting the
40 comparable provision in UPA (1997) and stating, “it is clear that [the provision] does not create
41 an exemption”).

42
43 Subsection ~~(h)~~ **(i)**—This subsection does not override Uniform Commercial Code,
44 Article 9, which may provide different remedies for a secured creditor acting in that capacity.

45 * * *

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** 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, if:**

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

12 **(ii) the entity becomes a different type of entity when records**
13 **delivered to both the [Secretary of State] and a similar office in the other jurisdiction**
14 **become effective.**

15 * * *

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

17 **(A) [Part] 5; or**

18 **(B) a similar law of another jurisdiction, however the transaction is**
19 **denominated, if:**

20 **(i) the transaction involves a single entity;**

21 **(ii) the transaction does not change the entity’s type; and**

22 **(iii) the internal affairs of the entity become governed by the**
23 **law of the other jurisdiction when records delivered to both the [Secretary of State] and a**

1 similar office in the other jurisdiction become effective.

2 * * *

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

4 (A) [Part] 3; or

5 (B) a similar law of another jurisdiction, however the transaction is
6 denominated, one effect of which is that all of one or more classes or series of interests of an
7 entity are acquired by another entity when a record delivered to the [Secretary of State] or
8 similar office in the other jurisdiction becomes effective.

9 * * *

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

11 (A) [Part] 2; or

12 (B) similar laws of one or more other jurisdictions, however the
13 transaction is denominated, under which two or more entities are combined into one of the
14 entities or a newly created entity when records delivered to the [Secretary of State] a
15 similar offices in the other jurisdictions becomes effective.

16 * * *

17 (b) A reference in this [article] to an entity or type of entity includes a domestic
18 entity and foreign entity, unless the reference is expressly only to a domestic entity or
19 foreign entity.

20 (c) A term used in the law of a foreign jurisdiction applicable to a transaction that
21 has a meaning comparable to the meaning of a different term used in this [article] to refer
22 to a party to, documentation for, or other matter relating to a conversion, domestication,
23 interest exchange, or merger must be treated as referring to the term used in this [article].

Comment

* * *

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

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

When the definitions in subsection (a) of conversion, domestication, interest exchange and merger refer to a transaction under the law of a foreign jurisdiction “however the transaction is denominated,” those provisions should be applied broadly. The law of the foreign jurisdiction may authorize a transaction that includes two or more transactions that this article treats separately, or the law of the foreign jurisdiction may authorize two or more transactions that this article encompasses within one transaction. In both cases, the transactions under the foreign law are intended to be included in the 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 before the dissolution of the company of a
13 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”). This duty ~~continues through~~
4 ~~winding up, although in that context the scope of company opportunities inevitably~~
5 ~~narrows.~~ ends when the company is dissolved.
6

7 In most, if not all, situations, usurping a company opportunity also breaches the duty not
8 to compete, Paragraph (b)(3), but not *vice versa*.
9

10 The duties not to appropriate a company opportunity and not to compete with the
11 company may be violated by wrongfully causing dissolution with the intention of
12 appropriating a company opportunity or competing with the company following
13 dissolution because in those cases the conduct of the member will have begun before
14 dissolution.
15

16 * * *

1 Issues 6 and 7

2 Uniform Partnership Act

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

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

7 * * *

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

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

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

15 (1) to each person owning a transferable interest that reflects contributions made
16 with respect to that transferable interest and not previously returned, an amount equal to the
17 value at the time of contribution of the unreturned contributions; and

18 (2) among persons owning transferable interests, in proportion to their respective
19 rights to share in distributions immediately before the dissolution of the partnership.

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

23 (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.

(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. 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 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

1 * * *

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

8
9 **Subsection (b)(1) – Distributions made prior to dissolution of a partnership**
10 **normally are not considered a return of contributions for purposes of this subsection.**
11 **Instead, subject to agreements among the partners, course of conduct and other evidence of**
12 **intent, only those distributions made prior to dissolution that have been made in**
13 **proportion to how contributions were made to the partnership would be treated as returns**
14 **of contributions.**

15
16 Subsection (c)—This section applies obligation by obligation, because a person—qua
17 partner or person dissociated as a partner—is required to contribute to the partnership to satisfy a
18 partnership obligation only if, when the obligation was incurred: (i) the person was a partner; and
19 (ii) the partnership was not an LLP. See Section 306(b), (c). As for when a partnership obligation
20 is incurred, see Section 306(b) and (c), comments. **Section 703(c) and (d) provide independent**
21 **ways in which a person dissociated as a partner may be released from liability for a debt,**
22 **obligation, or other liability of the partnership.**

23
24 ~~The allocation of contribution obligations parallels the default rule stated in Section~~
25 ~~401(a) (providing that, “except in the case of a limited liability partnership, [each partner]~~
26 ~~is chargeable with a share of the partnership losses in proportion to the partner’s share of~~
27 ~~the profits”).~~ The partnership agreement can change the allocation **rules in this section** inter se
28 partners and persons dissociated as partners but cannot prejudice the rights of non-partner
29 creditors.

30
31 * * *

32 SECTION 901. STATEMENT OF QUALIFICATION.

33 * * *

34 **(g) A partnership becomes a limited liability partnership at the time of its formation**
35 **if:**
36 **(1) all persons that agreed to become initial partners in the partnership agree**
37 **that the partnership will become a limited liability partnership at the time of its formation;**
38 **and**

1 **(2) on the date of formation of the partnership under Section 202(a):**

2 **(A) the partnership delivers to the [Secretary of State] for filing a**
3 **statement of qualification under subsection (c); and**

4 **(B) the statement of qualification includes a statement that the**
5 **partnership has become a limited liability partnership at the time of its formation.**

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 dissolution;

12 (2) identify the date the dissolved partnership became a limited liability
13 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 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 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; and

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

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 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 **governing** jurisdiction ~~of formation~~ of a foreign limited partnership
6 governs:

7 (1) the internal affairs of the **foreign** partnership³; **and**

8 (2) the liability of a partner as partner for a debt, obligation, or other liability of
9 the **foreign** partnership **and**

10 ~~**(3) the liability of a series of the partnership.**~~

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

14 (c) Registration of a foreign limited partnership to do business in this state does not
15 authorize the foreign partnership to engage in any business or exercise any power **in this state**
16 that a limited partnership may not engage in or exercise in this state.

17 **Alternative B**

18 **SECTION 1001. GOVERNING LAW.**

19 (a) The law of the **governing** jurisdiction ~~of formation~~ of a foreign limited partnership
20 governs:

21 (1) the internal affairs of the **foreign** partnership;

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

³ Note: “Foreign partnership” rather than “partnership” will be used throughout Article 10.

1 the foreign 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, of the foreign partnership; and

6 (4) if the foreign partnership establishes and uses a structure described in
7 paragraph (3), the liability of:

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

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

12 (C) a partner as partner for a debt, obligation, or other liability of any
13 part of the structure.

14 * * *

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

19 Alternative C

20 **SECTION 1001. GOVERNING LAW.**

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

23 (1) the internal affairs of the foreign partnership;

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

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

(A) a protected series of the foreign partnership;

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

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

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

* * *

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

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

(1) “Enforcement date” means⁴ the date on which a claimant first serves process on a foreign series limited partnership, or a protected series of a foreign series limited partnership, in an action seeking to enforce a claim against an asset of the foreign partnership or a protected series by attachment, levy, or the like.

⁴ David and Lisa: The existing UPSA adds here “12:01 a.m. on.” John marked this as a delta after the Style Committee meeting. Upon reflection, I think Style was correct to question the need for the extra specificity. So I have deleted the phrase. That change is consistent with the definition of “incurrence date.”

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 a record that states the name of the**
8 **protected series and describes 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 foreign partnership, and any asset of another protected series of the**
12 **foreign 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 foreign partnership or**
16 **another protected series of the foreign partnership, determine any consideration paid, the**
17 **payer, 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 series 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 a 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 provided in paragraph (2), the claim is governed by the principles of
5 law and equity, including a principle providing a right to a creditor or holding a person
6 liable for a debt, obligation, or other liability of another person, that would apply if each
7 protected series of the foreign limited partnership were a domestic limited partnership
8 formed separately from the foreign limited partnership that created the protected series
9 and distinct from another protected series of the foreign limited partnership; and

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

15 SECTION 1001C. ENFORCEMENT AGAINST NON-ASSOCIATED ASSET.

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

20 (1) A judgment against a foreign partnership may be enforced against an
21 asset of a protected series of the foreign partnership if the asset was a non-associated asset
22 of the protected series at any time on the incurrence date or the enforcement date.

23 (2) A judgment against a protected series may be enforced against an asset of

1 the foreign partnership if the asset was a non-associated asset of the foreign partnership at
2 any time on the incurrence date or the enforcement date.

3 (3) A judgment against a protected series may be enforced against an asset of
4 another protected series of the foreign partnership if the asset was a non-associated asset of
5 the other protected series at any time on the incurrence date or the enforcement date.

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

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

13 (d) This section applies to a non-associated asset of a foreign series limited
14 partnership or protected series if:

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

16 (2) either:

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

19 (B) the claim is to enforce a judgment or seek a pre-judgment remedy,
20 pertaining to:

21 (i) a liability arising from law of this state other than this [act];

22 or

23 (ii) an act or omission in this state.

1 End of Alternatives

2 Legislative Note:

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

11
12 Alternative A does not recognize series liability shields authorized by the law of the
13 governing jurisdiction of a foreign limited partnership that has created a series structure. That
14 rule is consistent with the Uniform Protected Series Act, which made the policy choice to
15 authorize the use of series only by limited liability companies.

16
17 If a state wishes to defer to the law of the governing jurisdiction of a foreign limited
18 partnership that uses a series structure, without permitting the use of series by domestic
19 partnerships, it can do so using either Alternative B or C. Alternative B validates the use of
20 series by a foreign limited partnership and defers to the law of the foreign jurisdiction for the
21 application of series liability shields. Alternative C defers to the law of the foreign jurisdiction,
22 but imposes the restrictions found in Sections 402 and 404 of the Uniform Protected Series Act
23 that protect creditors in the domestic state.

24
25 Comment

26 A number of states permit use of a structure called “series” in which parts of the
27 assets, liabilities, and interest holders of an entity are associated together and kept separate
28 from similar associations of other assets, liabilities, and interest holders of the entity. A
29 state that authorizes a series structure provides separate liability shields that protect one
30 series and the interest holders that own an interest in that series from the liabilities of other
31 series and the parent entity.

32
33 This act does not provide for the law that will govern the creation and use by a
34 foreign limited partnership of a series structure of the asset-partitioning type (as
35 contemplated by Del. Code. Ann. Tit. 6, § 17-218 (West 2014)). For an explanation of how
36 the asset-partitioning concept of series differs from the rules applicable to a non-series
37 limited partnership, see Section 1131, comment.

38
39 Subsection (a)—This subsection provides that the laws of the **governing** jurisdiction **of**
40 **formation** of a foreign limited partnership, rather than the laws of this state, govern both the
41 internal affairs of the limited partnership and the liability of its partners for the obligations of the
42 limited partnership. A partnership agreement cannot change this provision. Section 105(c)(18).

43
44 This subdivision parallels Section 104 (pertaining to the governing law for domestic

1 limited partnerships). *See* Section 104, cmt.

2
3 ~~Subsection (a)(3)—This act does not provide for series of the asset partitioning type~~
4 ~~(as contemplated by Del. Code Ann. Tit. 6, § 17-218 (West 2014)). However, under this~~
5 ~~provision, the law of this state will respect the “internal shields” created under the series~~
6 ~~provisions of another jurisdiction’s limited partnership statute. This provision does not~~
7 ~~address the myriad of other unsettled issues pertaining to series.~~

8
9 ~~For an explanation of how the asset partitioning concept of series differs from the~~
10 ~~traditional concept, see Section 1131, comment.~~

11
12 Subsections (b) and (c)—These sections together make clear that, although a foreign
13 entity may not be denied registration simply because of a difference between the laws of its
14 jurisdiction of formation and the laws of this state, the foreign limited partnership “may not
15 engage in any activity or exercise any power a limited partnership may not engage in or exercise
16 in this state.” Subsection (c).

17
18 **SECTION 1131. INTEREST EXCHANGE AUTHORIZED.**

19 * * *

20 **Comment**

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

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

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

42
43 * * *

1 **Uniform Limited Liability Company Act**

2 **Alternative A**

3 **SECTION 901. GOVERNING LAW.**

4 (a) The law of the **governing** jurisdiction ~~of formation~~ of a foreign limited liability
5 company governs:

6 (1) the internal affairs of the **foreign** company⁵;

7 (2) the liability of a member as member and a manager as manager for a debt,
8 obligation, or other liability of the **foreign** company; and

9 (3) **if the foreign company is a foreign series limited liability company,** the
10 liability of ~~a series of the company~~ **the foreign company or a protected series of the foreign**
11 **company.**

12 * * *

13 (c) Registration of a foreign limited liability company to do business in this state does not
14 authorize the foreign company to engage in any activities and affairs or exercise any power that a
15 limited liability company may not engage in or exercise in this state.

16 **Alternative B**

17 **SECTION 901. GOVERNING LAW.**

18 (a) The law of the **governing** jurisdiction ~~of formation~~ of a foreign limited liability
19 company governs:

20 (1) the internal affairs of the **foreign** company;

⁵ Note: "Foreign company" rather than "company" will be used throughout Article 9.

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

(3) ~~the liability of a series of the company~~ **except as provided in Sections 901B and 901C, the liability of:**

(A) a protected series of the foreign company;

(B) the foreign company for a debt, obligation, or other liability of a protected series of the foreign company;

(C) one protected series of the foreign company for a debt, obligation, or other liability of another protected series of the foreign company; and

(D) a member as member for a debt, obligation, or other liability of a protected series of the foreign company. the liability of a protected series of the foreign company.

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

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

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

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

1 **(4) “Non-associated asset” means an asset of a protected series as to which the**
2 **protected series has not created and does not maintain a record that states the name of the**
3 **protected series and describes the asset with sufficient specificity to permit a disinterested,**
4 **reasonable individual to:**

5 **(A) identify the asset and distinguish it from any other asset of the protected**
6 **series, any asset of the foreign company, and any asset of another protected series of the**
7 **foreign company;**

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

10 **(C) if the protected series acquired the asset from the foreign company or**
11 **another protected series of the foreign company, determine any consideration paid, the**
12 **payer, and the payee.**

13 **(5) “Protected series” means a series, protected series, protected cell, segregated**
14 **account, or similar part of a structure that associates or otherwise segregates assets,**
15 **liabilities, and members among various parts of the structure, however the part is**
16 **denominated, of a foreign series limited liability company.**

17 **SECTION 901B. CLAIM SEEKING TO DISREGARD LIMITATION OF**
18 **LIABILITY. If a claim seeks to disregard a limitation of liability applicable to a foreign**
19 **series limited liability company or a protected series of a foreign series limited liability**
20 **company and the claimant is a resident of this state or doing business or registered to do**
21 **business in this state, or the{Δ What is the claim?} claim is to establish or enforce a liability**
22 **arising under the law of this state or from an act or omission in this state:**

23 **(1) except as provided in paragraph (2), the claim is governed by the principles of**

1 law and equity, including a principle providing a right to a creditor or holding a person
2 liable for a debt, obligation, or other liability of another person, that would apply if each
3 protected series of the foreign series limited liability company were a domestic company
4 formed separately from the foreign company that created the protected series and distinct
5 from another protected series of the foreign company; and

6 (2) the failure of the foreign series limited liability company or protected series to
7 observe formalities relating to the exercise of its powers or management of its activities and
8 affairs is not a ground to disregard a limitation of liability under Section 901(a)(2) or
9 (3)(D), but may be a ground to disregard a limitation of liability under Section
10 901(a)(3)(A), (B), or (C).

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

12 (a) If a claim against a foreign series limited liability company or a protected series
13 of a foreign series limited liability company has been reduced to judgment, in addition to
14 any other remedy provided by law or equity, the judgment may be enforced in accordance
15 with the following rules:

16 (1) A judgment against the foreign company may be enforced against an
17 asset of a protected series of the foreign company if the asset was a non-associated asset of
18 the protected series at any time on the incurrence date or the enforcement date.

19 (2) A judgment against a protected series may be enforced against an asset of
20 the foreign company if the asset was a non-associated asset of the foreign company at any
21 time on the incurrence date or the enforcement date.

22 (3) A judgment against a protected series may be enforced against an asset of
23 another protected series of the foreign company if the asset was a non-associated asset of

1 the other protected series at any time on the incurrence date or the enforcement date.

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

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

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

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

12 (2) either:

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

15 (B) the claim is to enforce a judgment or seek a pre-judgment remedy,
16 pertaining to:

17 (i) a liability arising from law of this state other than this [act];

18 or

19 (ii) an act or omission in this state.

20 End of Alternatives

21 *Legislative Note: Alternative A should be used by a state that has adopted the Uniform*
22 *Protected Series Act. Alternative B should be used by a state that has not adopted that act.*

23 Comment

24 Subsection (a)—This subsection provides that the laws of the governing jurisdiction of
25

1 **formation** of a foreign limited liability company, rather than the laws of this state, govern both
2 the internal affairs of the foreign LLC and the liability of its members and managers for the
3 obligations of the LLC. An operating agreement cannot change this provision. Section
4 105(c)(15).

5
6 This subdivision parallels Section 104 (pertaining to the governing law for domestic
7 LLCs). See the comment to Section 104.
8

9 Subsection (a)(3)—The LLC statutes of several states authorize limited liability
10 companies to have asset-partitioning series. According to those statutes, if series are properly
11 created, a debt, obligation, or liability associated with the property of a particular series is
12 enforceable only against property of that series, and not against the property of the LLC
13 generally or any other series thereof.
14

15 This act does not provide for asset-partitioning series. However, under this provision, the
16 law of this state will respect the “internal shields” created under the series provisions of another
17 jurisdiction’s limited liability company statute, **subject to certain restrictions taken from the**
18 **Uniform Protected Series Act (last amended 2023) which protect certain in-state creditors.**
19 This provision does not address the myriad of other unsettled issues pertaining to series **which**
20 **are addressed comprehensively in the Uniform Protected Series Act.**
21

22 For an explanation of how the asset-partitioning concept of series differs from the
23 traditional concept, see Section 1031, comment.
24

25 Subsections (b) and (c)—These sections together make clear that, although a foreign
26 limited liability company may not be denied registration simply because of a difference between
27 the laws of its **governing** jurisdiction **of formation** and the laws of this state, the foreign limited
28 liability company “may not engage in any activity or exercise any power that a limited liability
29 company 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 to

4 § 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];

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

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

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 *transactions were not all effective on the same date, the state should decide whether to use (1)*
19 *different dates based on when each type of transaction was first authorized, (2) a single date,*
20 *which could be the first date on which any of the three transactions was first authorized, or (3)*
21 *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

1 protected agreement even if advances were not made until after the ~~effective date of the act~~
2 stated. Likewise, a partnership agreement in effect under this act or a predecessor to this act is a
3 “protected agreement.”
4

5 The purpose of the protected agreement concept is to protect persons that agreed to
6 contracts or organic rules before conversions, domestications, and interest exchanges are
7 authorized by the state and thus did not think to consider the consequences of the limited
8 partnership engaging in one of those transactions. If To protect those persons, the concept
9 of a protected agreement looks at whether the agreement has provisions that apply if ~~an entity~~
10 merges the limited partnership is a party to a merger. If that is the case, those the
11 provisions regarding mergers will also apply if the ~~entity~~ limited partnership enters into an
12 interest exchange, conversion, or domestication even though the agreement does not mention
13 those other types of transactions. See Sections 1131(c) (interest exchange), 1141(c) (conversion),
14 1151(c) (domestication).
15

16 The underlying theory, although something of a blunt instrument, assumes that
17 because conversions, domestications, and interest exchanges are similar to mergers, and
18 their result can be accomplished through the use of a merger, it is appropriate to assume
19 that the parties would want the same rules to apply to all of the transactions. Because
20 protected agreements are only intended to operate in the context of contracts and organic
21 rules adopted when conversions, domestications, and interest exchanges are not authorized
22 under state law, once the state permits those transactions, the protected agreement concept
23 is no longer needed with respect to contracts and organic rules first adopted after the
24 transactions are available.
25

26 A contract or organic rule that includes a provision applying to a merger of the
27 entity that makes the contract or organic rule a protected agreement will lose the status of
28 a protected agreement after the provision applying to a merger is amended after the date
29 stated in this section. See Sections 1131(c) (interest exchange), 1141(c) (conversion), and
30 1151(c) (domestication).
31

32 * * *

33 SECTION 1131. INTEREST EXCHANGE AUTHORIZED.

34 * * *

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

39 Legislative Note: See the Legislative Note to Section 1101.

1 **SECTION 1141. CONVERSION AUTHORIZED.**

2 * * *

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

7 *Legislative Note: See the Legislative Note to Section 1101.*

8 **SECTION 1151. DOMESTICATION AUTHORIZED.**

9 * * *

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

14 *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 foreign company is denominated under the organic law of the foreign company and whether or
11 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 by:

21 (1) a conversion, domestication, interest exchange, or merger under:
22 (A) this [act]; or
23 (B) the law of a foreign jurisdiction, however the transaction is denominated
24 under that law; or

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

3 **Comment**

4
5 The protected series is still novel, and this act is the first to comprehensively address the
6 multitude of issues raised by the construct. Juxtaposing protected series with entity transactions
7 raises a plethora of additional issues. ~~For example, during the Drafting Committee's~~
8 ~~discussions of this subject, a commissioner created a set of Power Point slides diagramming~~
9 ~~11 possible merger transactions involving protected series. Adding conversions,~~
10 ~~domestications, and interest exchanges would have added countless more permutations.~~

11
12 The Drafting Committee decided to move slowly in this area and to provide a very narrow
13 channel for entity transactions involving protected series. As its first step in creating the narrow
14 channel, the Committee rejected allowing a protected series itself to be a party to any entity
15 transaction.

16
17 Paragraphs (1) and (2)— Paragraph (1) prohibits a protected series from being a
18 party to or being formed, organized, established, or created in, or resulting from a
19 transaction under Article 10 of the Uniform Limited Liability Company Act (2006) (Last
20 Amended 2013) or similar laws of other jurisdictions. Jurisdiction is defined in Section 102
21 of the Uniform Limited Liability Company Act and “means the United States, a state, a
22 foreign county, or a political subdivision of a foreign country.” Thus, a protected series is
23 prohibited from participating in transactions under the law of a foreign country or political
24 subdivision thereof such as a state or province.

25
26 Paragraph (2) prohibits a protected series from participating in transactions with
27 the substantive effect of a transaction referred to in paragraph (1). For example, the
28 assignment of all the assets of a protected series to another entity and the assumption by
29 that entity of all the liabilities of a protected series has the substantive effect of a merger of
30 the protected series into the other entity, and thus is prohibited by paragraph (2). ,Section
31 1001 defines the terms listed in Paragraph (1) but with regard to domestications refers to a
32 ~~domesticating or domesticated limited liability company. Hence the need for Paragraph (2).~~

33
34 **SECTION 603. RESTRICTION ON ENTITY TRANSACTION INVOLVING**
35 **PROTECTED SERIES LIMITED LIABILITY COMPANY.** A series limited liability

36 company may not be:

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

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

1 ~~of a merger.~~

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

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

4 (i) this [act]; or

5 (ii) the law of a foreign jurisdiction, however the transaction is

6 denominated under that law; or

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

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

10 (A) a merger under:

11 (i) this [act]; or

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

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

16 **Comment**

17
18 In service of the “narrow channel” discussed in the comment to Section 602, this section
19 precludes a participation of a series limited liability company in an entity transaction except as is
20 strictly delineated in Section 604 with respect to a merger. However, this ~~provision~~ section
21 does not preclude a series limited liability company: (i) being involved in a triangular merger as
22 the non-party; or (ii) as the non-party to such a merger, providing consideration in the form of
23 interests in one of the protected series of the company. (If the consideration involves making a
24 person an associated member of the protected series, the person must be a member of the series
25 limited liability company or become one as a result of the merger. Section 302(a).)

26
27 The manner in which a protected series may be affected by a merger of the series
28 limited liability company of which it is a part is specified in Sections 605(2), 606(2), and
29 607(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 1-210,⁶ 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 * * *

⁶ 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 information in a record delivered to the [Secretary of State] for**
9 **filing under this [act] may not be made dependent on facts outside the record:**

10 **(1) the name and address of a person;**

11 **(2) the registered office of an entity;**

12 **(3) the registered agent of an entity;**

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

15 **(5) the effective date of the record; and**

16 **(6) a required statement of the date on which the underlying transaction was**
17 **approved or the manner in which the approval was given.**

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

19 * * *

20 ~~(e) A plan of merger that is signed by all the merging entities and meets all the~~
21 ~~requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead~~
22 ~~of a statement of merger and on filing has the same effect. If a plan of merger is filed as~~
23 ~~provided in this subsection, references in this [act] to a statement of merger refer to the~~

1 ~~plan of merger filed under this subsection.~~(Reserved).⁷

2 * * *

3 **Uniform Limited Partnership Act**

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

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

9 **(b) The following information in a record delivered to the [Secretary of State] for**
10 **filing under this [article] may not be made dependent on facts outside the record:**

11 **(1) the name and address of a person;**

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

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

14 **(4) a 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 the record; and**

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

19 **Comment**

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

⁷ Note: This same change will be made to META Sections 305, 405, and 505 and also to each of the individual UUOA fundamental transaction provisions.]

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 **and may:**

13 **(1) order the [Secretary of State] to file the entity filing or a revision of the**
14 **filing; and**

15 **(2) take other appropriate action with respect to the filing.**

16 * * *

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

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

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

21 **Comment**

22 1. Filing duty in general.

23
24 Under this section the filing office is required to file an entity filing if it “satisfies this
25 [Code]” (*i.e.*, both this article and the article that constitutes the organic law of the entity, as well

as Article 2 if the entity filing relates to a transaction under that article). The purpose of this language is to limit the discretion of the filing office to a ministerial role in reviewing the contents of entity filings. **The one exception is an entity filing that is described in subsection (f) where the Secretary of State is authorized to refuse to file an entity filing if there is a reasonable belief that the entity filing is being filed fraudulently or for a fraudulent, criminal, or unlawful purpose.** If the entity filing submitted is in the form prescribed and contains the information required by Section 1-201 and the other applicable provision of the Code, the filing office must file it. Consistently with this approach, subsection (a) states explicitly that the filing duty of the filing office is ministerial and subsection (e) provides that the filing of an entity filing by the filing office does not affect the validity or invalidity of any provision contained in the filing and does not create any presumption with respect to any provision. Persons adversely affected by provisions in an entity filing may test their validity in a proceeding appropriate for that purpose. A presumption should not be drawn about the validity of the provision from the fact that the filing office accepted the entity filing for filing.

* * *

6. Power of the court to review a refusal to file.

The relief that may be ordered by a court when the Secretary of State has refused to file an entity filing will usually include ordering the Secretary of State to complete the filing, although it may be necessary for the court to require that the entity filing be revised to address the objection of the Secretary of State.

Subsection (d) confirms that the power of the court to decide whether an entity filing should be accepted by the Secretary of State for filing includes the inherent power to take other action or award other relief with respect to the filing that the court considers appropriate. An example of other relief a court might order is preserving as the filing date the date on which the entity filing was first delivered to the Secretary of State, even though that date is outside the normal time in which the Secretary of State would ordinarily treat the date of delivery as the filing date. Preserving the original filing date may be important, for example, to demonstrate compliance with a contractual condition (such as that a transaction be completed by a certain date), or to permit filing a lawsuit by a nonregistered foreign entity close to the end of the running of the applicable statute of limitations (which lawsuit would be barred if the foreign entity's registration is not processed until after the statute of limitations has run).

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

Uniform Partnership Act

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

1 (a) ~~The~~ Except as provided in subsection (g), the [Secretary of State] shall file a record
2 delivered to the [Secretary of State] for filing which satisfies this [act]. The duty of the
3 [Secretary of State] under this section is ministerial.

4 * * *

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

9 (1) order the [Secretary of State] to file the record or a revision of the record;

10 and

11 (2) take other appropriate action with respect to the filing.

12 * * *

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

15 (1) is being filed fraudulently; or

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

17 **Comment**

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

29 * * *

1 Subsection (d) – The relief that may be ordered by a court when the Secretary of
2 State has refused to file an entity filing will usually include ordering the Secretary of State
3 to complete the filing, although it may be necessary for the court to require that the entity
4 filing be revised to address the objection of the Secretary of State.

5
6 Subsection (d) confirms that the power of the court to decide whether a record
7 should be accepted by the Secretary of State for filing includes the inherent power to take
8 other action or award other relief with respect to the filing that the court considers
9 appropriate. An example of other relief a court might order is preserving as the filing date
10 the date on which the record was first delivered to the Secretary of State, even though that
11 date is outside the normal time in which the Secretary of State would ordinarily treat the
12 date of delivery as the filing date.

13
14 If the Secretary of State refuses to file a record under subsection (g), the refusal may
15 be challenged under subsection (d).

16 * * *

1 Issue 18

2 Uniform Business Organizations Code

3 SECTION 1-102. DEFINITIONS.

4 (a) In this [act], unless the same term is defined differently in another [article] for the
5 purpose of that [article]:

6 * * *

7 (10) “Entity”:

8 (A) means:

9 (i) a business corporation;

10 (ii) a nonprofit corporation;

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

12 (iv) a limited partnership, including a limited liability limited
13 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, or business trust, including a series trust, or
20 common-law business trust; ~~for~~ or

21 (x) any other person that has:

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

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

**[(xi) 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,
unless the organic law provides that a part of the structure is not an entity; 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,
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.**

* * *

1 **(18) “Governing jurisdiction” means the jurisdiction whose law includes the**
2 **organic law of an entity.**⁸

3 ~~(18)~~ **(19)** “Governor” means: * * *

4 ~~(19)~~ **(20)** “Interest” means: * * *

5 ~~(20)~~ **(21)** “Interest holder” means: * * *

6 ~~(21)~~ **(22)** “Jurisdiction”, used to refer to a political entity, means the United
7 States, a state, a foreign country, or a political subdivision of a foreign country.

8 ~~(22) “Jurisdiction of formation” means the jurisdiction whose law includes~~
9 ~~the organic law of an entity.~~

10 * * *

11 (32) “Organic law” means the law of an entity’s **governing** jurisdiction ~~of~~
12 ~~formation governing~~ **that governs** the internal affairs of the entity.

13 * * *

14 (34) “Person” means an individual, **estate**, business ~~corporation, or~~ nonprofit
15 ~~corporation, partnership, limited partnership, limited liability company, [general~~
16 ~~cooperative association,] limited cooperative association, unincorporated nonprofit~~
17 ~~association, statutory trust, business trust, common-law business trust, estate, trust,~~
18 ~~association, joint venture, public corporation, government or governmental subdivision,~~
19 ~~agency, or instrumentality, or any other legal or commercial entity.~~ **entity, government or**
20 **governmental subdivision, agency, or instrumentality, or other legal entity. The term**
21 **includes a protected series, however denominated, of an entity if the protected series is**
22 **established under law that limits, or limits if conditions specified under law are satisfied,**

⁸ See Note to Style Committee in Issue 1.

1 the ability of a creditor of the entity or of another protected series of the entity to satisfy a
2 claim from assets of the protected series.

3 * * *

4 (b) A reference in this [article] or [Article] 2 to an entity or type of entity includes a
5 domestic entity and foreign entity, unless the reference is expressly only to a domestic entity
6 or foreign entity.

7 *Legislative Note: If the state uses a term other than one of the terms in subsection*
8 *(a)(10)(B)(v) to refer to the series concept, that term should be added.*

9
10 *Subsection (a)(10)(B)(v) treats a series as not being a separate entity unless the*
11 *relevant organic law provides that a series is an entity. If the law of the state treats a series as*
12 *an entity, a domestic series should be added to the list of entities in subsection (a)(10)(A).*

13
14 **Comment**

15 * * *

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

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

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

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

35
36 The laws of a number of United States jurisdictions permit the use of a structure
37 called “series” in which a part of the assets, liabilities, and interest holders of an entity are
38 associated together and kept separate from similar associations of other assets, liabilities,

1 **and interest holders of the entity. A defining characteristic of such a structure is that it**
2 **provides internal or horizontal shields that protect the assets of one series from the**
3 **creditors of the entity and the creditors of any other series. Paragraphs (A)(v) and (ix)**
4 **confirm that a limited liability company or statutory trust that is authorized to create series**
5 **is included in the broader category of those types of entities.**
6

7 Section 6 of the Uniform Unincorporated Nonprofit Association Act (2008) (Last
8 Amended 2013) (UUNAA) (§ 7-106 of the Code) gives an unincorporated nonprofit association
9 the power to acquire an estate in real property and thus an unincorporated nonprofit association
10 organized in a state that has adopted that act will be an “entity.” At common law, an
11 unincorporated nonprofit association was not a legal entity and did not have the power to acquire
12 real property. Most states that have not adopted the UUNAA have nonetheless modified the
13 common law rule, but states that have not adopted the UUNAA should analyze whether they
14 should modify the definition of “entity” to add an express reference to unincorporated nonprofit
15 associations.
16

17 There is some question as to whether a partnership subject to the Uniform Partnership Act
18 (1914) (1914 UPA) is an entity or merely an aggregation of its partners. That question has been
19 resolved by Section 3-201, which makes clear that a general partnership is an entity with its own
20 separate legal existence. Section 8 of the 1914 UPA gives partnerships subject to it the power to
21 acquire estates in real property and thus such a partnership will be an “entity.” As a result, all
22 general partnerships will be “entities” regardless of whether the state in which they are organized
23 has adopted the 1997 UPA.
24

25 Paragraph (B) (i) of this definition excludes a sole proprietorship from the concept of
26 “entity.”
27

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

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

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

35 (2) The sharing of gross returns does not by itself establish a partnership, even if the
36 persons sharing them have a joint or common right or interest in property from which the
37 returns are derived.
38

39 A virtually identical provision appears in Section 7(3)-(4) of the 1914 UPA.
40

41 Paragraph (B)(iv) of this definition excludes decedent’s estates for the same policy reason
42 as trusts with a predominantly donative purpose and charitable trusts.
43

44 **Paragraph (B)(v) provides that a series is not an entity unless the organic law of the**
45 **series provides that a series is an entity. On the other hand, paragraph (A) confirms that**
46 **an entity that uses the series concept is itself always an entity. Because there is not a single**

1 **term that is universally used for the series concept, paragraph (B)(v) lists all of the**
2 **commonly recognized terms and also accommodates other terms that may be used to refer**
3 **to the series concept.**
4

5 Paragraph ~~(B)(v)~~ **(B)(vi)** excludes governmental subdivisions, agencies, and
6 instrumentalities because they are not properly within the scope of the Code.
7

8 Limited liability partnerships and limited liability limited partnerships are “entities”
9 because they are general partnerships and limited partnerships, respectively, that have made the
10 additional required election claiming LLP or LLLP status. A limited liability partnership is not,
11 therefore, a separate type of entity from the underlying general partnership, nor is a limited
12 liability limited partnership a separate type of entity from the underlying limited partnership that
13 has elected limited liability partnership status.
14

15 * * *

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) ~~in~~ a record **acknowledging acceptance of interest holder liability** by each
13 interest holder of a domestic converting entity ~~which~~ **that has not affirmatively voted for or**
14 **consented to the conversion and that** will have interest holder liability for debts, obligations,
15 and other liabilities that are incurred after the conversion becomes effective, unless, in the case of
16 an entity that is not a business or nonprofit corporation:⁹

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.

⁹ 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) A term used in this [article] that is not defined in this [article] but is defined in**
22 **the organic law of an entity has the meaning given to it in the organic law.**

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

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

2 (1) by a domestic converting entity:

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

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

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

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

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

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

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

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

23 (2) in a record, by each interest holder of a domestic converting entity ~~which~~ that

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

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

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

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

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

14 **[Part] 6**

15 **APPROVAL REQUIREMENTS**

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

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

20 [Source: UPA § 1123(a)(1).]

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

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

25 [Source: ULPA § 1123(a)(1).]

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

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

5 [Source: ULLCA § 1023(a)(1).]

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

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

12 **(1) the plan, or a summary of the plan and a statement of how the member**
13 **reasonably may obtain a copy of the plan in a record;**

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

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

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

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

22 **(1) at least two-thirds of the voting power of members present at the meeting;**
23 **and**

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

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

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

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

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

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

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

18 (f) The voting requirements for a district, class, or voting group under Section 6-404
19 apply to approval of a transaction under this [article].

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

22
23 SECTION 2-605. APPROVAL BY UNINCORPORATED NONPROFIT
24 ASSOCIATION.

25 Except as provided in the organic rules of a domestic unincorporated nonprofit

1 association, a plan is not effective unless it has been approved by the nonprofit association
2 by all members of the nonprofit association entitled to vote on or consent to any matter.

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

9 **SECTION 2-606. APPROVAL BY STATUTORY TRUST ENTITY.**

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

13 [Source: USTEA § 923(a)(1).]

14 **[SECTION 2-607. APPROVAL BY BUSINESS CORPORATION.**

15 **(a) . . .]**

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

26 **[SECTION 2-608. APPROVAL BY NONPROFIT CORPORATION.**

27 **(a) . . .]**

28 Legislative Note: A state that adds nonprofit corporations to this Code should transfer
29 from its nonprofit corporation law to this section the requirements for approval of a merger by
30 a nonprofit corporation, generalized to apply to all fundamental transactions. This section
31 should include any applicable requirements for approval by the board of directors of
32 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 address 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 a 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, before, simultaneously with, or after a transaction under this
22 [act], to or for a charitable corporation or unincorporated entity that has a charitable
23 purpose and is not the surviving entity in the transaction, inures to the surviving entity if it is

- 1 **a charitable corporation or unincorporated entity that has a charitable purpose.**
- 2 (d) A trust obligation that would govern property if transferred to a nonsurviving entity
- 3 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 that is prohibited by [Section 602 or 603 of the Uniform Protected
11 Series Act]; or

12 Alternative B

13 in which a series entity or a series, protected series, protected cell,
14 segregated account, or similar part of an arrangement, configuration, or other structure
15 established by a series entity that associates assets, liabilities, and interest holders among
16 various parts of the structure, however a part of the entity is denominated under the
17 organic law of the entity, is to be a party to, result from, or be formed, organized,
18 established, or created by:

19 (A) a conversion, domestication, interest exchange, or merger under
20 this [act] or the law of a foreign jurisdiction, however the transaction is denominated under
21 that law; or

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

1 **End of Alternatives**

2
3 (2).]

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

6
7 *Subsection (a) may be used by states that have special statutes restricted to the*
8 *organization of certain types of entities. A common example is banking statutes that prohibit*
9 *banks from engaging in transactions other than pursuant to those statutes.*

10
11 *Nonprofit entities may participate in transactions under this act with for profit entities,*
12 *subject to compliance with Section 104. If a state desires, however, to exclude entities with a*
13 *charitable purpose or to exclude other types of entities from the scope of the act, that may be*
14 *done by referring to those entities in subsection (a).*

15
16 **There are two alternative approaches to the issue in subsection (b)(1). Alternative A**
17 **refers to the prohibitions in Sections 602 and 603 of the Uniform Protected Series Act, which**
18 **specify that a protected series or series limited liability company is restricted from participating**
19 **in transactions such as those authorized by this act. A state that has enacted the Uniform**
20 **Protected Series Act should enact Alternative A. If the state does not authorize the creation of**
21 **protected series, it should consider whether to prohibit a foreign series from engaging in**
22 **transactions under this act. If it wishes to do so, it should enact Alternative B.**

23
24 *Subsection (b) **also** may be used to exclude certain types of transactions governed by*
25 *more specific statutes. A common example is the conversion of an insurance company from*
26 *mutual to stock form. There may be other types of transactions that vary greatly among the*
27 *states.*

28
29 **SECTION 201. MERGER AUTHORIZED.**

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

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

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

35 * * *

36 **Comment**

37 The merger transaction authorized by this act involves the combination of one or more

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

9
10 Subsection (a). Subsection (a)(1) states the general rule that subject to subsection (c) one
11 or more domestic entities may merge with or into a domestic or foreign surviving entity. **The**
12 **surviving entity may be one of the merging entities (either domestic or foreign) or a new**
13 **entity (again, either domestic or foreign) created by the merger**. Subsection (a)(2) provides
14 that two or more foreign entities may merge into a domestic surviving entity **created in the**
15 **merger** so long as the requirements of subsection (b) are met. **A merger in which the surviving**
16 **entity is created in the merger was often described in older statutes as a consolidation.**
17 **Section 102(45) defines a surviving entity as “the entity that continues in existence after or**
18 **is created by a merger” and thus a merger under article 2 includes a consolidation in which**
19 **a new surviving entity is created in the transaction.**

20
21 * * *

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 governing~~
7 jurisdiction, and type of entity;

8 (2) ~~if as to the surviving entity, its name, governing jurisdiction, and type of~~
9 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 governing
23 jurisdiction 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 **Model Entity Transactions Act**

3 **SECTION 203. APPROVAL OF PLAN OF MERGER.**

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

5 * * *

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

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

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

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

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

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

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

22 (C) any other terms or conditions of the plan, if the change would
23 adversely affect the interest holder in any material respect.

1 * * *

1 Issue 24

2 Model Entity Transactions Act

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

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

6 (b) A statement of merger must contain:

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

9 (2) the name, ~~jurisdiction of formation~~ governing jurisdiction, and type of
10 entity of the surviving entity;

11 * * *

12 **Comment**

13 * * *

14 Subsection (b)(1) and (2) – The names of foreign entities set forth in the statement of
15 merger will generally be their names in their ~~jurisdiction of formation~~ governing jurisdiction
16 before the merger, except that if a foreign entity has been required to adopt a different name in
17 order to register to do business in the adopting state, the foreign qualification or registration
18 statute will likely require that when the entity does business in the adopting state it must use the
19 name adopted for purposes of registering to do business. Engaging in a merger under this article
20 will be part of the business done by the entity in the state and the name of the entity set forth in
21 the statement of merger will thus need to be the name under which the entity has registered to do
22 business. Use of the name under which the entity has registered to do business will allow the
23 records in the filing office to associate the registration of the entity to do business with the
24 statement of merger.

25
26 **If one of the merging entities is also the surviving entity, it will appear in the**
27 **statement of merger under both subsection (b)(1) and (2). Where there is no change to the**
28 **information about the surviving entity in subsection (b)(2), the information in subsection**
29 **(b)(2) will be redundant but must nonetheless be included. Where the information changes**
30 **as a result of the merger, or where the surviving entity is created by the merger, the**
31 **information required in subsection (b)(1) and (2) will make the public record clearer.**
32

33 * * *

1 Issue 25

2 Uniform Business Organizations Code

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

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

6 (b) A foreign filing entity or foreign limited liability partnership doing business in this
7 state may not maintain an action or proceeding in a court of this state unless it is registered to do
8 business in this state.

9 * * *

1 Issue 27

2 Uniform Business Organizations Code

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

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

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

7 * * *

1 **Issue 28**

2 **Uniform Business Organizations Code**

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

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

11 * * *

1 Issue 29

2 Uniform Business Organizations Code

3 SECTION 1-102. DEFINITIONS.

4 (a) In this [Code], ~~except as otherwise provided in definitions of the same terms in~~
5 ~~other articles of this [Code]~~ unless the same term is defined differently in another [article]
6 for the purpose of that [article]:

7 * * *

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

9 SECTION 1-510. TRANSFER OF REGISTRATION.

10 (a) ~~If a registered foreign entity merges into a nonregistered foreign entity or~~
11 ~~converts to a foreign entity required to register with the [Secretary of State] to do business~~
12 ~~in this state, the~~ A registered foreign entity shall deliver to the [Secretary of State] for filing an
13 application for transfer of registration if the foreign entity:

14 (1) is a party to a merger in which the surviving entity is a nonregistered
15 foreign entity;

16 (2) converts to another type of foreign entity in the same or a different state;
17 or

18 (3) is the domesticating entity in a domestication in which the governing
19 jurisdiction of the domesticated entity is a jurisdiction other than this state.

20 (b) The application for transfer of registration must be signed by the surviving,
21 converted, or domesticated entity and state:

22 (1) the name of the registered foreign entity before the merger ~~or~~ conversion, or
23 domestication;

1 (2) the type of entity it was before the merger, conversion, or domestication;

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

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

6 (5) the following information regarding the applicant entity, ~~if different than the~~
7 ~~information for the foreign entity before the merger or conversion~~:

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

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

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

1 Issue 30

2 Uniform Business Organizations Code

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

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

7 * * *

8 (f) A foreign filing entity or foreign limited liability partnership registered or
9 otherwise authorized by law to do business in this state on [insert the effective date of this
10 subsection] is subject to this [code], is deemed to be registered to do business in this state,
11 and is not required to deliver to the [Secretary of State] for filing a foreign registration
12 statement 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 change the
6 standards of conduct for the governors and interest holders from the standards applicable
7 under the entity's organic law and organic rules before the administrative dissolution.

8 Uniform Limited Liability Company Act

9 SECTION 708. ADMINISTRATIVE DISSOLUTION.

10 * * *

11 (d) A limited liability company that is administratively dissolved continues in existence
12 as ~~an entity~~ a limited liability company but may not carry on any activities except as necessary
13 to wind up its activities and affairs and liquidate its assets under Sections 702, 704, 705, 706, and
14 707, or to apply for reinstatement under Section 709.

15 * * *

16 (f) The administrative dissolution of a limited liability company does not change the
17 standards of conduct for the members and managers from the standards applicable under
18 this [act] and the liability company's organic rules before the administrative dissolution.