

3-21-10

Entity Harmonization Revisions to the

**REVISED UNIFORM LIMITED LIABILITY COMPANY
ACT**

**prepared after the Committee’s Meeting, March 12-14, 2010 in Washington, D.C.,
for review by the “Fine Tooth Comb” Subcommittee (“FTC”), and thereafter
to the Committee on Style, and
thereafter to the Annual Meeting**

Additions to Re-ULLCA are indicated with underlining, deletions with strike outs.

**When a revision derives from the Hub, yellow highlighting indicates any passages in the
revision which substantially deviate from the Hub.¹**

Footnotes contain explanations as well as some queries.

**Some new sections are temporarily numbered with a number and a capital letter – e.g.
704A – so as to preserve at least for the moment uniform numbering with states that have
already enacted Re-ULLCA or will have done so before this drafting project is complete.**

¹ Some “play” may possibly remain in the harmonization with the Hub, as the Committee on Style is continuing to work with the Hub.

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Revised Uniform Limited Liability Company Act.

SECTION 102. DEFINITIONS. In this [act]:

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

²(2) “Contribution”, except in the phrase “right of contribution,” means any benefit provided by a person to a limited liability company in order to become a member or

in the person’s capacity as a member.

³(3) “Debtor in bankruptcy” means a person that is the subject of:

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

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

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(5) “Distribution”, except as otherwise provided in Section 405(b), means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or otherwise to a person in the person’s capacity as a member. The term includes:

(A) a redemption or other purchase by a limited liability company of a

² Conformed to ULPA.

³ Conformed to Hub, § 1-102(4).

⁴ Deleted per harmonization (in recognition that it is no longer appropriate to require a domestic entity to have an office (in addition to a registered agent) with the state.

transferable interest; and

(B) a transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities or have access to records or other information concerning the company's activities.⁵

⁶ (7) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(8) "Limited liability company", except in the phrase "foreign limited liability company", means an entity formed under this [act].

(9) "Manager" means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Section 407(c).

(10) "Manager-managed limited liability company" means a limited liability company that qualifies under Section 407(a).

(11) "Member" means a person that has become a member of a limited liability company under Section 401 and has not dissociated under Section 602.

(12) "Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company.

(13) "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters

⁵ The phrase "participate in the management or conduct of the company's activities or have access to records or other information concerning the company's activities" is taken from Section 502(a)(3) (describing the realm of governance rights not available to a transferee).

⁶ Deleted as unnecessary.

described in Section 110(a). The term includes the agreement as amended or restated.

(14) “Organizer” means a person that acts under Section 201 to form a limited liability company.

⁷(15) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit trust association, statutory trust, business trust, or common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

⁹(xy) “Property” means all property, whether real, personal, or mixed, or tangible or intangible, or any interest therein.

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

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

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

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

or process.

¹² (19) “State” means a state of the United States, the District of Columbia, Puerto Rico,

⁷ Conformed to Hub, § 1-102(30).

⁸ Conform Hub’s definition to this one.

⁹ From Hub, § 1-102(34).

¹⁰ From Hub, § 1-102(38).

¹¹ Already conforms with Hub, § 1-102(40).

¹² Already conforms with Hub, § 1-102(41).

the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) “Transfer” includes assigning, conveying, selling, , leasing, encumbering (including by mortgaging or granting a security interest), , making a gift, and transferring by operation of law.¹³

(21) “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement. The term applies, whether or not the person remains a member or continues to own any part of the right and includes any fraction of the right.

(22) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under Section 603(a)(3).¹⁴

SECTION 103. KNOWLEDGE; NOTICE.

(a) A person knows a fact when the person:

- (1) has actual knowledge of it; or
- (2) is deemed to know it under subsection (d)(1) or law other than this [act].

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

(1) has reason to know the fact from all of the facts known to the person at the time in question; or

- (2) is deemed to have notice of the fact under subsection (d)(2);

(c) Subject to Section 206A (f),¹⁵ a person notifies another of a fact by taking steps

¹³ Changes inspired by Hub, § 1-102(43), with the language further refined by use of gerunds and the express inclusion of both of the two most common types of encumbrances (i.e., security interests as well as mortgages).

¹⁴ The referenced provision states that a person dissociated as a member is treated as a transferee of the person’s own transferable interest. The general definition of transferee does not capture that situation, because in that situation the ownership of the transferable interest does not shift. Instead, all governance rights disappear.

¹⁵ This subsection provides a more specific rule for notification by the Secretary of State.

reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person that is not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in Section 302(g); and

(2) to have notice of a limited liability company's:

(A) dissolution, 90 days after a statement of dissolution under Section 702(b)(2)(A) becomes effective;

(B) termination, 90 days after a statement of termination Section 702(b)(2)(F) becomes effective; and

(C) merger, conversion, or domestication, 90 days after articles of merger, conversion, or domestication under [Article] 10 become effective.

SECTION 104. NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit.

(c) A limited liability company has perpetual duration.

Legislative Note: This state should consider whether to amend statutes protecting the public interest in organizations formed for charitable or similar purposes.

SECTION 105. POWERS. A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its

activities.

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

- (1) the internal affairs of a limited liability company; and
- (2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW. Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

SECTION 108. NAME.

(a) The name of a limited liability company must contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.¹⁶

¹⁷(b) Except as otherwise provided in subsections (c) and (d), the name of a limited liability company must be distinguishable on the records of the [Secretary of State] from any:

- (1)¹⁸ name of a person that is not an individual and that is incorporated, organized, or authorized to transact business in this state;
- (2) limited liability company name stated in each certificate of organization that contains the statement as provided in Section 201(b)(3) and that has not lapsed;¹⁹
- (3) name reserved under Section 109;²⁰ and
- (4) assumed name registered under [this state’s assumed name statute]..

¹⁶ A comment will state that the act certainly permits any additional designators required by any “professional firms” statute – e.g., “*Professional* Limited Liability Company”. Query whether statutory language (perhaps bracketed) is necessary to permit the addition of a letter to a permitted abbreviation – e.g. or *PLLC*.

¹⁷ Conformed, with exceptions noted *infra*, to Hub, § 1-301(a).

¹⁸ Roughly comparable to Hub, § 1-301(a)(1) (which uses the defined term of “domestic filing entity”)

¹⁹ Unique to Re-ULLCA – the double filing requirement.

²⁰ Re-ULLCA allows foreign LLCs to “reserve” a name, while the Hub separately addresses “registration” of a name by a foreign entity. Complete harmonization with the Hub would require, therefore, inserting another section into this Article.

(c) Subsection (b) does not apply if the other entity or the person for which the name is reserved or registered consents in a record to the use of the name and submits an undertaking in a form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable on the records of the [Secretary of State] from any name in any category of names in subsection (a).

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

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

(f) An entity name may not contain the words [insert prohibited words or words that may be used only with approval by the appropriate state agency].

(g) Subject to Section 805, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

²¹**SECTION 109. RESERVATION OF NAME.**

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the [Secretary of State] for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the [Secretary of State] finds that the name applied for is available, the [Secretary of State] shall reserve the name for the applicant's exclusive use for a [120]-day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the [Secretary of State] for filing a signed notice in a record of the transfer which states the name and address of the transferee.

SECTION 110. OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

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

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

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

(3) the activities of the company and the conduct of those activities; and

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

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

(c) An operating agreement may not:

(1) vary a limited liability company's capacity under Section 105 to sue and be

²¹ Conformed to Hub, §1-303

sued in its own name;

(2) vary the law applicable under Section 106;

(3) vary the power of the court under Section 204, except to provide for arbitration of claims seeking relief under that Section;

(4) eliminate all fiduciary duties, but, if not manifestly unreasonable may:

(i) restrict or eliminate the duties stated in Section 409 (b) and (g);

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

(iii) alter the duty of care, except to authorize intentional misconduct or knowing violation of law; and

(iv) alter any other fiduciary duty, including eliminating particular aspects of that duty;²²

(5) eliminate the contractual obligation of good faith and fair dealing under Section 409(d), but if not manifestly unreasonable may prescribe the standards by which to measure the performance of that obligation;

(6) unreasonably restrict the duties and rights stated in Section 410, but may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;²³

(7) vary the power of a court to decree dissolution in the circumstances specified in Section 701(a)(4)(A) and (5), except to provide for arbitration of claims seeking dissolution under those provisions;

²² Query whether this provision should permit the *elimination* of other fiduciary duties. This change is not driven by harmonization, but rather by a notion of internal consistency. Why impose greater restrictions on fiduciary duties that the statute does not expressly and directly recognize?

²³ Source: ULPA § 110(b)(4). Query – why should the operating agreement’s power in this area be subject to greater restriction than the agreement’s power over fiduciary duty? I.e., reasonable vs. not manifestly unreasonable?

(8) vary the requirement to wind up a limited liability company's business as specified in Section 702(a) and (b)(1);

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

(10) vary the rights of a member under Section 1014; or

(11) except as otherwise provided in Sections 111 and 112(b), restrict the rights under this [act] of a person other than a member or manager.

(d) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

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

(f) The operating agreement may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, whether directly or by providing indemnification therefor, except for:

(1) breach of the duty of loyalty;

(2) a financial benefit received by the member or manager to which the member or manager is not entitled;

(3) a breach of a duty under Section 406;

(4) intentional infliction of harm on the company or a member; or

(5) an intentional violation of criminal law.

(g) The court shall decide any claim under subsection (c)(4) or (5) that a term of an operating agreement is manifestly unreasonable. The court:

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

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

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

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

SECTION 111. OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING MEMBERS; PREFORMATION AGREEMENT.

(a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability

company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

SECTION 112. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

(a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under Section 503(b)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the [Secretary of State] for filing and has become effective under this [act] contains a provision that would be ineffective under Section 110(c) if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c), if a record that has been delivered by a limited liability

company to the [Secretary of State] for filing and has become effective under this [act] conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

²⁴**SECTION 113. REGISTERED AGENT.**

(a) Each limited liability company and each foreign limited liability company that is registered under Section 803 to do business in this state shall designate²⁵ and maintain a registered agent in this state. . The designation of a registered agent pursuant to this subsection is an affirmation under Section 207(c) by the limited liability company or foreign limited liability company that the **designated person**²⁶ has consented to serve.(b) A registered agent for a limited liability company or foreign limited liability company must be an individual who is a resident of this state or other person registered to do business in this state.

(c) The duties of a registered agent are:²⁷

(1) to forward to the limited liability company or foreign limited liability company at the address most recently supplied to the agent by the company any process, notice, or demand

pertaining to the company which is served on **or delivered to**²⁸ the agent; and

²⁴ To fully conform sections 113-116 to the Hub would require including the concept of a commercial registered agent, which hardly makes sense for a state unless the state plans to extend the concept to other forms of entity. Therefore, sections 113-116 are conformed to the extent possible with the provisions of Hub, Article 4 which pertain to ordinary registered agents.

²⁵ The initial designation is in the articles of organization [LLC - § 201(b)(2)] or foreign registration statement [foreign LLC – §803(4)].

²⁶ Hub, § 1404(b) refers to the “agent” having “consented to serve.” Strictly speaking, the person is not an agent absent that consent. Query whether to conform Hub.

²⁷ Query – if the LLC or foreign LLC is substantially behind in its payments to the registered agent, may the agent suspend performance of this duty on the grounds of material breach? If the answer is no (which I assume is the correct answer), query whether this formulation should be revised.

(2) if the registered agent resigns, to provide the notice required by Section 115(c) to the company at the address most recently supplied to the agent by the company.²⁹

SECTION 114. CHANGE OF REGISTERED AGENT OR ADDRESS FOR REGISTERED AGENT.³⁰

(a) A limited liability company or foreign limited liability company may change its registered agent or the address of its registered agent by delivering to the [Secretary of State] for filing a statement of change³¹ that states:

(1) the name of the company; and

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

(b) The designation of a new registered agent pursuant to this section is an affirmation under Section 207(c) by the limited liability company or foreign limited liability company that the designated person³² has consented to serve.

(c) Subject to Section 205(c), a statement of change is effective when filed by the [Secretary of State].³³ ³⁴

SECTION 115. RESIGNATION OF REGISTERED AGENT.

²⁸ The meaning of “served” is unclear outside the context of service of process. Consistent with the Hub, we are eliminating the requirement of an in-state office. We ought to make sure that a third party in this state can find an in-state office to which to deliver a notice. E.g. UCC, § 2-607(3)(a) (notice of defect to preserve claim for breach).

²⁹ This subsection is derived from Hub, § 1-413. Unlike the Hub, this Act does not empower a registered agent to file a statement of change for itself and thereby effect the filings of the entities for which it serves as an agent. That power makes no sense unless a state adopts comparable provisions in all its entity acts. Therefore, this subsection omits Hub, § 1-413(3).

³⁰ Changes reflect harmonization with Hub, § 1-407.

³¹ Hub, § 1-407(a) includes “signed on behalf of the entity” but here that language would be redundant of Section 203 (signing requirements).

³² Hub, § 1-407(c) refers to the “agent” having “consented to serve.” Strictly speaking, the person is not an agent absent that consent. Query whether to conform Hub.

³³ Hub, § 1-407(d) provides: “A statement of change under this section takes effect on delivery to the [Secretary of State] for filing.” Query how a statement can have effect before the filing office takes official cognizance of it?

³⁴ Omitted as unnecessary in a “spoke” – Hub, § 1-407(e) (“As an alternative to using the procedure in this section, a represented entity may change the information on file under Section 1-404(a) by amending its most recent registered agent filing in a manner provided by law of this state other than this [act] for amending the filing.”)

(a) A registered agent may resign as registered agent for a limited liability company or foreign limited liability company by delivering to the [Secretary of State] for filing a statement of resignation³⁵ that states:

(1) the name of the company;

(2) the name of the agent;

(3) that the agent resigns from serving as **registered agent**³⁶ for the company; and

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

(b) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is **filed by the [Secretary of State]**³⁷ or the designation³⁸ of a new registered agent for the limited liability company or foreign limited liability company.

(c) A registered agent promptly shall furnish the limited liability company or foreign limited liability company notice in a record of the date on which a statement of resignation was delivered to the [Secretary of State] for filing.

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter **subsequently served on, delivered to,** or tendered to it as agent for the limited liability company or foreign limited liability company. The resignation does not affect any contractual rights the company has against the agent or that the agent has against the company.

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

SECTION 116. SERVICE OF PROCESS, NOTICE OR DEMAND.

(a)

served,

³⁵ Omitted here: “signed by or on behalf of the agent,” Hub. § 1-410(a)

³⁶ Hub, § 1-410(a)(3) refers to “agent for service of process”. Query whether to conform the Hub.

³⁷ Hub, § 1-410(b) refers to “delivered to the [Secretary of State] for filing”. Query – suppose the filing officer rejects the filing as defective (e.g., unsigned)?

³⁸ Query whether it is necessary to provide a cross reference to indicate how the designation might take place – i.e., by a statement of change or by amendment of the certificate of organization.

(a) A limited liability company or foreign limited liability company may be served with any process, notice, or demand required or permitted by law by serving its registered agent.³⁹

(b) If a limited liability company or foreign limited liability company no longer has a registered agent in this state or the agent cannot with reasonable diligence be served, the company may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at its principal office in accordance with any applicable judicial rules and procedures and with the envelope conspicuously marked “important legal notice” or with words of similar import. Service is effected under this subsection on the earliest of:

(1) the date the company receives the mail or delivery by a similar commercial delivery service;

(2) the date shown on the return receipt, if signed on behalf of the company; or

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

(c) If process, notice, or demand cannot be served on a limited liability company or foreign limited liability company pursuant to subsection (a) or (b), service may be made by handing a copy to the supervisor, administrator,⁴⁰ clerk, or other individual in charge of any regular place of business or activity of the company if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record. Receipt of a written process, notice, or demand by the registered agent of a limited liability company or foreign limited liability company is receipt by the company.⁴¹

(e) Service of process, notice, or demand may be made by other means under law other than this [act].

³⁹ Query whether/how to expand to expressly cover notices required to be sent, made, or delivered (but not “served”). See early note re: UCC § 2-607(3)(a). For a possible solution, see subsection (d), second sentence.

⁴⁰ Hub, § 1- 412(c) refers to “manager,” but that word is a term of art under LLC law.

⁴¹ Added to address the issue, discussed in earlier notes, of the registered agent serving as agent for receipt of demands and notices not contemplated as being “served.”

[ARTICLE] 2

FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY;

CERTIFICATE OF ORGANIZATION.

(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the [Secretary of State] for filing a certificate of organization.

(b) A certificate of organization must state:

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

(2) the name and street and mailing addresses of the initial registered agent; and

(3) if the company will have no members when the [Secretary of State] files the certificate, a statement to that effect.

(c) Subject to Section 112(c), a certificate of organization may also contain statements as to matters other than those required by subsection (b). However, a statement in a certificate of organization is not effective as a statement of authority.

(d) Unless the filed certificate of organization contains the statement as provided in subsection (b)(3), the following rules apply:

(1) A limited liability company is formed when the [Secretary of State] has filed the certificate of organization and the company has at least one member, unless the certificate states a delayed effective date pursuant to Section 205(c).

(2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the [Secretary of State] for filing and the [Secretary of State] files the certificate.

(3) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(e) If a filed certificate of organization contains a statement as provided in subsection (b)(3), the following rules apply:

(1) The certificate lapses and is void unless, within [90] days from the date the [Secretary of State] files the certificate, an organizer signs and delivers to the [Secretary of State]

for filing a notice stating:

- (A) that the limited liability company has at least one member; and
- (B) the date on which a person or persons became the company's initial member or members.

(2) If an organizer complies with paragraph (1), a limited liability company is deemed formed as of the date of initial membership stated in the notice delivered pursuant to paragraph (1).

(3) Except in a proceeding by this state to dissolve a limited liability company, the filing of the notice described in paragraph (1) by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

Legislative Note: Enacting jurisdictions should consider revising their "name statutes" generally, to protect "the limited liability company name stated in each certificate of organization that contains the statement as provided in Section 201(b)(3)". Section 108(b)(2).

SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.

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

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

- (1) the name of the company;
- (2) the date of filing of its certificate of organization; and
- (3) the changes the amendment makes to the certificate as most recently amended or restated.

(c) To restate its certificate of organization, a limited liability company must deliver to the [Secretary of State] for filing a restatement, designated as such in its heading, stating:

- (1) in the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;
- (2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and
- (3) the changes the restatement makes to the certificate as most recently amended or restated.

(d) Subject to Sections 112(c) and 205(c), an amendment to or restatement of a certificate

of organization is effective when filed by the [Secretary of State].

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the [Secretary of State] for filing a statement of change under Section 114 or a statement of correction under Section 206.

SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO [SECRETARY OF STATE].⁴²

(a) A record delivered to the [Secretary of State] for filing pursuant to this [act] must be signed as follows:

(1) Except as otherwise provided in paragraphs (2) through (4), a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(3) A notice under Section 201(e)(1) must be signed by an organizer.

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

(5) A statement of cancellation under Section 201(d)(2) must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

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

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

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

⁴² This provision cannot be harmonized with the Hub, because the Hub presupposes such provisions existing in the entity spokes. See Hub, § 1-201(4): "(4) The entity filing must be signed by an individual authorized to sign the filing under this [act]."

SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

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

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

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

SECTION 205. FILING REQUIREMENTS .⁴³

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

- (1) The filing of the record must be required or permitted by this [act].
- (2) The record must be physically delivered in written form unless the [Secretary of State] permits electronic delivery of records in other than written form.
- (3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.
- (4) The record must be signed by an individual⁴⁴ authorized to sign the filing under Section 203.
- (5) The record must state the name and capacity, if any, of the individual who signed it but need not contain a seal, attestation, acknowledgment, or verification.

(b) If a law other than this [act] prohibits the disclosure by the [Secretary of State] of information contained in a record filed by the [Secretary of State], the [Secretary of State] shall accept the filing if the filing otherwise complies with this section but the [Secretary of State] may

⁴³ Conformed, as much as possible, to Hub, § 1-201, except for subsection (e). That subsection reflects a decision made by the Drafting Committee at its March, 2010 meeting. Suggest Hub be conformed.

⁴⁴ Query “individual” vs. “person” – suppose an LLC’s managing member is itself an LLC?

redact the information.

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

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

⁴⁵**SECTION 205A. EFFECTIVE TIME AND DATE.** Except as otherwise provided in Section 205B and subject to Section 206(c), an entity filing is effective:

(1) on the date and at the time of its filing by the [Secretary of State];

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

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

(4) if a delayed effective date is specified⁴⁶ as permitted by this [act], but no time is specified, at 12:01 a.m. on the date specified.

SECTION 205B. WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.⁴⁷

(a) A filed record may be withdrawn before it takes effect by delivering to the [Secretary of State] for filing a statement of withdrawal.

⁴⁵ From Hub, § 1-203

⁴⁶ Suggest conform Hub § 1-203 by similarly relocating the phrase “is specified”.

⁴⁷ From Hub, § 1-204, but modified. Suggest conforming the Hub.

(b) A statement of withdrawal must:

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

(2) identify the filed record to be withdrawn and the date of its filing; and

(3) if not signed on behalf of each person that signed the record being withdrawn,

state that the record is withdrawn in accordance with the agreement of all the persons who signed the record.

(d) On the **filing by**⁴⁸ the [Secretary of State] of a statement of withdrawal, the action or transaction evidenced by the original filed record does not take effect.

⁴⁹**SECTION 206. CORRECTING FILED RECORD.**

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

(1) the record at the time of filing contained an inaccuracy;

(2) the record was defectively signed; or

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

defective.

(b) To correct a filed record, the person on whose behalf the record was delivered to the [Secretary of State] for filing⁵⁰ must deliver to the [Secretary of State] for filing a statement of correction.

⁴⁸ The Hub refers to “delivery for filing to the [Secretary of State]” but query how can a document be effective before the filing officer takes official cognizance of the document?

⁴⁹ Replacement language comes essentially verbatim from Hub, § 1-205, except for the reference in subsection (d) to Section 103(d).

⁵⁰ Hub refers “parties to the record”. Suggest conforming Hub to this phrasing.

(c) A statement of correction:

(1) may not state a delayed effective date;

(2) must be signed on behalf of the person correcting the filed record;

(3) must identify the filed record to be corrected or have attached a copy and state the date of **the record's**⁵¹ filing;

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

(5) must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except **for the purposes of Section 103(d)** and as to persons relying on the uncorrected filed record and adversely affected by the correction. As **for those purposes** and to those persons, the statement of correction is effective when filed.

⁵²SECTION 206A. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE; TRANSMISSION OF INFORMATION BY THE [SECRETARY OF STATE].

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

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

⁵¹ Hub states “its”. Query conform the Hub.

⁵² Derived essentially verbatim from Hub, §1-206.

time of filing to the person on whose behalf the record was delivered for filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.

(c) If the [Secretary of State] refuses to file a record delivered for filing pursuant to this [act], the [Secretary of State] shall return⁵³ the record or notify the person that submitted the record not later than [15] business days after the record is delivered, together with a brief explanation in a record of the reason for the refusal.

(d) If the [Secretary of State] refuses to file a record pursuant to this act, the person that submitted the filing may seek review of the refusal in the [appropriate court] under the following procedures:

(1) The review proceeding is commenced by petitioning the court to compel filing of the record and by attaching to the petition the record and the explanation of the [Secretary of State] of the refusal to file.

(2) The court may summarily order the [Secretary of State] to file the record or take other action the court considers appropriate.

(3) The final decision of the court may be appealed as in other civil proceedings.

(e) Except as stated in Section 201(d)(3) and (e)(3),⁵⁴ the filing of or refusal to file a record pursuant to this [act] does not:

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

(2) affect the correctness or incorrectness of information contained in the filing; or

(3) create a presumption that the filing is valid or invalid or that information

contained in the filing is correct or incorrect.

(f) When this [act] requires or provides for the [Secretary of State] to send a specified

⁵³ Query whether “return” should be revised to “send” so as to connect to subsection (f).

⁵⁴ These paragraphs provide: “the filing of the certificate of organization by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.”

written record to a limited liability company or foreign limited liability company, or notify a limited liability company or foreign limited liability company of specified information, the [Secretary of State] satisfies the requirement or provision by depositing the specified written record or a written record containing the specified information, addressed to the limited liability company or foreign limited liability company care of its registered agent or at its principal office:

(1) in the U.S., mail, postage prepaid,; or

(2) with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery is not available, for delivery as promptly as practicable.⁵⁵

SECTION 207. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.

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

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

(2) subject to subsection (b), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

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

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

⁵⁵ This provision does not encompass documents to be returned, or notifying required, for persons other than LLCs and foreign LLCs. For example, if a would-be organizer fails to submit acceptable articles of organization or the proper fee, the Secretary of State will reject the filing. At the moment, it appears that neither this Act nor the Hub requires the organizers to include a return address.

(i) effected an amendment under Section 202;

(ii) filed a petition under Section 204; or

(iii) delivered to the [Secretary of State] for filing a statement of change under Section 114 or a statement of correction under Section 206.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the [Secretary of State] for filing under this [act] and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

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

⁵⁶**SECTION 208. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

(a) On request of any person, the [Secretary of State] shall issue a certificate of good standing for a limited liability company or a certificate of registration for a qualified foreign limited liability company.

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

(1) the limited liability company's name or the qualified foreign limited liability company's name used in this state;

(2) that the limited liability company is formed under the law of this state and the date of its formation,⁵⁷ or that the qualified foreign limited liability company is registered to do

⁵⁶ Derived essentially verbatim from Hub, §1-208. Also, the Hub uses is "registration" instead of "certificate of authority" for foreign LLCs. Article 8 has been be revised accordingly.

⁵⁷ Omitted from Hub: "and the period of its duration if less than perpetual" because duration can be affected by non-filed agreements.

business in this state;

(3) that all fees, taxes, and penalties owed to this state by the limited liability company or the qualified foreign limited liability company and⁵⁸ collected through the [Secretary of State] have been paid, if:

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

(B) nonpayment affects the good standing or registration of the limited liability company or foreign limited liability company;

(4) that the most recent annual report required by Section 209 has been delivered for filing to the [Secretary of State]; and

(5) that , with respect of a limited liability company, no statement of dissolution, statement of termination, or declaration of dissolution has been filed and no proceeding is pending under Section 705.⁵⁹

(c) Subject to any qualification stated in the certificate, a certificate issued by the [Secretary of State] under subsection (a) may be relied upon as conclusive evidence of the facts stated in the certificate.⁶⁰

⁶¹SECTION 209. ANNUAL REPORT FOR [SECRETARY OF STATE].

(a) Each limited liability company and foreign limited liability company registered to do business in this state shall deliver to the [Secretary of State] for filing an annual report that states:

(1) the name of the company;

⁵⁸ The phrase “by the limited liability company or the qualified foreign limited liability company and” has been added to the Hub language. Suggest conforming the Hub.

⁵⁹ Section 705 pertains to administrative dissolution. Hub, § 1-208(b)(5) requires the Secretary of State to indicate “that the entity has not been dissolved.” With an LLC (or limited partnership), the Secretary is not able to go so far. Dissolution can occur without any filing having to be made. Suggest conforming the Hub to the language used here if possible. Also, at its March, 2010 meeting the Drafting Committee deleted “(6) other facts of record pertaining to the entity with the [Secretary of State] which the person requesting the certificate reasonably requests.” Suggest conforming the Hub.

⁶⁰ Suggest conforming the Hub to this much more limited provision.

⁶¹ Revisions made to harmonize, to the extent possible, with Hub, § 1-211.

(2) ⁶²the name and street and mailing addresses of its registered agent in this state;
(3) the street and mailing addresses of its principal office; and
(4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under Section 805(a).⁶³

(b) Information in an annual report under this section must be current as of the date the report is signed on behalf of the limited liability company or foreign limited liability company.

(c) The first annual report must be delivered to the [Secretary of State] for filing after [January 1] and before [April 1] of the year following the calendar year in which a limited liability company was formed or a foreign limited liability company registered to do business in this state. Subsequent annual reports must be delivered to the [Secretary of State] after [January 1] and before [April 1] of each calendar year thereafter.

(d) If an annual report under this section does not contain the information required by subsection (a), the [Secretary of State] shall promptly notify the reporting limited liability company or foreign limited liability company in a record⁶⁴ and send the report to the company for correction.

(e) If an annual report under this section contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 114.⁶⁵

⁶² Harmonized to Hub’s approach – no designated office; i.e., no requirement that a domestic organization maintain an office in the state of formation.

⁶³ The Hub has one more item on this list: “the names of the governors.” Suggest revising the Hub to restrict that requirement to corporations.

⁶⁴ Query whether “in a record” is still needed, given Section 206A(f) – the new provision detailing how the Secretary of State notifies or sends a document.

⁶⁵ Suggest amending the Hub to include this provision.

[ARTICLE] 3

RELATIONS OF MEMBERS AND MANAGERS

TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

SECTION 301. NO AGENCY POWER OF MEMBER AS MEMBER.

(a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this [act] from imposing liability on a limited liability company because of the person's conduct.

SECTION 302. STATEMENT OF AUTHORITY.

(a) A limited liability company may deliver to the [Secretary of State] for filing a statement of authority. The statement:

(1) must include the name of the company and the street and mailing addresses of its registered agent;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the [Secretary of State] under Section 205(a), a limited liability company must deliver to the [Secretary of State] for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the street and mailing addresses of the company's registered agent;

(3) the caption of the statement being amended or canceled and the date the

statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) and Section 103(d) and except as otherwise provided in subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b);

or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subsection (b) and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are

deemed to know of the limitation.

(h) Subject to subsection (i), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection (g).

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the [Secretary of State] for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g).

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subsection (f)(1).

SECTION 303. STATEMENT OF DENIAL. A person named in a filed statement of authority granting that person authority may deliver to the [Secretary of State] for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.

⁶⁶(a) A debt, obligation, or other liability of a limited liability company is: solely the debt, obligation, or other liability of the company. A member, manager, agent of the company, or agent of a manager or member is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by

⁶⁶ Conformed to Trust Act, § 304(a) and Hub .

reason of being or acting as a member, manager, agent of the company, or agent of a manager or member.

⁶⁷(b) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on any member, manager, agent of the company, or agent of a manager, for any debt, obligation, or other liability of the company.

⁶⁷ No comparable provision in the Trust Act, but conformed to the style and substance of Trust Act, § 304(a).

[ARTICLE] 4

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

SECTION 401. BECOMING MEMBER.

(a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) If a filed certificate of organization contains the statement required by Section 201(b)(3), a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company's initial members.

(d) After formation of a limited liability company, a person becomes a member:

- (1) as provided in the operating agreement;
- (2) as the result of a transaction effective under [Article] 10;
- (3) with the consent of all the members; or
- (4) if, within 90 consecutive days after the company ceases to have any members:

⁶⁸(A) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(B) at least one person becomes a member in accordance with the consent;

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

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

SECTION 403. LIABILITY FOR CONTRIBUTIONS.

(a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

⁶⁹(b) The obligation of a person to make a contribution may be compromised only by consent of all members. A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a) without notice of any

⁶⁸ Decision to change the rule was made at the October, 2009 meeting. The revision language is derived from ULPA, § 801(3)(B) (permitting a limited partnership to avoid dissolution following the dissociation a sole general partner). That language should be conformed to this provision, which relocates the phrase "a majority of"

⁶⁹ Per a decision made at the October, 2009 meeting. Source: ULPA, § 502(c).

compromise under this subsection may enforce the obligation.

SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

(a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502 and any charging order in effect under Section 503.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Section 708(c), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

SECTION 405. LIMITATIONS ON DISTRIBUTION.

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

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

(2) the company's total assets would be less than the sum of its total liabilities

plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances. In subsection (a), “distribution” does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.⁷⁰

(c) The effect of a distribution under subsection (a) is measured:

(1) in the case of a distribution of indebtedness:

(A) as of the date the indebtedness is distributed; and again

(B) as of the date each payment of principal or interest is made (with each payment treated as a distribution); and

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

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

(B) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.⁷¹

(d) A limited liability company’s indebtedness, including indebtedness issued in

⁷⁰ This sentence was previously subsection (g) and is relocated here to improve the conceptual flow of the section.

⁷¹ Revised per a decision at the March, 2010 meeting of the Drafting Committee. (Per the same decision, subsection (f) is subsumed into this provision.)

connection with or as part of a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made under this section.⁷²

(e) A limited liability company's indebtedness incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement

(f) . This section does not apply to distributions under Section 708.

SECTION 406. LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as otherwise provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 405 and in consenting to the distribution fails to comply with Section 409, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of Section 405.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was

⁷² Former subsection (e) has been moved here to improve the section's conceptual flow.

made in violation of Section 405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 405.

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

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

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

(e) An action under this section is barred if not commenced within two years after the distribution.

SECTION 407. MANAGEMENT OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be “manager-managed”;

(B) the company is or will be “managed by managers”; or

(C) management of the company is or will be “vested in managers”; or

(2) includes words of similar import.

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

(1) The management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the

company's activities.

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

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members.

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

(1) Except as otherwise expressly provided in this [act], any matter relating to the activities of the company is decided exclusively by the managers.

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

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

(4) The consent of all members is required to:

(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;

(B) approve a merger, conversion, or domestication under [Article] 10;

(C) undertake any other act outside the ordinary course of the company's activities; and

(D) amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the

members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under this [act] may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) This [act] does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

SECTION 408. INDEMNIFICATION, ADVANCEMENT AND INSURANCE.⁷³

⁷³ Per a decision of the Drafting Committee at its March, 2010 meeting, this section has been revised to authorize (but not require) advancement of expenses. It was not possible to harmonize with USTEPA, § 509(b), because in HULLCA the scope of indemnification is narrower (and required, unless the operating agreement provides otherwise).

(a) A limited liability company shall reimburse a member of a member-managed company or the manager of a manager-managed company for any payment made and indemnify the member or manager for any debt, obligation, or other liability incurred by the member or manager in the course of the member's or manager's activities on behalf of the company, if the member or manager complied with the duties stated in Sections 405 and 409 in making the payment or incurring the debt, obligation, or other liability.

(b) A limited liability company shall indemnify and hold harmless a member or manager with respect to any claim or demand against the person by reason of the person's former or present capacity as member or manager, if the claim or demand does not arise from the person's breach of a duty stated in Section 405 or 409.

(c) As a activity in the ordinary course of its activities,⁷⁴ a limited liability company may advance expenses, including reasonable⁷⁵ attorney's fees and costs, incurred by a member or manager in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, upon an undertaking by the person to repay the limited liability company if the person is ultimately determined not to be entitled to be indemnified under subsection (a).

(c) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 110(f),⁷⁶ the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.

⁷⁴ The introductory phrase tracks Section 407(b)(3) and c(3), so that the decision to make advancements requires only majority consent.

⁷⁵ Query to FTC – should “reasonable” be moved to modify expenses?

⁷⁶ This cross reference assumes that the Committee adopts the principal proposed revision of Section 110.

(a)

The duty of loyalty of a member in a member-managed limited liability company includes the duties:

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

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

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

(C) from the appropriation of a limited liability company opportunity;

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

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(b) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(c) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this [act] or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(d) It is a defense to a claim under subsection (a)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company. Subject to subsections (a)(2) and (f) and any other applicable law, if a member enters into transaction with a limited liability company in which the member has an interest adverse to the company, the member's rights and obligations arising from the transaction are the same as those of a person not a member.

(e) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

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

(1) Subsections (a), (b), (c), and (d) apply to the manager or managers and not the members.

(2) The duty stated under subsection (a)(3) continues until winding up is completed.

(3) Subsection (c) applies to the members and managers.

(4) Subsection (e) applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

SECTION 410. RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.

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

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the

information is material to the member's rights and duties under the operating agreement or this [act].

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this [act], except to the extent the company can establish that it reasonably believes the member already knows the information; and

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

(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

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

(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose material to the member's interest as a member;

(B) the member makes a demand in a record received by the company,

describing with reasonable particularity the information sought and the purpose for seeking the information; and

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

(3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the company shall in a record inform the member that made the demand:

(A) of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(B) if the company declines to provide any demanded information, the company's reasons for declining.

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

(c) On 10 days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2). The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (b)(3).

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

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any

restriction or condition imposed by the operating agreement or under subsection (g) applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

[ARTICLE] 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

SECTION 501. NATURE OF TRANSFERABLE INTEREST. A transferable interest is personal property.

SECTION 502. TRANSFER OF TRANSFERABLE INTEREST.

(a) A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

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

(3) subject to Section 504, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities;

or

(B) except as otherwise provided in subsection (c), have access to records or other information concerning the company's activities.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

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

(d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee's rights under this

section until the company has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in Section 602(4)(B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Sections 403 and 406(c) known to the transferee when the transferee becomes a member.

SECTION 503. CHARGING ORDER.

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

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

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

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

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the

transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 502.

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

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

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

(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

SECTION 504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER. If a member dies, the deceased member's personal representative or other legal representative may exercise:

- (1) the rights of a transferee provided in Section 502(c); and
- (2) for the purposes of settling the estate, the rights the deceased member had under Section 410.

[ARTICLE] 6

MEMBER'S DISSOCIATION

SECTION 601. MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Section 602(1).⁷⁷

(b) A person's dissociation from a limited liability company is wrongful only if the dissociation:

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

(2) occurs before the termination of the company and:

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

(B) the person is expelled as a member by judicial order under Section 602(5);

(C) the person is dissociated under Section 602(7)(A) by becoming a debtor in bankruptcy; or

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

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

⁷⁷ The operating agreement can negate the power as well as the right. See Re-ULLCA, § 110(c) (omitting any reference to this provision from the "operating may not" list).

SECTION 602. EVENTS CAUSING DISSOCIATION. A person is dissociated as a member from a limited liability company when:

(1) the company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members if:

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

(B) there has been a transfer of all of the person's transferable interest in the company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 503 which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

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

(5) on application by the company, the person is expelled as a member by judicial order

because the person:

(A) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under Section 409; or

(C) has engaged in, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

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

(A) the person dies; or

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the person is appointed; or

(ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under [this act] or the operating agreement;

(7) in a member-managed limited liability company, the person:

(A) becomes a debtor in bankruptcy;

(B) executes an assignment for the benefit of creditors; or

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is

distributed;

(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

(11) the company participates in a merger under [Article] 10, if:

(A) the company is not the surviving entity; or,

(B) otherwise as a result of the merger, the person ceases to be a member;

(12) the company participates in a conversion under [Article] 10;

(13) the company participates in a domestication under [Article] 10, if, as a result of the domestication, the person ceases to be a member; or

(14) the company terminates.

SECTION 603. EFFECT OF PERSON'S DISSOCIATION AS MEMBER.

(a) When a person is dissociated as a member of a limited liability company:

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

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

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

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

[ARTICLE] 7

DISSOLUTION AND WINDING UP

SECTION 701. EVENTS CAUSING DISSOLUTION.

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

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of 90 consecutive days during which the company has no members;

(4) on application by a member, the entry by [appropriate court] of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all of the company's activities is unlawful; or

(B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or

(5) on application by a member, the entry by [appropriate court] of an order dissolving the company on the grounds that the managers or those members in control of the company:

(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In a proceeding brought under subsection (a)(5), the court may order a remedy other than dissolution.

SECTION 702. WINDING UP.

(a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

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

(1) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and

(2) may:

(A) deliver to the [Secretary of State] for filing a statement of dissolution stating the name of the company and that the company is dissolved;

(B) preserve the company activities and property as a going concern for a reasonable time;

(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(D) transfer the company's property;

(E) settle disputes by mediation or arbitration;

(F) deliver to the [Secretary of State] for filing a statement of termination stating:

(i) the name of the company and that the company is terminated;

and

(ii) any other information the limited liability company determines;

and

(G) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section 304(a)(2).

(d) If the legal representative under subsection (c) declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section 304(a)(2); and

(2) shall promptly deliver to the [Secretary of State] for filing an amendment to the company's certificate of organization to:

(A) state that the company has no members;

(B) state that the person has been appointed pursuant to this subsection to wind up the company; and

(C) provide the street and mailing addresses of the person.

(e) The [appropriate court] may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

(1) on application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(A) the company does not have any members;

(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (c); or

(3) in connection with a proceeding under Section 701(a)(4) or (5).

SECTION 702B. RESCINDING DISSOLUTION⁷⁸ A limited liability company may rescind its dissolution under subsection (b), unless a statement of termination pertaining to the company has been delivered to the [Secretary of State] for filing or the [appropriate court] has entered an order under Section 701(a)(4) or (5) dissolving the company. If a limited liability company rescinds its dissolution:

(1) the company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company after the dissolution and before the rescission is determined as if dissolution had never occurred; except⁷⁹

(2) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the rescission may not be adversely affected.

(b) Rescinding dissolution under this section requires:

(1) the consent of each member;

(2) if a statement of dissolution pertaining to the limited liability company has

⁷⁸ At its March, 2010 meeting, the Drafting Committee tentatively decided to subsume this section into the previous section, thereby helping preserve Re-ULLCA's numbering system and avoiding having to choose a name for "undoing" a dissolution. However, two subsections are necessary to properly address the effect of statements of dissolution and termination. For that reason, and because the concept should have a label, this draft uses a separate section.

⁷⁹ RUPA, § 803(b) uses "and" rather than "except".

been delivered for filing to the [Secretary of State] but has not become effective, the filing on behalf of the company under Section 205B of a statement of withdrawal pertaining to the statement of dissolution; and

(3) if a statement of dissolution pertaining to the limited liability company is effective, the filing on behalf of the company of a statement of correction under Section 206, stating that dissolution has been rescinded under this section.

SECTION 703. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

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

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

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

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

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

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

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

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

(2) if the claim is timely received but rejected by the company:

(A) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant receives the notice; and

(B) the claimant does not commence the required action within the 90 days.

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

SECTION 704. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

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

(b) The notice authorized by subsection (a) must:

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

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

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within three years after publication of the notice.⁸⁰

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b), unless the claimant commences an action to enforce the claim against the

⁸⁰ MBCA § 14.07(c) states "three years".

company within three years after the publication date of the notice, the claim of each of the following claimants is barred:

- (1) a claimant that **did not receive notice in a record**⁸¹ under Section 703;
- (2) a claimant whose claim was timely sent to the company but not acted on; and
- (3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section or Section 703 may be enforced:

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

(2) except as provided in Section 704A(d), if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

⁸²**SECTION 704A. COURT PROCEEDINGS**

(a) A dissolved limited liability company that has published a notice under section 704 may file an application with the [appropriate court] in the county where the dissolved company's principal office (or, if none in this state, the office of its registered agent) is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved company or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved company, are reasonably estimated to arise after the effective date of dissolution.

⁸¹ MBCA § 14.07(c)(1) refers to "given written notice" rather than "received".

⁸² Source: MBCA, § 14.08.

Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 704(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved limited liability company to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved company.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited liability company.

(d) Provision by the dissolved limited liability company for security in the amount and the form ordered by the court under subsection (a) shall satisfy the dissolved company's obligations with respect to claims that are contingent, have not been made known to the dissolved company or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member or transferee who received assets in liquidation.

⁸³**SECTION 705. ADMINISTRATIVE DISSOLUTION.**

(a) The [Secretary of State] may commence a proceeding under subsections (b) and (c) to dissolve a limited liability company administratively if the company does not:

(1) pay any fee, tax, or penalty required to be paid to the [Secretary of State] not later than [six months] after it⁸⁴ is due;⁸⁵

⁸³ Conformed the Hub, §§ 1-601 and 1-602, but keep in one section to preserve numbering

⁸⁴ QUERY – antecedent of “it” – though discernable – does not follow strict rules of syntax.

⁸⁵ QUERY – whether to return to the previous formulation, putting the time frame earlier in the provision. If so, conform the Hub.

(2) deliver an annual report to the [Secretary of State] not later than [six months] after it⁸⁶ is due; or

(3) have a registered agent in this state for [60] days⁸⁷.

(b) If the [Secretary of State] determines that one or more grounds exist for dissolving a limited liability company, the [Secretary of State] shall serve the company⁸⁸ a notice in a record of the [Secretary of State's] determination.

(c) If a limited liability company, not later than [60] days after service of the notice is effected pursuant to subsection (b), does not correct each ground for dissolution or demonstrate to the satisfaction of the [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of State] shall dissolve the company administratively by signing a **declaration**⁸⁹ of dissolution that recites the ground or grounds for dissolution and its effective date. The [Secretary of State] shall file the original of the declaration and serve a copy on the company⁹⁰.

(d) A limited liability company that is dissolved administratively continues in existence as an entity but, may not carry on any **activities**⁹¹ except as necessary to wind up its activities and liquidate its affairs under Sections 702 and 708, to notify claimants under Sections 703 and 704,⁹² or to apply for reinstatement under Section 706.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

SECTION 706. REINSTATEMENT FOLLOWING ADMINISTRATIVE

⁸⁶ QUERY – antecedent of “it” – though discernable – does not follow strict rules of syntax.

⁸⁷ QUERY – consecutive days?

⁸⁸ Hub, § 1-602(a) includes here “pursuant to Section 1-412”.

⁸⁹ Hub, § 1-602(b) uses “statement of dissolution,” but Re-ULLCA uses that term for a record filed on behalf of an LLC.

⁹⁰ Hub, § 1-602(a) includes here “pursuant to Section 1-412”.

⁹¹ Hub, § 1-602(c) refers to “business.” Re-ULLCA uses (throughout) the broader term “activities.”

⁹² Query whether to add reference to new Section 704A.

DISSOLUTION.

(a) A limited liability company that is dissolved administratively under Section 705 may apply to the [Secretary of State] for reinstatement [within two years]⁹³ after the effective date of dissolution. The application must state:

(1) the name of the company at the time of its administrative dissolution and, if needed, a different name that satisfies Section 108;

(2) the address of the principal office of the limited liability company and the name and address of its registered agent;

(3) the effective date of limited liability company's dissolution; and

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

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

(c) If the [Secretary of State] determines that an application contains the information required by subsection (a), is satisfied that the information is correct, and determines that all payments required to be made to the [Secretary of State] by subsection (b) have been made, the [Secretary of State] shall cancel the **declaration** of dissolution and prepare a statement, of reinstatement that states the [Secretary of State's] determination and the effective date of restatement, file the original of the statement, and serve a copy on the limited liability.

(d) When reinstatement under this section is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company

⁹³ USTEА to be conformed. Suggest conforming the Hub.

resumes carrying on its **activities** as if the administrative dissolution had never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement..

⁹⁴**SECTION 707. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.**

(a) If the [Secretary of State] denies a limited liability company's application for reinstatement following administrative dissolution, the [Secretary of State] shall serve the limited liability company⁹⁵ with a notice in a record that explains the reason or reasons for the denial.

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

SECTION 708. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S ACTIVITIES.

(a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under Section 503:

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

(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502.

(c) If a limited liability company does not have sufficient surplus to comply with

⁹⁴ Conformed to Hub, § 1-604.

⁹⁵ Hub, § 1-602(a) includes here "pursuant to Section 1-412".

subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

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

[ARTICLE] 8

FOREIGN LIMITED LIABILITY COMPANIES

SECTION 801. GOVERNING LAW.⁹⁶

(a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(1) the internal affairs of the company; and

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

(b) A foreign limited liability company may not be precluded from registering to do business in this state because of any difference between the law of the limited liability company's jurisdiction of formation and the law of this state.

(c) A foreign limited liability company's registration to do business in this state does not authorize the company⁹⁷ to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

⁹⁸SECTION 802. REGISTRATION TO DO BUSINESS⁹⁹ IN THIS STATE.

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

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

⁹⁶ Conformed to Hub, § 1-501.

⁹⁷ Hub, §1-501(c) has "it" here, but my third grade teacher would rise from her grave.

⁹⁸ Derived essentially verbatim from Hub, § 1-502 and replacing Re-ULLCA § 808..

⁹⁹ NOTE - "doing business" has been the term of art forever (or at least the mind of this man runneth not to the contrary). However, LLCs are not necessarily "business" entities.

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

(d) A member or manager of a foreign limited liability company is not liable for a debt, obligation, or other liability of the company solely because the company did business in this state without registering to do business in this state.¹⁰⁰

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

¹⁰¹SECTION 803. FOREIGN REGISTRATION STATEMENT. To register to do business in this state, a foreign limited liability company must deliver a foreign registration statement to the [Secretary of State] for filing. The application must state:

(1) the name of the company and, if the name does not comply with Section 108, an alternate name adopted pursuant to Section 805(a);

(2) the name of the jurisdiction under whose law the company is formed,¹⁰²

(3) the street and mailing addresses of the company's principal office and, if the law of the jurisdiction under which the company is formed require the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(4) the name and street and mailing addresses of the company's initial registered

¹⁰⁰ Source: Re-ULLCA, § 808(c), which is substituted (although revised to use the singular form) because Hub, § 105(d) overlaps and does not fit with Re-ULLCA, § 801 (whose prominence and content are important). Hub, § 105(d) (post Style) provides: "The liability of an interest holder or governor of a foreign filing entity or of a partner of a foreign limited liability partnership is governed by the laws of its jurisdiction of formation. Any limitation on that liability is not waived solely because the foreign filing entity or foreign limited liability partnership does business in this state without registering."

¹⁰¹ Conformed to Hub, § 1-503.

¹⁰² Hub, § 1-503(3) refers to "jurisdiction of formation," which is a defined term. Hub, §1-102(19) ("Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity."). The Re-ULLCA language is revised here by deleting "state or other" as superfluous.

agent.¹⁰³

¹⁰⁴SECTION 803A. AMENDMENT OF FOREIGN REGISTRATION

STATEMENT.

(a) A foreign limited liability company registered to do business in this state shall deliver to the [Secretary of State] for filing an amendment to its foreign registration statement if there is a change in:

- (1) the name of the entity;¹⁰⁵
- (2) the name of the jurisdiction under whose law the company is formed;¹⁰⁶
- (3) the address or addresses required by Section 802(3); and
- (4) the name or street or mailing addresses of the company's registered agent in this state.¹⁰⁷

(b) The requirements of Section 802 for an original foreign registration statement apply to an amendment of a foreign registration statement under this section.

¹⁰³ Hub, § 1-504(5) refers simply to “the information required by Section 1-404(a).” Hub, Article 4 is the registered agent article, and § 1-404(a) states:

(a) A registered agent filing must state:

- (1) the name of the represented entity's commercial registered agent; or
- (2) if the entity does not have a commercial registered agent:
 - (A) the name and address of the entity's noncommercial registered agent; or
 - (B) if the entity designates an officer or employee to accept service of process, the title of the office or other position and the address of the business office of that person.

¹⁰⁴ Source: Hub, § 1-504.

¹⁰⁵ Omitted, Hub, § 1-504(a)(2): “the type of entity, including, if it is a limited partnership, whether the entity became or ceased to be a limited liability limited partnership;”.

¹⁰⁶ Hub, § 1-504(a)(3) provides: “the jurisdiction of formation”. See the notes under Section 802 of this draft for an explanation of this draft's use of different language.

¹⁰⁷ Hub, § 1-504(a)(5) provides: “the information required by Section 1-404(a)”.

SECTION 804. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.

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

- (1) maintaining, defending, mediating, arbitrating or settling an action or proceeding;¹⁰⁸
- (2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
- (3) maintaining accounts in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities¹⁰⁹ or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, by any means if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, or security interests in property;
- (8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property;
- (9) conducting an isolated transaction that is not in the course of similar transactions;
- (10) owning, without more, real or personal property;¹¹⁰
- (11) doing business in interstate commerce.

¹⁰⁸ Suggest conform Hub.

¹⁰⁹ Hub refers to "interests," a term defined by Hub § 1-102(16)(E) to mean "a membership interest in a limited liability company." Suggest conform Hub.

¹¹⁰ Source: MBCA, § 15.01(b)(9). The Drafting Committee anticipates returning to this provision, after the 2010 Annual Meeting, to consider how better to indicate when mere passive ownership of land ends and transacting business begins.

(b)

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

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SECTION 805. NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY.

(a) A foreign limited liability company whose name does not comply with Section 108 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 108. A foreign limited liability company that registers under an alternate name under this subsection need not comply with [this state's fictitious or assumed name statute]. After registering to do business in this state with an alternate name, a foreign limited liability company may do business in this state under:

(1) the alternate name;

(2) the name in the jurisdiction under whose law the company is formed, with that jurisdiction clearly identified;¹¹² or

(3) an assumed or fictitious name the company is authorized to use under [this state's fictitious or assumed name statute].

(b) If a foreign limited liability company registered to do business in this state changes its name to one that does not comply with Section 108, it may not do business in this state until it complies with subsection (a) by amending its registration to adopt an alternate name that

¹¹¹ No longer necessary, given the new Section 206A, which is derived from Hub, § 1-206.

¹¹² Hub, § 1-506(a)(3) states: "its entity name, with the addition of its jurisdiction of formation clearly identified;"

complies with Section 108.

¹¹³SECTION 805A. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.

A foreign limited liability company¹¹⁴ registered to do business in this state which converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the [Secretary of State] for filing is deemed to have withdrawn its registration on the effective date of the conversion.¹¹⁵

¹¹⁶SECTION 805B. WITHDRAWAL ON CONVERSION TO NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.¹¹⁷

(a) A foreign limited liability company registered to do business in this state shall deliver a statement of withdrawal¹¹⁸ to the [Secretary of State] for filing if the company converts to a domestic or foreign entity that is not organized, incorporated, or otherwise formed through the public filing of a record, other than a limited liability partnership. The statement must state:

(1) the name of the foreign limited liability company and the name of the jurisdiction under whose law it was formed before the conversion;

¹¹³ From Hub, § 1-508.

¹¹⁴ Hub, § 1-508 includes the word “qualified,” but that term is defined in the Hub and not in this Act.

¹¹⁵ Probably would read more easily as: “A foreign limited liability company registered to do business in this state is deemed to have withdrawn its registration if the company converts to a domestic limited liability partnership or to a domestic entity that is organized, incorporated, or otherwise formed through the delivery of a record to the [Secretary of State] for filing. The deemed withdrawal occurs when the conversion becomes effective.

¹¹⁶ From Hub, § 1-509.

¹¹⁷ Hub, § 1-509 also includes dissolution, but a dissolved foreign LLC might continue doing business for quite some time during winding up. Perhaps substitute notion of “termination.” Whatever decision is made, suggest conforming Hub.

¹¹⁸ Usage problem exists here and in the Hub – specifically, “statement of withdrawal” is used here and for statement used to withdraw a filed record before the record becomes final. Hub, § 1-204, HULLCA, § 205B. Suggest using “cancellation” here.

(2) the type of entity to which it has converted and the jurisdiction whose laws govern the entity's internal affairs;¹¹⁹

(3) that the foreign company surrenders its registration to do business in this state;

(4) that the foreign company revokes the authority of its registered agent to accept service on its behalf;¹²⁰ and

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

(b) After a withdrawal is effective under this section, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Section 807(b).

¹²¹**SECTION 805C. TRANSFER OF REGISTRATION.**

(a) A foreign limited liability company registered to do business in this state that merges into¹²² or converts to a foreign entity required to register with the [Secretary of State] to do business in this state shall¹²³ deliver to the [Secretary of State] for filing an application for transfer of registration. The application must state:

(1) the name of the applicant entity;¹²⁴

¹¹⁹ Sequence of items (2) and (3) reversed to improve conceptual flow.

¹²⁰ The phrase “to accept service on its behalf” may be redundant or perhaps overly restricted. A registered agent has authority to receive notices and demands as well as process.

¹²¹ From Hub, § 1-510.

¹²² Hub, § 1-510(a) states “mergers with” but later language makes clear that this section contemplates a merger in which the foreign LLC disappears. Suggest conforming Hub.

¹²³ Query –what if the foreign LLC disappears during the merger but the resulting organization already has its own registration? Also, suppose the resulting entity intends not to do business in the state. Must that entity file for a transfer and then for a withdrawal of registration?

¹²⁴ Technically speaking, it must be the resulting entity that makes application, b/c the foreign LLC either no longer exists (did not survive a merger) or is no longer an LLC (has been converted). Query, therefore, whether “applicant entity” is clear.

(2) that before the merger or conversion the registration pertained to a foreign limited liability company;

(3) the name of the entity into which the foreign limited liability company has merged¹²⁵ or to which it has been converted, and, if the name does not comply with Section 108, an alternate name adopted pursuant to Section 805(a);

(4) the type of entity into which it has merged or to which it has been converted and the jurisdiction whose law governs **the surviving or converted entity's**¹²⁶ internal affairs; and

(5) the following information regarding the entity into which it has merged or to which it has been converted, if different than the information for the applicant entity:¹²⁷

(A) the street and mailing address of the principal office of **the surviving or converted** entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing address of that office; and

(B) the name and street and mailing address of the entity's registered agent in this state.¹²⁸

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

¹²⁵ See earlier note re: "merge with" = "disappear into".

¹²⁶ The Hub provision does not include the phrase "the surviving or converted entity's" and instead uses merely "its".

¹²⁷ See earlier note re: applicant entity cannot be the foreign LLC.

¹²⁸ Deleted as apparently redundant, Hub, § 1-510(c) ("An application for transfer of registration must be delivered to the [Secretary of State] for filing and takes effect at the time provided in Section 1-203.")

¹²⁹**SECTION 806. TERMINATION OF REGISTRATION.**

(a) The [Secretary of State] may terminate the registration of a foreign limited liability company to do business in this state in the manner provided in subsections (b) and (c) if the company does not:

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

(2) deliver to the [Secretary of State] for filing, not later than 60 days after the due date, its annual report required under Section 209;

(3) appoint and maintain a registered agent as required by Section 113(b); or

(4) deliver to the [Secretary of State] for filing a statement of a change under Section 114 within 30 days after a change has occurred in the name or address of the registered agent.¹³⁰

(b) The [Secretary of State] may terminate the registration of a foreign limited liability company by filing a notice¹³¹ of termination or noting the termination in the record of the [Secretary of State] and by sending a copy of the notice or the information in the notation to the company's registered agent in this state, or if the company does not maintain a proper registered agent in this state, to the company's principal office. The notice or notated information¹³² must state:

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

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

¹²⁹ Conformed to Hub, § 1-511.

¹³⁰ Hub, § 1-511 has no parallel to Section 806(a)(4) and Hub, § 1-511(3) refers to Hub, § 1-402.

¹³¹ The Committee should consider recommending that the Hub change this term of art, because "notice" is a term of art under agency law, under Section 103(b), and under parallel provisions of ULPA and perhaps other "spoke" statutes.

¹³² Suggest conforming Hub.

(c) The authority of a foreign limited liability company to do business in this state ceases on the effective date of the notice of termination or notated information unless before that date the company cures each ground for termination stated in the notice of termination or the notated information.¹³³ If the company cures each ground, the [Secretary of State] shall file a record so stating.¹³⁴

¹³⁵SECTION 807. WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN LIMITED LIABILITY COMPANY.

(a) A foreign limited liability company registered to do business in this state may withdraw its registration by delivering a statement of withdrawal to the [Secretary of State] for filing. The statement of withdrawal must state:

(1) the name of the foreign company and the name of the jurisdiction under whose law it is formed;

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

(3) that the company revokes the authority of its registered agent to accept service on its behalf; and

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

(b) After the withdrawal of the registration of a foreign limited liability company, service of process in any **action or**¹³⁶ proceeding based on a cause of action arising during the time **the company**¹³⁷ was registered to do business in this state may be made¹³⁸ by registered or certified

¹³³ The awkward repeated parallel construction could be avoided by referring to making “a declaration of termination, either by filing a separate record or noting the information”

¹³⁴ Query why require a separate record if the filing office has previously only noted the termination in existing records?

¹³⁵ conformed to Hub, § 1-507.

¹³⁶ Suggest conform Hub.

¹³⁷ Suggest conform Hub.

mail, return receipt requested, or by similar commercial delivery service, addressed to the company at its principal office in accordance with any applicable judicial rules and procedures and with the envelope conspicuously marked “important legal notice” or with words of similar import.¹³⁹ Service is effected under this subsection on the earliest of:

(1) the date the company receives the mail or delivery by a similar commercial delivery service;

(2) the date shown on the return receipt, if signed on behalf of the entity; or

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

(c) If process, notice, or demand cannot be served on a foreign limited liability company pursuant to subsection (b), service may be made by handing a copy to the supervisor, administrator,¹⁴⁰ clerk, or other individual in charge of any regular place of business or activity of the company if the individual served is not a plaintiff in the action.

¹³⁸ Hub, § 1-507(b) provides: “(After the withdrawal of the registration of an entity, service of process in any proceeding based on a cause of action arising during the time it was registered to do business in this state may be made pursuant to Section 1-412.” This draft does not incorporate Hub, Article 4. The language that follows is derived from Hub, § 1-412(b), changed as explained in the next footnote.

¹³⁹ Hub, § 1-412(b) states: “If an entity that filed a registered-agent filing with the [Secretary of State] no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures. The names of the governors and the address of the principal office may be as shown in the most recent [annual] [biennial] report filed with the [Secretary of State].” However, Hub, § 1-211 (annual/biennial report) does not mention governors. The highlighted language is a stand-in for governor information, at least temporarily.

¹⁴⁰ Hub refers to “manager,” but that word is a term of art under LLC law. Query whether to conform Hub.

¹⁴²**SECTION 809. ACTION BY [ATTORNEY GENERAL].** The [Attorney General] may maintain an action to enjoin a foreign limited liability company from doing business in this state in violation of this [act].

¹⁴¹¹⁴¹ All the provisions of this Section now appear in Section 802, except for subsection (d).

¹⁴² Conformed to Hub, § 1-512.

[ARTICLE] 9

ACTIONS BY MEMBERS

SECTION 901. DIRECT ACTION BY MEMBER.

(a) Subject to subsection (b), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this [act] or arising independently of the membership relationship.

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

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

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

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

SECTION 903. PROPER PLAINTIFF.

A derivative action may be maintained only by a person that is a member at the time the action is commenced and:

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

(2) whose status as a member devolved upon the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.¹⁴³

SECTION 904. PLEADING. In a derivative action under Section 902, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the response to the demand by the managers or other members; or

(2) why demand should be excused as futile.¹⁴⁴

SECTION 905. SPECIAL LITIGATION COMMITTEE.

(a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under Section 410 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

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

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

¹⁴³ Conformed to ULPA, § 1002 (returning to the contemporaneous ownership rule).

¹⁴⁴ Conformed to ULPA, § 1004(2)

(A) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(B) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

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

(A) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(B) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

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

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

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

(4) be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the

committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to proceed under the direction of the plaintiff.

SECTION 906. PROCEEDS AND EXPENSES.

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

(1) any proceeds or other benefits of a derivative action under Section 902, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

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

(b) If a derivative action under Section 902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

[ARTICLE] 10

MERGER, CONVERSION, AND DOMESTICATION

SECTION 1001. DEFINITIONS. In this [article]:

- (1) “Constituent limited liability company” means a constituent organization that is a limited liability company.
- (2) “Constituent organization” means an organization that is party to a merger.
- (3) “Converted organization” means the organization into which a converting organization converts pursuant to Sections 1006 through 1009.
- (4) “Converting limited liability company” means a converting organization that is a limited liability company.
- (5) “Converting organization” means an organization that converts into another organization pursuant to Section 1006.
- (6) “Domesticated company” means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to Sections 1010 through 1013.
- (7) “Domesticating company” means the company that effects a domestication pursuant to Sections 1010 through 1013.
- (8) “Governing statute” means the statute that governs an organization’s internal affairs.
- (9) “Organization” means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, statutory trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.
- (10) “Organizational documents” means:

(A) for a domestic or foreign general partnership, its partnership agreement;

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a statutory trust, its certificate of trust and trust instrument;

(E) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(11) “Personal liability” means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(A) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(B) by the organization’s organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(12) “Surviving organization” means an organization into which one or more other

organizations are merged whether the organization preexisted the merger or was created by the merger.

SECTION 1002. MERGER.

(a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, Sections 1003 through 1005, and a plan of merger, if:

- (1) the governing statute of each of the other organizations authorizes the merger;
- (2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and
- (3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

- (1) the name and form of each constituent organization;
- (2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
- (3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
- (4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and
- (5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

SECTION 1003. ACTION ON PLAN OF MERGER BY CONSTITUENT

LIMITED LIABILITY COMPANY.

(a) Subject to Section 1014, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to Section 1014 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the [Secretary of State] for filing under Section 1004, a constituent limited liability company may amend the plan or abandon the merger:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

SECTION 1004. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each constituent limited liability company, as provided in Section 203(a); and

(2) each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited liability company, the company's certificate of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that the [Secretary of State] may use for the purposes of Section 1005(b); and

(8) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited liability company shall deliver the articles of merger for filing in the [office of the Secretary of State].

(d) A merger becomes effective under this [article]:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) compliance with subsection (c); or

(B) subject to Section 205(c), as specified in the articles of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

SECTION 1005. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of [Article] 7;

(9) if the surviving organization is created by the merger:

(A) if it is a limited liability company, the certificate of organization becomes effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service¹⁴⁵ of process for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the [Secretary of State] under this subsection must be made in the same manner and has the same consequences as in Section 116(c) and (d).

SECTION 1006. CONVERSION.

(a) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, Sections 1007 through 1009, and a plan of conversion, if:

- (1) the other organization's governing statute authorizes the conversion;
- (2) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute; and
- (3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

- (1) the name and form of the organization before conversion;

¹⁴⁵ Here the term of art – registered agent – would not be appropriate.

(2) the name and form of the organization after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

SECTION 1007. ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED LIABILITY COMPANY.

(a) Subject to Section 1014, a plan of conversion must be consented to by all the members of a converting limited liability company.

(b) Subject to Section 1014 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the [Secretary of State] for filing under Section 1008, a converting limited liability company may amend the plan or abandon the conversion:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

SECTION 1008. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.

(a) After a plan of conversion is approved:

(1) a converting limited liability company shall deliver to the [Secretary of State] for filing articles of conversion, which must be signed as provided in Section 203(a) and must include;

(A) a statement that the limited liability company has been converted into another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by this [act];

(E) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(F) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the [Secretary of State] may use for the purposes of Section 1009(c); and

(2) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the [Secretary of State] for filing a certificate of organization, which must include, in addition to the information required by Section 201(b):

(A) a statement that the converted organization was converted from another organization;

(B) the name and form of that converting organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the

certificate of organization takes effect; and

(2) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

SECTION 1009. EFFECT OF CONVERSION.

(a) An organization that has been converted pursuant to this [article] is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by law other than this [act], all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of [Article] 7.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability

company was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the [Secretary of State] under this subsection must be made in the same manner and has the same consequences as in Section 116(c) and (d).

SECTION 1010. DOMESTICATION.

(a) A foreign limited liability company may become a limited liability company pursuant to this section, Sections 1011 through 1013, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(b) A limited liability company may become a foreign limited liability company pursuant to this section, Sections 1011 through 1013, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(c) A plan of domestication must be in a record and must include:

(1) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

**SECTION 1011. ACTION ON PLAN OF DOMESTICATION BY
DOMESTICATING LIMITED LIABILITY COMPANY.**

(a) A plan of domestication must be consented to:

(1) by all the members, subject to Section 1014, if the domesticating company is a limited liability company; and

(2) as provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

(b) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the [Secretary of State] for filing under Section 1012, a domesticating limited liability company may amend the plan or abandon the domestication:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was

required to approve the plan.

SECTION 1012. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE DATE.

(a) After a plan of domestication is approved, a domesticating company shall deliver to the [Secretary of State] for filing articles of domestication, which must include:

(1) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

(2) the name of the domesticating company and the jurisdiction of its governing statute;

(3) the name of the domesticated company and the jurisdiction of its governing statute;

(4) the date the domestication is effective under the governing statute of the domesticated company;

(5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by this [act];

(6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(7) if the domesticated company was a foreign limited liability company not authorized to transact business in this state, the street and mailing addresses of an office that the [Secretary of State] may use for the purposes of Section 1013(b).

(b) A domestication becomes effective:

(1) when the certificate of organization takes effect, if the domesticated company

is a limited liability company; and

(2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

SECTION 1013. EFFECT OF DOMESTICATION.

(a) When a domestication takes effect:

(1) the domesticated company is for all purposes the company that existed before the domestication;

(2) all property owned by the domesticating company remains vested in the domesticated company;

(3) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(5) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of [Article] 7.

(b) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject

to suit in this state on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the [Secretary of State] under this subsection must be made in the same manner and has the same consequences as in Section 116(c) and (d).

(c) If a limited liability company has adopted and approved a plan of domestication under Section 1010 providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's certificate of organization must be delivered to the [Secretary of State] for filing stating:

- (1) the name of the company;
- (2) a statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;
- (3) a statement the domestication was approved as required by this [act]; and
- (4) the jurisdiction of formation of the domesticated foreign limited liability company.

SECTION 1014. RESTRICTIONS ON APPROVAL OF MERGERS, CONVERSIONS, AND DOMESTICATIONS.

(a) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:

- (1) the company's operating agreement provides for approval of a merger,

conversion, or domestication with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

¹⁴⁶**SECTION 1014A. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER, CONVERSION, DOMESTICATION.**

(a) A plan of merger, domestication, or conversion of a limited liability company may be amended, subject to Section 1014:

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

(2) by the managers or members of the company in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change:

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

(B) the organizational documents of the surviving, converted, or domesticated organization that will be in effect immediately after the merger, conversion, or domestication becomes effective, except for changes that, under the governing statute of the organization, do not require approval of the persons considered by the governing statute to be owners of the organization; or

¹⁴⁶ This Section is based on Entity Transaction Act, § 204 (pertaining to merger) and has been modified in an attempt to avoid amending each part of this Article to include the abandonment/amendment concept.

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

(b) After a plan of merger, conversion, or domestication has been approved by a limited liability company and before a statement of merger, conversion, or domestication becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan is abandoned under section (b) before a statement of merger, conversion, or domestication is delivered to the [Secretary of State] for filing, the abandonment is effective without further action. If a statement of merger, conversion, or domestication has been delivered to the [Secretary of State] for filing but has not yet become effective, the abandonment is effective only if, before that record becomes effective, a statement of withdrawal pertaining to that record is delivered to the [Secretary of State] for filing under Section 205B and becomes effective under Section 205A.¹⁴⁷

SECTION 1015. [ARTICLE] NOT EXCLUSIVE. This [article] does not preclude an entity from being merged, converted, or domesticated under law other than this [act].

¹⁴⁷ Query whether META has comparable provision to address abandoning after a filing has already been made (but not yet become effective).

[ARTICLE] 11

MISCELLANEOUS PROVISIONS

SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1101A. RESERVATION OF POWER TO AMEND OR REPEAL. The [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all domestic and foreign entities subject to this [act] are governed by the amendment or repeal.

SECTION 1102. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1103. SAVINGS CLAUSE. This [act] does not affect an action commenced, proceeding brought, or right accrued before this [act] takes effect.

SECTION 1104. APPLICATION TO EXISTING RELATIONSHIPS.

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

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

and

(2) except as otherwise provided in subsection (c), a limited liability company formed before [the effective date of this act] which elects, in the manner provided in its operating

agreement or by law for amending the operating agreement, to be subject to this [act].

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

(c) For the purposes applying this [act] to a limited liability company formed before [the effective date of this act]:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for the purposes of applying Section 102(10) and subject to Section 112(d), language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

Legislative Note: *It is recommended that the "all-inclusive" date should be at least one year after the date of enactment but no longer than two years.*

Each enacting jurisdiction should consider whether: (i) this Act makes material changes to the "default" (or "gap filler") rules of jurisdiction's predecessor statute; and (ii) if so, whether subsection (c) should carry forward any of those rules for pre-existing limited liability companies. In this assessment, the focus is on pre-existing limited liability companies that have left default rules in place, whether advisedly or not. The central question is whether, for such limited liability companies, expanding subsection (c) is necessary to prevent material changes to the members' "deal."

For an example of this type of analysis in the context of another business entity act, see the Uniform Limited Partnership Act (2001), § 1206(c).

Section 301 (de-codifying statutory apparent authority) does not require any special transition provisions, because: (i) applying the law of agency, as explained in the Comments to Sections 301 and 407, will produce appropriate results; and (ii) the notion of “lingering apparent authority” will protect any third party that has previously relied on the statutory apparent authority of a member of a particular member-managed LLC or a manager of a particular manager-managed LLC. RESTATEMENT (THIRD) OF AGENCY § 3.11, cmt. c (2006).

It is unnecessary to expand subsection (c) of this Act if the state’s predecessor act is the original Uniform Limited Liability Company Act, revised to provide for perpetual duration.

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

SECTION 1106. EFFECTIVE DATE. This [act] takes effect on