

Alabama's New LLC Act

An Overview of the New Law's Most Significant Changes

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Tripp Watson

Entrepreneur. *noun.*: person who takes upon himself the immediate responsibility, risk, and conduct of a concern of industry

Attorney. *noun.*: one who is turned to; an advocate

Tripp Watson is the founder of The Watson Firm. He is an “Entrepreneur Attorney,” which means that he is an advocate and counselor to risk-takers. Tripp is one of the only individuals in the county who offers business consulting and legal advice specifically tailored to entrepreneurs of all sizes.

From a family of entrepreneurs, Tripp went to law and business schools with the explicit purpose of opening a firm dedicated to advising aspiring and existing entrepreneurs with high-growth businesses. Unlike many attorneys who only advise on business law matters, Tripp is also a business owner who personally knows the stresses and demands of running a small business and who can advice on both the legal and management issues entrepreneurs face.

Because of his legal and business training and years of experience, Tripp provides his clients unique insights into the problems that keep entrepreneurs up at night.



Bar Admissions

- Alabama
- Tennessee

Professional Associations

- Alabama State Bar
- Birmingham Bar Association
 - *Long Range Planning Committee*
 - *Solo/Small Practice Section Committee*
- Birmingham Venture Club
- Central Alabama Angel Network
- Judge James Edwin Horton American Inn of Court
- National Association of Business Economists
 - *President, Alabama Chapter*

Education

- Masters of Business Administration (M.B.A.), Brock School of Business, Samford University
- Juris Doctor (J.D.), Cumberland School of Law, Samford University
- Bachelor of Arts (B.A.), Economics and Politics, Washington and Lee University

Summary of the New Act

Effective on January 1, 2015, the new Alabama Limited Liability Company Law of 2014 is designed to increase the ability to contract, add series segmentation, and decrease statutory requirements and duties. The Act is effective on all LLCs filed after Jan. 1, 2015 and becomes retroactively effective on all LLCs on Jan. 1, 2017. Below are some of the major changes, in no particular order:

- **Elimination of a Written Operating Agreement**
 - Operating Agreements (now called “Limited Liability Company Agreements”) can now be “oral” or “implied”
- **Right to Contract**
 - Many default provisions have been removed, and almost all can be contracted around in the LLC Agreement
- **Series Segmentation**
 - Internal “Series” can divide up liabilities, Members, etc., eliminating the need for multiple LLCs
- **Limitation of Fiduciary Duties**
 - Duties of loyalty and care are only placed on those with “direction and oversight” of the LLC
 - Others can be expanded or restricted in the LLC Agreement
- **Addition of “Good Faith and Fair Dealing” CoA**
 - No Alabama precedent outside of insurance law
 - Will most likely refer to Delaware law as persuasive
- **Ability to Limit Liability of Member to LLC for Breach of Contract**
 - In the LLC Agreement, the LLC can waive its ability to hold a Member liable for breach of contract
- **Reinstatement**
 - A dissolved LLC can come back to life
- **Non-Profits**
 - An LLC no longer has to be for a business purpose, but can be non-profit
- **Adding Remedies Against Non-Performing Members**
 - An LLC can now reduce or even eliminate a Member’s interest for failing to perform according to the LLC Agreement
- **Wrongful Dissociation**
 - Partnership liabilities to remain with the company are now recognized for LLCs
- **Clawback of Distributions**
 - A Member can be liable for receiving distributions in excess of the fair market value of the assets
- **No Guarantee of Access to Records**

- Members can be barred from the books and records in an LLC Agreement

The Alabama Limited Liability Company Law of 2014

What follows is a side-by-side comparison of the existing law with the law as it goes into effect on January 1, 2015. The first section provides a general overview of the section headers, where they have moved from/to and if they have been eliminated or added. The next section provides the complete law side by side so that individual provisions can be compared.

Note: The current law is based upon a wide variety of existing laws, uniform acts, and committee work. Therefore, it does not build upon the existing Alabama LLC law. The comparison is simply to facilitate learning the new provisions of the law.

Legend

- ~~Strikethrough~~ – These provisions have either been completely removed or so altered that they no longer resemble the old meaning
- *Italics* – These provisions have been retained in some form, but are no longer in the same section and have been moved
- **Highlighting** – These sections are new and are either entirely new or so substantially different from the prior law as to have a different meaning

§ 10A-5-1.01. Short title.

This chapter and the provisions of Chapter 1, to the extent applicable to limited liability companies, shall be known and may be cited as the "Alabama Limited Liability Company Law."

§ 10A-5-1.02. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms mean:

(1) Articles of organization. The filing instrument provided for by *Section 10A-5-2.01*, or, if it has been amended or restated, as most recently amended or restated. In the case of a foreign limited liability company, the term includes all documents serving a similar function that are required to be filed to form the limited liability company in the state or other jurisdiction where it is organized. The term articles of organization as used in this chapter is synonymous with the term certificate of formation as defined in *Section 10A-1-1.03(6)*. In this chapter, the use of the term certificate of formation shall be deemed to include articles of organization, and vice-versa. Together with the operating agreement the articles of organization or certificate of formation of a limited liability company constitute its governing documents within the meaning of *Section 10A-1-1.03(40)*.

(2) Business entity. A corporation, limited liability company, partnership, limited partnership, registered limited liability partnership, or other entity organized to engage in business, whether for profit or not, created under the laws of the State of Alabama, predecessor law, or law of another jurisdiction.

(3) Financial rights. Rights to (1) share in profits and losses as provided in *Section 10A-5-5.03*, (2) receive interim distributions as provided in *Section 10A-5-5.04*, and (3) receive termination distributions as provided in *Section 10A-5-7.05*.

§ 10A-5A-1.01. Short title.

This chapter and the provisions of Chapter 1, to the extent applicable to limited liability companies, shall be known and may be cited as the "Alabama Limited Liability Company Law of 2014."

§ 10A-5A-1.02. Definitions.

Notwithstanding *Section 10A-1-1.03*, as used in this chapter, unless the context otherwise requires, the following terms mean:

(a) "Certificate of formation," with respect to a limited liability company, means the certificate provided for by *Section 10A-5A-2.01*, and the certificate as amended or restated.

(b) "Constituent limited liability company" means a constituent organization that is a limited liability company.

(c) "Constituent organization" means an organization that is party to a merger under Article 10.

(d) "Converted organization" means the organization into which a converting organization converts pursuant to Article 10.

(e) "Converting limited liability company" means a converting organization that is a limited liability company.

(f) "Converting organization" means an organization that converts into another organization pursuant to Article 10.

(g) "Disqualified person" means any person who is not a qualified person.

(h) "Distribution" except as otherwise provided in *Section 10A-5A-4.06(e)*, means a transfer of money or other property from a limited liability company, or series thereof, to another person on account of a transferable interest.

(i) "Governing statute" means the statute that governs an organization's internal affairs.

(j) "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed or existing under this chapter.

(k) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the activities and affairs of a limited liability company or series thereof. The limited liability company agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the limited liability company agreement. The limited liability company agreement includes any amendments to the limited liability company agreement.

(4) Limited liability company. An organization formed under the laws of any jurisdiction other than Alabama that is substantially similar to a limited liability company.

(5) Governance rights. All a member's rights as a member of a limited liability company except financial rights, including without limitation, the rights to participate in the management of the limited liability company and to bind the limited liability company as provided in *Section 10A-5-3.03*.

(6) Limited liability company or Domestic limited liability company. An organization that is formed and existing under this chapter.

(7) Member. A person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest in the limited liability company.

(8) Operating agreement. A written agreement of the member or members governing the affairs of a limited liability company and the conduct of its business. The operating agreement, if entered into together with the articles of organization or certificate of formation of a limited liability company constitute its governing documents within the meaning of Section of 10A-1-1.03(40).

(l) "Member" means a person admitted under *Section 10A-5A-4.01* and not dissociated under *Section 10A-5A-6.02*.

(m) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; nonprofit corporation; professional corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(n) "Organizational documents" means:

(1) for a general partnership or foreign general partnership, its partnership agreement and if applicable, its registration as a limited liability partnership or a foreign limited liability partnership;

(2) for a limited partnership or foreign limited partnership, its certificate of formation and partnership agreement, or comparable writings as provided in its governing statute;

(3) for a limited liability company or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable writings as provided in its governing statute;

(4) for a business or statutory trust or foreign business or statutory trust its agreement of trust and declaration of trust, or comparable writings as provided in its governing statute;

(5) for a corporation for profit or foreign corporation for profit, its certificate of formation, bylaws, and other agreements among its shareholders that are authorized by its governing statute, or comparable writings as provided in its governing statute;

(6) for a nonprofit corporation or foreign nonprofit corporation, its certificate of formation, bylaws, and other agreements that are authorized by its governing statute, or comparable writings as provided in its governing statute;

(7) for a professional corporation or foreign professional corporation, its certificate of formation, bylaws, and other agreements among its shareholders that are authorized by its governing statute, or comparable writings as provided in its governing statute; and

(8) for any other organization, the basic writings 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.

(o) "Qualified person," with respect to a limited liability company rendering professional services in this state, means a person authorized by this state or a regulatory authority of this state to own a transferrable interest in that limited liability company.

(p) "Surviving organization" means an organization into which one or more other organizations are merged under Article 10, whether the organization pre-existed the merger or was created pursuant to the merger.

(q) "Transfer" means an assignment, conveyance, deed, bill of sale, lease, mortgage, security

interest, encumbrance, gift, or transfer by operation of law.

(r) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

(s) "Transferrable interest" means a member's right to receive distributions from a limited liability company or a series thereof.

§ 10A-5A-1.03. 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 law other than this chapter.

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

- (1) knows of it;
- (2) receives notification of it;
- (3) has reason to know the fact from all of the facts known to the person at the time in question; or
- (4) is deemed to have notice of the fact under subsection (d).

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person is deemed to have notice of a limited liability company's:

- (1) matters included in the certificate of formation under *Sections 10A-5A-2.01(a)(1), (a)(2), (a)(3), (a)(4)* and, if applicable, (a)(5) upon filing;
- (2) dissolution, 90 days after a statement of dissolution under *Section 10A-5A-7.02(b)(1)* becomes effective;
- (3) merger or conversion, 90 days after a statement of merger or statement of conversion under Article 10 becomes effective; and
- (4) reinstatement, 90 days after a certificate of reinstatement under *Section 10A-5A-7.08* becomes effective.

(e) A member's knowledge, notice or receipt of a notification of a fact relating to the limited liability company is not knowledge, notice or receipt of a notification of a fact by the limited liability company solely by reason of the member's capacity as a member.

§ 10A-5-1.03. Powers.

Unless its certificate of formation provides otherwise, every limited liability company has perpetual duration and succession in its name and has, without limitation, all powers

§ 10A-5A-1.04. Powers and privileges.

- (a) A limited liability company is a separate legal entity. A limited liability company's status for tax purposes shall not affect its status as a separate legal entity formed under this chapter.
- (b) A limited liability company shall possess and may exercise all the powers and privileges

enumerated in Chapter 1, including *Sections 10A-1-2.11, 10A-1-2.12, and 10A-1-2.13.*

§ 10A-5-1.04. Indemnification. (Now 4.10)

~~§ 10A-5-1.05. Unauthorized assumption of powers.~~

~~All persons who assume to act as a limited liability company without authority to do so shall be jointly and severally liable for all debts and liabilities created by their so acting.~~

granted and enumerated by Chapter 1 or by any other law or by its limited liability company agreement, together with any powers incidental thereto, including those powers and privileges necessary or convenient to the conduct, promotion, or attainment of the business, purposes, or activities and affairs of the limited liability company.

(c) A limited liability company may carry on any lawful activity, whether or not for profit.

(d) A series established under this chapter has the power and capacity, in the series' own name, to:

(1) sue and be sued;

(2) contract;

(3) hold and convey title to assets of the series, including real property, personal property, and intangible property; and

(4) grant liens and security interests in assets of the series.

§ 10A-5A-1.05. Governing law.

The law of this state governs:

(a) the organization and internal affairs of a limited liability company, or series thereof;

(b) the liability of a member as a member for the debts, obligations, or other liabilities of a limited liability company, or series thereof;

(c) the authority of the members and agents of a limited liability company, or series thereof;

and

(d) the availability of the assets of a series or the limited liability company for the obligations of another series or the limited liability company.

§ 10A-5A-1.06. Rules of construction.

(a) It is the policy of this chapter and this state to give maximum effect to the principles of freedom of contract and to the enforceability of limited liability company agreements.

(b) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(c) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(d) The use of any gender shall be applicable to all genders. The captions contained in this chapter are for purposes of convenience only and shall not control or affect the construction of this chapter.

(e) *Sections 7-9A-406 and 7-9A-408* of the Uniform Commercial Code, and all successor statutes thereto, do not apply to any interest in a limited liability company, including all rights,

§ 10A-5-1.06. Application of partnership provisions to limited liability companies; classification for federal income tax purposes.

(a) The terms "partnership" and "limited partnership," when used in any chapter or title other than the Alabama Limited Liability Company Law, the Alabama General Partnership Law, and the Alabama Limited Partnership Law, and any successors of those acts, include a limited liability company organized under this chapter, unless the context re-quires otherwise.

(b) Notwithstanding subsection (a), for purposes of taxation, other than Chapter 14A of Title 40, a domestic or foreign limited liability company shall be treated as a partnership unless it is classified otherwise for federal income tax purposes, in which case it shall be classified in the same manner as it is for federal income tax purposes.

(c) A foreign or domestic limited liability company governed by this chapter is subject to any amendment to or repeal of this chapter.

powers, and interests arising under a limited liability company agreement or this chapter. This provision prevails over *Sections 7-9A-406 and 7-9A-408* of the Uniform Commercial Code, and all successor statutes thereto, and is expressly intended to permit the enforcement of the provisions of a limited liability company agreement that would otherwise be ineffective under *Sections 7-9A-406 and 7-9A-408* of the Uniform Commercial Code, and all successor statutes thereto.

(f) Division E of Article 3 of Chapter 1 shall have no application to this chapter.

(g) *Sections 10A-1-1.03(75)*, (84), (91), and (94) shall have no application to this chapter.

(h) *Section 10A-1-2.13(c)* shall have no application to this chapter.

§ 10A-5A-1.07. Application of partnership provisions to limited liability companies; classification for federal income tax purposes.

Subject to *Section 10A-5A-3.01*:

(a) The terms "partnership" and "limited partnership," when used in any chapter or title other than the Alabama Limited Liability Company Law, the Alabama General Partnership Law, and the Alabama Limited Partnership Law, and any successors of those laws, include a limited liability company organized under this chapter, unless the context requires otherwise.

(b) Notwithstanding subsection (a), for purposes of taxation, other than Chapter 14A of Title 40, a limited liability company or foreign limited liability company shall be treated as a partnership unless it is classified otherwise for federal tax purposes, in which case it shall be classified in the same manner as it is for federal tax purposes.

§ 10A-5A-1.08. Limited liability company agreement; scope; function; and limitations.

(a) Except as otherwise provided in subsections (b) and (c):

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

(2) to the extent the limited liability company agreement does not otherwise provide for a matter described in subsection (a)(1), this chapter governs the matter.

(b) (1) To the extent that, at law or in equity, a member or other person has duties, including fiduciary duties, to the limited liability company, or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or other person's duties may be expanded or restricted or eliminated by a written limited liability company agreement, but the implied contractual covenant of good faith and fair dealing may not be eliminated.

(2) A written limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including fiduciary duties, of a member or other person to a limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement, but a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(3) A member or other person shall not be liable to a limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or other person's good faith reliance on the limited liability company agreement.

(4) A limited liability company agreement may provide that:

(A) a member or transferee who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

(B) at the time or upon the happening of events specified in the limited liability company agreement, a member or transferee may be subject to specified penalties or specified consequences.

(5) A penalty or consequence that may be specified under paragraph (4) of this subsection may include and take the form of reducing or eliminating the defaulting member's or transferee's proportionate interest in a limited liability company, subordinating the member's or transferee's transferable interest to that of non-defaulting members or transferees, forcing a sale of that transferable interest, forfeiting the defaulting member's or transferee's transferable interest, the lending by other members or transferees of the amount necessary to meet the defaulting member's or transferee's commitment, a fixing of the value of the defaulting member's or transferee's transferable interest by appraisal or by formula and redemption or sale of the transferable interest at that value, or other penalty or consequence.

(6) A written limited liability company agreement may supersede, in whole or in part, the provisions of Division C of Article 3 of Chapter 1.

(c) A limited liability company agreement may not:

(1) vary the nature of the limited liability company as a separate legal entity under *Section 10A-5A-1.04(a)*;

(2) vary the law applicable under *Section 10A-5A-1.05*;

(3) restrict the rights under this chapter of a person other than a member, dissociated member, or transferee;

(4) vary the power of the court under *Section 10A-5A-2.05*;

(5) eliminate the implied contractual covenant of good faith and fair dealing as provided under *Section 10A-5A-1.08(b)(1)*;

(6) eliminate or limit the liability of a member or other person for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing as provided under *Section 10A-5A-1.08(b)(2)*;

(7) waive the requirements of *Section 10A-5A-4.04(c)*;

(8) vary the law applicable under *Section 10A-5A-4.06(c)*;

(9) reduce the limitations period specified under *Section 10A-5A-4.06(d)* for an action commenced under other applicable law;

(10) waive the prohibition on issuance of a certificate of a transferable interest in bearer form under *Section 10A-5A-5.02(c)*;

(11) vary the power of a court to decree dissolution in the circumstances specified in *Section 10A-5A-7.01(d)* or in *Section 10A-5A-11.09(e)*;

(12) vary the requirement to wind up a limited liability company's activities and affairs as specified in *Section 10A-5A-7.02(a)*;

(13) vary the provisions of *Section 10A-5A-8.01*;

(14) vary the right of a member under *Section 10A-5A-10.09*; or

(15) waive the requirements of *Section 10A-5A-11.02(b)*.

§ 10A-5A-1.09. Limited liability company agreement; effect on limited liability company and persons admitted as members.

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

(b) A person that is admitted as a member of a limited liability company becomes a party to and assents to the limited liability company agreement except as provided in *Section 10A-5A-4.04(c)*.

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

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

§ 10A-5A-1.10. Limited liability company agreement; effect on third parties and relationship to writings effective on behalf of limited liability company.

(a) If a limited liability company agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, except that the approval of any person may be waived by that person and any conditions may be waived by all persons for whose benefit those conditions were intended.

(b) A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth in the limited liability company agreement.

(c) 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 limited liability company agreement. A transferee and a dissociated member are bound by the limited liability company agreement.

(d) If a writing that has been delivered by a limited liability company for filing in accordance with Article 3 of Chapter 1 and has become effective conflicts with a provision of the limited liability company agreement:

(1) The limited liability company agreement prevails as to members, dissociated members, and transferees; and

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

§ 10A-5-2.01. Formation.

One or more persons may form a limited liability company by filing a certificate of formation for the limited liability company with the judge of probate of the county in which the initial registered office of the limited liability company is

§ 10A-5A-2.01. Formation.

(a) In order to form a limited liability company, one or more organizers must execute a certificate of formation and deliver it for filing to the filing officer provided for in subsection

(e). Notwithstanding *Section 10A-1-3.05*, the certificate of formation shall set forth:

(1) the name of the limited liability company, which must comply with Article 5 of Chapter 1;

located pursuant to Article 3 of Chapter 1.

§ 10A-5-2.02. Supplemental Provisions required in the Certificate of Formation.

~~In addition to the information required for a certificate of formation by Section 10A-1-3.05, the certificate of formation of a limited liability company shall set forth:~~

~~(1) The right, if given, of the member or members to admit additional members, and the terms and conditions of the admission.~~

~~(2) The circumstances, if any, under which the cessation of membership of one or more members will result in dissolution of the limited liability company.~~

~~(3) If the limited liability company is to be managed by one or more managers, the certificate of formation shall so state and shall set out the names and the mailing addresses of the manager or managers who are to serve as managers until their successors are elected and begin serving.~~

§ 10A-5-2.03. Amendment of certificate of formation.

(a) The certificate of formation may be amended by delivering the amendment to the judge of probate in whose office the certificate of formation is filed. The amendment shall set forth:

- (1) The name of the limited liability company.
- (2) The date of filing of the certificate of formation.
- (3) The amendment(s).

(b) Within 30 days after the happening of any of the following events, an amendment to the certificate of formation shall be filed to reflect the occurrence of such event or events:

- (1) There is a change in the name of the limited liability company.
- (2) There is a false or erroneous statement in the certificate of formation.
- (3) There is a change in the period of duration of the limited

- (2) the address of the registered office required by Article 5 of Chapter 1;
- (3) the name of the registered agent at the registered office required by Article 5 of Chapter 1;
- (4) a statement that there is at least one member of the limited liability company;
- (5) if applicable, a statement as provided in Section 10A-5A-11.02(b)(3); and
- (6) any other matters the members determine to include therein.

(b) A limited liability company is formed when its certificate of formation becomes effective in accordance with Article 4 of Chapter 1.

(c) The fact that a certificate of formation has been filed and is effective in accordance with Article 4 of Chapter 1 is notice of the matters required to be included by Subsections (a)(1), (a)(2), (a)(3), and (a)(4) and if applicable, (a)(5), but is not notice of any other fact.

(d) A limited liability company agreement shall be entered into either before, after, or at the time of the filing of the certificate of formation and, whether entered into before, after, or at the time of the filing, may be made effective as of the filing of the certificate of formation or at any other time or date provided in the limited liability company agreement.

(e) A certificate of formation shall be delivered for filing to the judge of probate of the county in which the initial registered office of the limited liability company is located pursuant to Article 4 of Chapter 1 unless the certificate of formation is required to be delivered for filing to a different filing officer under Article 10.

§ 10A-5A-2.02. Amendment or restatement of certificate of formation.

Notwithstanding Division B of Article 3 of Chapter 1:

(a) A certificate of formation may be amended at any time.

(b) A certificate of formation may be restated with or without amendment at any time.

(c) To amend its certificate of formation, a limited liability company must deliver a certificate of amendment for filing to the filing officer provided for in subsection (g) which certificate of amendment shall state:

- (1) the name of the limited liability company;
- (2) the date of filing of its certificate of formation, and of all prior amendments and the filing office or offices where filed; and
- (3) the changes the amendment makes to the certificate of formation as most recently amended or restated.

(d) To restate its certificate of formation, a limited liability company must deliver a restated certificate of formation for filing to the filing officer provided for in subsection (g). A restated certificate of formation must:

- (1) be designated as such in the heading;

liability company stated in the certificate of formation.

(4) The members desire to make a change in any other statement in the certificate of formation to accurately represent the agreement between them.

(c) The form for evidencing an amendment to the certificate of formation of a limited liability company shall contain terms and provisions consistent with this chapter. The amendment shall be approved, unless the certificate of formation requires a greater vote, by a majority vote of the members entitled to vote.

(2) state the limited liability company's name;

(3) state the date of the filing of its certificate of formation, and of all prior amendments and the filing office or offices where filed; and

(4) set forth any amendment or change effected in connection with the restatement of the certificate of formation.

Any such restatement that effects an amendment shall be subject to any other provision of this chapter, not in-consistent with this section, which would apply if a separate certificate of amendment were filed to effect the amendment or change.

(e) The original certificate of formation, as theretofore amended, shall be superseded by the restated certificate of formation and thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(f) An amended or restated certificate of formation may contain only provisions that would be permitted at the time of the amendment if the amended or restated certificate of formation were a newly filed original certificate of formation.

(g) If a limited liability company is not an organization described in *Section 10A-1-4.02(c)(4)*, then that limited liability company shall deliver the certificate of amendment or the restated certificate of formation for filing with the judge of probate in whose office the original certificate of formation is filed. If a limited liability company is an organization described in *Section 10A-1-4.02(c)(4)*, then that limited liability company shall deliver the certificate of amendment or the restated certificate of formation for filing with the Secretary of State.

§ 10A-5A-2.03 Effect of filing amendment or restatement of certificate of formation.

(a) The filing of a certificate of amendment to the certificate of formation shall have the effect, and shall take effect, as provided in *Section 10A-1-3.14*.

(b) The filing of a restated certificate of formation shall have the effect, and shall take effect, as provided in *Section 10A-1-3.18*.

§ 10A-5-2.04. Execution of documents.

(a) Unless otherwise specified in this chapter, each document required by this chapter to be filed in the office of the judge of probate shall be executed in the following manner:

(1) The articles of organization shall be signed by one or more members named therein or an organizer.

(2) An amendment shall be signed by at least one member.

§ 10A-5A-2.04. Execution of documents.

(a) A writing delivered to a filing officer for filing pursuant to this chapter must be signed as provided by this section.

(1) A limited liability company's initial certificate of formation must be signed by at least one organizer.

(2) A writing signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.

(3) If an amendment requires the adding of a new member, the amendment shall be signed by a person who was a member before the amendment was filed and by the new member.

(4) Articles of dissolution shall be signed by at least one member, as authorized pursuant to the operating agreement.

(b) Any person may sign a document required by this chapter by an attorney-in-fact, but a power of attorney relating to the admission of a member shall specify that admission of a new member is an authorized act of the attorney-in-fact.

(c) The execution of articles of organization by a member or an organizer, or the execution of articles, of dissolution, or of an amendment by a member constitutes an affirmation that the facts therein are true under penalties for per-jury prescribed by Section 13A-10-103 or its successor.

§ 10A-5-2.05. Pre-formation transactions.

~~A limited liability company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the certificate of formation has been filed. Persons engaged in pre-filing activities other than those authorized by this section shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities as provided in Section 10A-5-1.05. In no event shall the activities of an organizer authorized under this chapter result in liability for such person under this section. This section shall not be interpreted to invalidate any debts, contracts, or liabilities of the limited liability company incurred on behalf of the limited liability company prior to the filing of its certificate of formation.~~

§ 10A-5-2.06. Records to be kept; right of inspection. (Now 4.09)

(3) A writing filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the limited liability company's activities and affairs under Section 10A-5A-7.03 or a person appointed or designated under Section 10A-5A-7.03 to wind up those activities and affairs.

(4) Any other writing must be signed by the person on whose behalf the writing is delivered to the filing officer.

(b) Any writing to be filed under this chapter may be signed by an agent, including an attorney-in-fact. Powers of attorney relating to the signing of the writing need not be delivered to the filing officer.

§ 10A-5A-2.05. Signing and filing pursuant to judicial order.

(a) If a person required by this chapter to sign a writing or deliver a writing to a filing officer for filing under this chapter does not do so, any other person that is aggrieved by that failure may petition the circuit court in the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state then the circuit court for the county in which the limited liability company's most recent registered office is located, to order:

(1) the person to sign the writing;

(2) the person to deliver the writing to the filing officer for filing; or

(3) the filing officer to file the writing unsigned.

(b) If a petitioner under subsection (a) is not the limited liability company or foreign limited liability company to whom the writing pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action. A person aggrieved under subsection (a) may seek the remedies provided in subsection (a) in a separate action against the person required to sign or deliver the writing or as a part of any other action concerning the limited liability company or foreign limited liability company in which the person required to sign or deliver the writing is made a party.

(c) A writing filed unsigned pursuant to this section is effective without being signed.

(d) A court may award reasonable expenses, including reasonable attorneys' fees, to the party or parties who prevail, in whole or in part, with respect to any claim made under subsection (a).

~~§ 10A-5-2.07. Parties to actions.~~

~~Neither a member nor a manager of a limited liability company is a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's or manager's rights against or liability to the limited liability company.~~

§ 10A-5A-2.06. Certificate of existence or qualification.

(a) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the writings filed in the office of the Secretary of State show that the limited liability company has been formed under the laws of this state. A certificate of existence shall reflect only the information on file with the Secretary of State. A certificate of existence must state:

(1) the limited liability company's name;

(2) that the limited liability company was formed under the laws of this state, the date of formation, and the filing office in which the certificate of formation was filed;

(3) whether the limited liability company has delivered to the Secretary of State for filing a statement of dissolution;

(4) whether the limited liability company has delivered to the Secretary of State for filing a certificate of reinstatement; and

(5) other facts of record in the office of the Secretary of State that are specified by the person requesting the certificate.

(b) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of qualification for a foreign limited liability company if the writings filed in the office of the Secretary of State show that the Secretary of State has filed an application for registration for authority to conduct activities and affairs in this state and the registration has not been revoked, withdrawn or terminated. A certificate of qualification must state:

(1) the foreign limited liability company's name and any alternate name adopted for use in this state;

(2) that the foreign limited liability company is authorized to conduct activities and affairs in this state;

(3) that the Secretary of State has not revoked the foreign limited liability company's registration;

(4) that the foreign limited liability company has not filed with the Secretary of State a certificate of withdrawal or otherwise terminated its registration; and

(5) other facts of record in the office of the Secretary of State that are specified by the person requesting the certificate.

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of qualification issued by the Secretary of State is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to conduct activities and affairs in this state.

~~§ 10A-5-3.01. Business transactions of a member with the limited liability company.~~

~~Except as otherwise provided in the operating agreement, a member may lend money to and transact any lawful business with the limited liability company and, subject to other applicable law, have the same rights and obligations with respect thereto as a person who is not a member.~~

§ 10A-5-3.02. Liability of members to third parties.

(a) Except as otherwise provided in this chapter, a member of a limited liability company is not liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(b) A member may be liable to creditors of the limited liability company for a written agreement to make a contribution to the limited liability company.

(c) A member of a limited liability company may become liable by reason of the member's own acts or conduct.

§ 10A-5-3.03. Agency power of members and managers; duties.

(a) Except as provided in subsection (b), every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the

§ 10A-5A-3.01. Liability of members to third parties.

A member of a limited liability company is not liable, solely by reason of being a member, for a debt, obligation, or liability of the limited liability company or a series thereof, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, agent, or employee of the limited liability company or a series thereof.

§ 10A-5A-3.02. Power to bind limited liability company.

No person shall have the power to bind the limited liability company, or a series thereof, except:

(a) to the extent the person is authorized to act as the agent of the limited liability company or a series thereof under or pursuant to the limited liability company agreement;

(b) to the extent the person is authorized to act as the agent of the limited liability company or a series thereof pursuant to *Sections 10A-5A-4.07, 10A-5A-7.03 or 10A-5A-11.11*; or

(c) to the extent provided by law other than this chapter.

limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(b) If the certificate of formation provides that management of the limited liability company is vested in a manager or managers, both of the following conditions apply:

(1) No member, acting solely in the capacity as member, is an agent for the limited liability company.

(2) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(c) An act of a manager or a member which is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with the operating agreement at the time of the transaction or at any other time.

(d) No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction.

(e) In a limited liability company managed by its members under subsection (a) of *Section 10A-5-4.01*, the only fiduciary duties a member owes to the company or to its other members are the duty of loyalty and the duty of care imposed by subsections (f) through (g).

(f) A member's duty of loyalty to a member-managed limited liability company and its members is limited to each of the following:

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

member in the conduct or winding up of the limited liability company's business or derived from a use by the member of the limited liability company's property, including the appropriation of the limited liability company's opportunity.

(2) To refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's business as or on behalf of a party having an interest adverse to the limited liability company.

(3) To refrain from competing with the limited liability company in the conduct of the limited liability company's business before the dissolution of the limited liability company.

(g) A member's duty of care to a member-managed limited liability company and its other members in the conduct or winding up of the limited liability company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(h) A member shall discharge the duties to a member-managed company and its other members under this chapter and under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(i) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(j) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

(k) If the management of a limited liability company is vested in a manager or managers pursuant to subsection (b) of *Section 10A-5-4.01*, each of the following applies:

(1) The only duty a member who is not also a manager owes to the company or to the other members solely by reason of being a member is to not disclose or otherwise use information described in *Sections 10A-1-3.31* and *10A-5-2.06(a)*, whether

or not obtained under the authority of *Sections 10A-1-3.32 and 10A-5-2.06(b)*, to the detriment of the company or the other members.

(2) A manager is held to the same standards of conduct prescribed for members in subsections (f) through (i).

(3) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in subsections (f) through (i) to the extent that the member exercises the managerial authority vested in a manager by this chapter.

(4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (f) through (i) to the extent of the managerial authority delegated to the members by the operating agreement.

(l) The governing documents may modify the duties contained in subsections (e) through (k), but may not provide for any of the following:

(1) Unreasonably restrict a right to information or access to records under *Sections 10A-1-3.31, 10A-1-3.32, 10A-1-3.33, and 10A-5-2.06*.

(2) Eliminate the duty of loyalty under subsection (f) of this section or under subsection (e) of *Section 10A-5-6.06*, but the governing documents of the limited liability company may provide for any of the following:

a. Identify types or categories of activities that do not violate the duty of loyalty.

b. Specify the number or percentage of members or percentage of membership interests or number or percent-age of disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(3) Unreasonably reduce the duty of care under subsection (g) of this section or subsection (e) of *Section 10A-5-6.06*.

(4) Eliminate the obligation of good faith and fair dealing under subsection (h), but the operating agreement may determine the standards by which the performance of the

obligation is to be measured, if the standards are not manifestly unreasonable.

~~§ 10A-5-4.01. Management of the limited liability company; creation of classes; voting; rights; meetings. (Repealed effective January 1, 2017)~~

~~—(a) Unless otherwise stated in the certificate of formation, the management of the limited liability company is vested in its members. Subject to any provisions in the operating agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the business or affairs of the limited liability company and to make all decisions with respect thereto.~~

~~(b) If the certificate of formation vests management of the limited liability company in one or more managers, then the managers shall have the power to manage the business or affairs of the limited liability company as provided in the operating agreement. Except as otherwise provided in the operating agreement, the managers:~~

~~—(1) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of more than one-half the number of members.~~

~~—(2) Need not be members of the limited liability company or natural persons.~~

~~—(3) Unless they have been earlier removed or have earlier resigned, shall hold office until their successors have been elected and qualified.~~

~~(c) The certificate of formation of a limited liability company may provide for classes or groups of members or managers having such relative rights, powers, and duties as so provided, and may make provision for the future creation of additional classes or groups of members or managers having such relative rights, powers, and duties as may be created in the manner provided in the certificate of formation, including~~

§ 10A-5A-4.01. Admission of members.

(a) The initial member or members of a limited liability company are admitted as a member or members upon the formation of the limited liability company.

(b) After formation of a limited liability company, a person is admitted as a member of the limited liability company:

(1) as provided in the limited liability company 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 occurrence of the dissociation of the last remaining member:

(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and

(B) the designated person consents to be admitted as a member effective as of the date the last person to have been a member ceased to be a member.

(c) A person may be admitted as a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company. A person may be admitted as the sole member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

~~rights, duties, and powers senior to existing classes and groups of members or managers. The certificate of formation may provide for taking action, including the amendment of the certificate of formation or operating agreement, without the vote or approval of one or more members or classes or groups of members or managers, including an action to create one or more classes of interests in the company that were not previously outstanding, but are authorized under the certificate of formation.~~

~~(d) The certificate of formation may grant to all or certain identified members or managers or a specified class or group of members or managers the right to vote separately or with all or any class or group of members or managers on any matter. Voting by members or managers may be on a per capita, number, financial interest, class, group, or any other basis.~~

~~(e) The governing documents may, with respect to any rights to vote, set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members or managers or class or group of members or managers, waiver of the notice, action by consent without a meeting, establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.~~

§ 10A-5-4.02. Limited liability company property.

(a) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company and title to any estate so acquired shall vest in the limited liability company itself rather than in the members individually.

(b) All property originally contributed to the limited liability company or subsequently acquired by a limited liability company by purchase or otherwise is limited liability company property. A member has no interest in specific limited liability

§ 10A-5A-4.02. Limited liability company property.

A member has no interest in any specific property of a limited liability company or a series thereof.

company property.

(c) Except as provided in subsection (d), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(d) If the certificate of formation provides that management of the limited liability company is vested in a manager or managers, title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; but a member, acting solely as a member, shall not have that authority.

(e) Title to property of the limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, even if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

(f) Property transferred under subsections (c), (d), and (e) may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under *Section 10A-5-3.03*, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(g) Title to property of the limited liability company that is held in the name of one or more persons other than the limited liability company, without an indication in the instrument transferring title to the property to them in their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred

free of any claims of the limited liability company or the members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company.

§ 10A-5-4.03. Operating agreements.

~~(a) The member or members of a limited liability company may enter into an operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business, and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business that are not inconsistent with the laws of this state or the articles of organization.~~

~~(b) In the event there is more than one member, any operating agreement shall initially be agreed to, in writing, by all of the members. If an operating agreement does not provide for the method by which an operating agreement may be amended, then all of the members shall agree in writing to any amendment.~~

~~(c) A court of equity may enforce an operating agreement by injunction or by other relief that the court in its discretion determines to be fair and appropriate in the circumstances. As an alternative to injunctive or other equitable relief, when the provisions of Section 10A-5-7.02 are applicable, the court may order dissolution of the limited liability company.~~

§ 10A-5-4.04. Derivative actions. (Now 9.01)

§ 10A-5-5.01. Contribution.

The contributions of a member to the limited liability

§ 10A-5A-4.03. Contribution.

A contribution by a member may be made to a limited liability company as agreed upon by

company may be in cash, property, services previously rendered, or a promissory note or other binding obligation to pay cash, convey property, or to render services.

§ 10A-5-5.02. Liability for contributions.

(a) Except as provided in the certificate of formation, a member is obligated to the limited liability company to perform any promise to pay cash or convey property or to render services, even if the member is unable to perform because of death, disability, or any other reason. A member who does not perform such a promise is obligated at the option of the limited liability company to pay cash equal to the amount or value of the portion of the contribution that has not been paid, conveyed, or rendered.

(b) The operating agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make, or who fails to pay any agreed assessment that the member is obligated to make, shall be subject to a reasonable penalty for such failure. The penalty may take the form of reducing the defaulting member's proportionate interest in the limited liability company, subordinating the member's interest to that of nondefaulting members, a forced sale of the member's interest in compliance with reasonable procedures for notice and disposition, forfeiture of the member's interest on compliance with reasonable procedures for notice, the lending of the amount necessary to meet the member's commitment by other members, affixing of the value of the member's interest by appraisal or by suitable formula and redemption or sale of the member's interest at that value, or other reasonable penalty.

(c) Unless otherwise provided in the operating agreement, the obligation of a member to perform any promise with respect to a contribution to the capital of the limited liability company, or to return money or other property paid or distributed in violation of this chapter, may be compromised only by consent

the members. A contribution by a member associated with a series may be made to that series as agreed upon by the members associated with that series.

§ 10A-5A-4.04. Liability for contribution.

(a) A member's obligation to make a contribution to a limited liability company, or a series thereof, is not excused by the member's death, disability, or other inability to perform personally. If a member does not make a contribution required by an enforceable promise, the member or the member's estate is obligated, at the election of the limited liability company, or series thereof, to contribute money equal to the value of the portion of the contribution that has not been made. The foregoing election shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company, or series thereof, may have under the limited liability company agreement or applicable law.

(b) (1) The obligation of a member to make a contribution to a limited liability company may be compromised only by consent of all the members. A conditional obligation of a member to make a contribution to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

(2) The obligation of a member associated with a series to make a contribution to the series may be compromised only by consent of all the members associated with that series. A conditional obligation of a member to make a contribution to a series may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of that series before the time the call occurs.

(3) Subsection (b)(1) shall not apply to a member's obligation to make a contribution to a series of a limited liability company.

(c) A promise by a member to make a contribution to a limited liability company, or a series thereof, is not enforce-able unless set forth in a writing signed by the member.

of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, or whose claim arises, after filing of the certificate of formation or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation.

§ 10A-5-5.03. Sharing of profits and losses.

The profits and losses, income, deductions, and credits, and items of income, deduction, and credits of the limited liability company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not so provide, profits and losses, income, deductions, and credits, and items of income, deductions, and credits shall be allocated on the basis of the pro rata value of the contributions made by each member to the extent they have been made and not returned.

§ 10A-5-5.04. Interim distributions of property; impairment of capital.

(a) Except as provided in this section or in the operating agreement, members are entitled to receive distributions from the limited liability company in proportion to their respective rights to share in profits under *Section 10A-5-5.03*.

(b) Subsection (a) shall not apply to any of the following:

(1) Distributions on dissolution.

(2) Distributions governed by a contrary provision in the operating agreement.

(c) No distribution may be made unless, after the distribution is made, the assets of the limited liability company are sufficient to pay all liabilities of the limited liability company except liabilities to members on account of their contributions.

(d) Unless otherwise provided in the operating agreement, a

§ 10A-5A-4.05. Sharing of and right to distributions before dissolution.

(a) (1) All members shall share equally in any distributions made by a limited liability company before its dissolution and winding up.

(2) A member has a right to a distribution before the dissolution and winding up of a limited liability company as provided in the limited liability company agreement. A decision to make a distribution before the dissolution and winding up of the limited liability company is a decision in the ordinary course of activities and affairs of the limited liability company. A member's dissociation does not entitle the dissociated member to a distribution.

(3) A member does not have a right to demand and receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in *Section 10A-5A-7.06(c)*, a limited liability company may dis-tribute an asset in kind if each member receives a percentage of the asset in proportion to the member's share of distributions.

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

(b) (1) All members associated with a series shall share equally in any distributions made by the series before its dissolution and winding up.

(2) A member associated with a series has a right to a distribution before the dissolution and winding up of the series as provided in the limited liability company agreement. A decision of the series to make a distribution before the dissolution and winding up of the series is a decision in the ordinary course of activities and affairs of the series. A member's dissociation from a series with which the member is associated does not entitle the dissociated member to a distribution from the series.

(3) A member associated with a series does not have a right to demand and receive a distribution from the series in any form other than money. Except as otherwise provided in *Section 10A-5A-11.14(c)*, a series may distribute an as-set in kind if each member associated with the series receives a percentage of the asset in proportion to the member's share of distributions from the series.

member has no right to receive and may not be required to accept a distribution in kind.

~~§ 10A-5-5.05. Purchase of interest of member whose membership has ceased.~~

~~Unless the governing documents of a limited liability company or a private agreement provide for the purchase of the interest of a former member whose membership has ceased, neither the limited liability company nor its members shall be obligated to purchase the interest of a former member whose membership has ceased.~~

(4) If a member associated with a series becomes entitled to receive a distribution from the series, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution.

(c) Subsection (a) shall not apply to a distribution made by a series.

§ 10A-5A-4.06. Limitation on distributions and liability for improper distributions.

(a) (1) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their transferable interests and liabilities for which the recourse of creditors is limited to specific property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of the property that is subject to a liability for which recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of the property exceeds that liability.

(2) A member who receives a distribution in violation of subsection (a)(1) or the limited liability company agreement, and who knew at the time of the distribution that the distribution violated subsection (a)(1) or the limited liability company agreement, shall be liable to the limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a)(1) or the limited liability company agreement, and who did not know at the time of the distribution that the distribution violated subsection (a)(1) or the limited liability company agreement, shall not be liable for the amount of the distribution.

(b) (1) A series shall not make a distribution to a member associated with the series to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the series, other than liabilities to members associated with the series on account of their transferable interests and liabilities for which the recourse of creditors is limited to specific property of the series, exceed the fair value of the assets of the series, except that the fair value of the property that is subject to a liability for which recourse of creditors is limited shall be included in the assets of the series only to the extent that the fair value of the property exceeds that liability.

(2) A member associated with a series who receives a distribution in violation of subsection (b)(1) or the limited liability company agreement, and who knew at the time of the distribution that the distribution violated subsection (b)(1) or the limited liability company agreement, shall be liable to that series for the amount of the distribution. A member associated with a series who receives a distribution in violation of subsection (b)(1) or the limited liability company

agreement, and who did not know at the time of the distribution that the distribution violated subsection (b)(1) or the limited liability company agreement, shall not be liable for the amount of the distribution.

(3) Subsection (a) shall not apply to a distribution made by a series.

(c) Except as provided in subsection (d), this section shall not affect any obligation or liability of a member under other applicable law for the amount of a distribution.

(d) An action under this section or other applicable law is barred if not commenced within two years after the distribution.

(e) For purposes of *Sections 10A-5A-4.06(a)* and *10A-5A-4.06(b)*, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of the limited liability company's activities and affairs under a bona fide retirement plan or other benefits program.

(f) This section shall not apply to distributions made in accordance with *Section 10A-5A-7.06*.

§ 10A-5A-4.07. Direction and oversight of the limited liability company.

(a) The limited liability company agreement of a limited liability company may provide that the activities and affairs of the limited liability company shall be under the direction, and subject to the oversight, of: (1) its members; (2) one or more managers; or (3) such other governance structure as provided in the limited liability company agreement. The limited liability company agreement of a limited liability company may provide that the activities and affairs of a series shall be under the direction, and subject to the oversight, of: (1) the members associated with that series; (2) one or more managers; or (3) such other governance structure as provided in the limited liability company agreement.

(b) If the limited liability company agreement does not specify who shall direct and oversee the activities and affairs of the limited liability company or a series thereof:

(1) (A) The activities and affairs of the limited liability company shall be under the direction, and subject to the oversight, of its members.

(B) The activities and affairs of a series shall be under the direction, and subject to the oversight, of the members associated with the series.

(C) Subsection (b)(1)(A) shall not apply to the activities and affairs of a series.

(2) (A) Except as provided in subsection (b)(3), a matter in the ordinary course of activities and affairs of the limited liability company may be decided by a majority of the members.

(B) Except as provided in subsection (b)(3), a matter in the ordinary course of activities and affairs of a series may be decided by a majority of the members associated with the series.

(C) Subsection (b)(2)(A) shall not apply to matters of a series.

- (3) (A) The consent of all members is required to:
- (i) amend the limited liability company agreement;
 - (ii) file a petition of the limited liability company for relief under Title 11 of the United States Code, or a successor statute of general application, or a comparable federal, state, or foreign law governing insolvency;
 - (iii) undertake any act outside the ordinary course of the limited liability company's activities and affairs; and
 - (iv) undertake, authorize, or approve any other act or matter for which this chapter requires the consent of all members.
- (B) The consent of all members associated with a series is required to:
- (i) undertake any act outside the ordinary course of the series' activities and affairs; and
 - (ii) undertake, authorize, or approve any other act or matter for which this chapter requires the consent of all the members associated with a series.
- (c) Any matter requiring the consent of members may be decided 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 writing, personally or by the member's agent.
- (d) This chapter does not entitle a member to remuneration for services performed for a limited liability company, except for reasonable compensation for services rendered in winding up the activities and affairs of the limited liability company.

§ 10A-5A-4.08. Duties of persons with direction and oversight.

- (a) (1) The duties a person who has the authority to direct and oversee the activities and affairs of a limited liability company owes to the limited liability company and to the members of the limited liability company include the duty of loyalty and the duty of care as described in subsections (b) and (d)(1).
- (2) The duties a person who has the authority to direct and oversee the activities and affairs of a series of a limited liability company owes to that series and the members associated with that series include the duty of loyalty and the duty of care as described in subsections (c) and (d)(2).
- (b) The duty of loyalty of a person described in subsection (a)(1) to a limited liability company and its members includes each of the following:
- (1) To account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by that person in the conduct or winding up of the limited liability company's activities and affairs or derived from a use by that person of the limited liability company's property, including the appropriation of the limited liability company's opportunity.
 - (2) To refrain from dealing with the limited liability company in the conduct or winding up of

the limited liability company's activities and affairs as or on behalf of a party having an interest adverse to the limited liability company.

(3) To refrain from competing with the limited liability company in the conduct of the limited liability company's activities and affairs before the dissolution of the limited liability company.

(c) The duty of loyalty of a person described in subsection (a)(2) to a series of a limited liability company and the members associated with that series includes each of the following:

(1) To account to the series and to hold as trustee for it any property, profit, or benefit derived by that person in the conduct or winding up of the series' activities and affairs or derived from a use by that person of the series' property, including the appropriation of the series' opportunity.

(2) To refrain from dealing with the series in the conduct or winding up of the series' activities and affairs as or on behalf of a party having an interest adverse to the series.

(3) To refrain from competing with the series in the conduct of the series' activities and affairs before the dissolution of the series.

(d) (1) The duty of care of a person described in subsection (a)(1) to a limited liability company and its members in the conduct or winding up of the limited liability company's activities and affairs includes refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(2) The duty of care of a person described in subsection (a)(2) to a series of a limited liability company and the members associated with that series in the conduct or winding up of that series' activities and affairs includes refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(e) (1) A person described in subsection (a)(1) shall discharge the duties to a limited liability company and its members under this chapter and under the limited liability company agreement and exercise any rights consistently with the implied contractual covenant of good faith and fair dealing.

(2) A person described in subsection (a)(2) shall discharge the duties to a series of a limited liability company and the members associated with that series under this chapter and under the limited liability company agreement and exercise any rights consistently with the implied contractual covenant of good faith and fair dealing.

(f) A person described in subsection (a) does not violate a duty or obligation under this chapter or under the limited liability company agreement merely because that person's conduct furthers that person's own interest.

(g) (1) Other than the implied contractual covenant of good faith and fair dealing, the only duty a member who does not have the authority to direct and oversee the activities and affairs of a limited liability company owes to a limited liability company or to the other members solely by reason of being a member is to not disclose or otherwise use information of the limited liability company to the detriment of the limited liability company or the other members.

(2) Other than the implied contractual covenant of good faith and fair dealing, the only duty a member associated with a series who does not have the authority to direct and oversee the activities and affairs of that series owes to that series or to the other members associated with that series solely by reason of being a member associated with that series is to not disclose or otherwise use information of that series to the detriment of that series or the other members associated with that series.

(h) When the authority of a person to direct and oversee the activities and affairs of a limited liability company is terminated, each of the following applies:

(1) Except as provided in subsection (h)(2), the person's duties terminate.

(2) The person's duties continue only with regard to matters arising and events occurring before the termination of the person's authority.

(i) When the authority of a person to direct and oversee the activities and affairs of a series of a limited liability company is terminated, each of the following applies:

(1) Except as provided in subsection (i)(2), the person's duties terminate.

(2) The person's duties continue only with regard to matters arising and events occurring before the termination of the person's authority.

§ 10A-5-2.06. Records to be kept; right of inspection.

(a) Each limited liability company shall keep at its registered office or principal place of business in this state the following records:

(1) A current list of the full name and last known business or residence street address of each member, and each manager, if any.

(2) A copy of the filed certificate of formation and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any documents have been executed.

(3) Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years.

(4) Copies of any then effective operating agreements including any amendments thereto.

(5) Copies of any financial statements of the limited liability company for the three most recent years.

§ 10A-5A-4.09. Records to be kept; right of members and dissociated members to information.

Notwithstanding Sections 10A-1-3.32 and 10A-1-3.33:

(a) Each limited liability company shall maintain the following records:

(1) A current list of the full name and last known business or residence street address of each member.

(2) A copy of the filed certificate of formation and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any documents have been executed.

(3) Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years.

(4) Copies of the then effective limited liability company agreement including any amendments thereto.

(5) Copies of any financial statements of the limited liability company for the three most recent years.

(b) Subject to subsection (g), on ten days' notice made in a writing received by the limited liability company, the records set forth in subsection (a) above, and any other books and records of the limited liability company, wherever situated, are subject to inspection and

(b) Those records, and any other books and records of the limited liability company, wherever situated, are subject to inspection and copying for any proper purpose at the reasonable request, and at the expense of, any member or manager or the member's or manager's agent or attorney during regular business hours as provided in Sections 10A-1-3.32 and 10A-1-3.33. Any agent, member, or manager of a limited liability company who, without reasonable cause, refuses to allow any member or the member's agent or attorney to inspect or copy any books or records of the limited liability company for any proper purpose shall be personally liable to the member for a penalty in an amount not to exceed 10 percent of the fair market value of the membership interest of the member, in addition to any other damages or remedy.

copying for any proper purpose by any member or the member's agent or attorney during regular business hours. Subject to subsection (g), any person with the authority to bind the limited liability company under *Section 10A-5A-3.02* and any person with the authority to direct and oversee the activities and affairs of a limited liability company who, without reasonable cause, refuses to allow any member or the member's agent or attorney to inspect or copy any books or records of the limited liability company for any proper purpose shall be personally liable to the member for a penalty in an amount not to exceed 10 percent of the fair market value of the transferable interest of the member, in addition to any other damages or remedy.

(c) Subject to subsection (g), on thirty days' notice made in a writing received by a limited liability company, a dissociated member may inspect and copy, during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company, to the extent the information pertains to the period during which the person was a member, was material to the person's rights and duties under the limited liability company agreement or this chapter when the person was a member, and the person seeks the information in good faith and for a proper purpose.

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

(e) A member or dissociated member may exercise rights under this section through an agent or attorney, or in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the limited liability company agreement or under subsection (g) applies both to the agent, attorney, or legal representative and to the member or dissociated member.

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

(g) In addition to any restriction or condition stated in its limited liability company agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may:

(1) 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; and

(2) keep confidential from the members and any other persons, for such period of time as the limited liability company deems reasonable, any information that the limited liability company reasonably believes to be in the nature of trade secrets or other information the disclosure of which the limited liability company in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its activities and affairs, or that the limited liability company is required by law or by agreement with a third party to keep confidential.

§ 10A-5-1.04. Indemnification.

Unless its certificate of formation provides otherwise, every limited liability company has the power to indemnify a member, manager, or employee or former member, manager, or employee of the limited liability company against expenses actually and reasonably incurred in connection with the defense of an action, suit, or proceeding, civil or criminal, in which the member, manager, or employee is made a party by reason of being or having been a member, manager, or employee of the limited liability company, except in relation to matters as to which the member, manager, or employee is determined in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty; to make any other indemnification that is authorized by the governing documents of the limited liability company or by a resolution adopted by the members after notice, unless notice is waived; and to purchase and maintain insurance on behalf of any person who is or was a member, manager, or employee of the limited liability company against any liability asserted against and incurred by the member, manager, or employee in any capacity or arising out of the member's, manager's, or employee's status as such, whether or not the limited liability company would have the power to indemnify the member, manager, or employee against that liability under the provisions of this section.

§ 10A-5A-4.10 Indemnification, advancement, reimbursement, and insurance.

A limited liability company, or a series thereof, may indemnify and hold harmless a member or other person, pay in advance or reimburse expenses incurred by a member or other person, and purchase and maintain insurance on behalf of a member or other person.

§ 10A-5A-4.11. Reliance on reports and information.

A member of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports, or statements presented by another member or agent of the limited liability company, or by any other person as to matters the member reasonably believes are within that other person's professional or expert competence, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or a series thereof, or the value and amount of assets or reserves or contracts, agreements, or

other undertakings that would be sufficient to pay claims and obligations of the limited liability company, or series thereof, or to make reasonable provision to pay those claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

§ 10A-5-6.01. Admission of additional members.

~~—(a) After the filing of a limited liability company's original certificate of formation, additional members may be admitted as follows:~~

~~—(1) In the case of a member acquiring an interest directly from the limited liability company, upon compliance with the operating agreement or, if the operating agreement does not provide for the admission of additional members, with the written consent of all members.~~

~~—(2) In the case of an assignee of an interest of a member, by complying with Section 10A-5-6.03.~~

~~(b) The effective time of admission of a member to a limited liability company shall be the later of:~~

~~—(1) The date the limited liability company is formed.~~

~~—(2) The time provided in the operating agreement, or if no time is provided, then when the person's admission is reflected in the records of the limited liability company.~~

§ 10A-5-6.02. Transferability of member's interest.

(a) Except as otherwise provided in the operating agreement:

(1) A membership interest in a limited liability company is assignable in whole or in part.

(2) An assignment of a member's interest in a limited liability company does not of itself dissolve the limited liability company or entitle the assignee to exercise any management rights.

(3) An assignment only entitles the assignee to the financial rights of the assignor to the extent assigned.

§ 10A-5A-5.01. Member's transferable interest.

The only interest of a member that is transferable is the member's transferable interest. A transferable interest is personal property.

§ 10A-5A-5.02. Transfer of transferable interest.

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

(1) is permissible;

(2) (A) does not by itself cause a member to cease to be a member of the limited liability company; and

(4) A member who assigns the member's interest in a limited liability company does not cease to be a member until the assignee is substituted as provided in *Section 10A-5-6.03*.

(b) A limited liability company, in the governing documents, may provide that a member's interest in the limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. Any provision for the assignment or transfer of a limited liability company interest represented by such a certificate shall be consistent with this chapter.

(c) Any purported transfer of a member's interest in violation of this section is void.

~~§ 10A-5-6.03. Right of assignee to become member.~~

~~—(a) Except as otherwise provided in the operating agreement:
—(1) An assignee of an interest in a limited liability company may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in the operating agreement, but in the absence of such a specification, consent shall be evidenced by a written instrument, dated and signed by the member.~~

~~—(2) The assignor of a membership interest is not released from liability to the limited liability company under *Section 10A-5-5.02*, whether or not the assignee becomes a member.~~

~~—(3) A member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of the interest becomes a member with respect to the assigned interest.~~

~~(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the governing documents and this chapter. An assignee who becomes a member also is liable for the obligations of the assignor to~~

(B) does not by itself cause a member to cease to be associated with a series of the limited liability company;

(3) does not by itself cause a dissolution and winding up of the limited liability company, or a series thereof; and

(4) subject to *Section 10A-5A-5.04*, does not entitle the transferee to:

(A) participate in the direction or oversight of the activities and affairs of the limited liability company, or a series thereof; or

(B) have access to records or other information concerning the activities and affairs of the limited liability company, or a series thereof.

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

(c) A transferable interest may be evidenced by a certificate of transferable interest issued by the limited liability company, or a series thereof. A limited liability company agreement may provide for the transfer of the transferable interest represented by the certificate and make other provisions with respect to the certificate. No certificate of transferable interest shall be issued in bearer form.

(d) A limited liability company, or a series thereof, need not give effect to a transferee's rights under this section until the limited liability company, or a series thereof, has notice of the transfer.

(e) Except as otherwise provided in *Sections 10A-5A-6.02(d)(2)*, *10A-5A-6.02(k)*, and *10A-5A-6.02(l)* when a member transfers a transferable interest, the transferor retains the rights of a member other than the right to distributions transferred and retains all duties and obligations of a member.

(f) When a member transfers a transferable interest to a person that is admitted as a member with respect to the transferred interest, the transferee is liable for the member's obligations under *Sections 10A-5A-4.04*, *10A-5A-4.06(a)(2)*, and *10A-5A-4.06(b)(2)* to the extent that the obligations are known to the transferee when the transferee voluntarily accepts admission as a member.

make contributions as provided in *Section 10A-5-5.02*. The assignee is not obligated for liabilities that are unknown to the assignee at the time of becoming a member.

~~§ 10A-5-6.04. Death or incompetency of member.~~

~~—(a) Except as otherwise provided in the governing documents:~~

~~—(1) If a member who is an individual dies or if a court of competent jurisdiction adjudges a member to be incompetent to manage the member's person or property, the member's personal representative, conservator, legal representative, heirs, or legatees may exercise all the member's financial rights for the purpose of settling the member's estate or administering the member's property, including any power the member had to transfer the membership interest.~~

~~—(2) If a member is a corporation, limited liability company, trust, general partnership, limited partnership, registered limited liability partnership, custodianship, or other entity and is dissolved or terminated, the financial rights of that member may be exercised by the legal representative or successor of that member.~~

~~(b) The personal representative, conservator, legal representative, heirs, or legatees of a deceased or incompetent member shall have the same rights and duties with respect to the inspection and copying of the books and records of the limited liability company that a member would have under *Sections 10A-1-3.31, 10A-1-3.32, and 10A-5-2.06* and subdivision (1) of subsection (k) of *Section 10A-5-3.03*. The duties of care and loyalty specified in *Section 10A-5-3.03*, including any modifications specified therein, shall inure to the benefit of the personal representative, conservator, legal representative, heirs, or legatees of a deceased or incompetent member.~~

§ 10A-5-6.05. Member's financial rights subject to charging order.

§ 10A-5A-5.03. Charging order.

(a) On application to a court of competent jurisdiction by any judgment creditor of a member or assignee, the court may charge the interest of the member or assignee with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of financial rights. This section shall be the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

(b) This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest.

(a) On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged and after the limited liability company has been served with the charging order, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the transferable interest.

(b) A limited liability company, after being served with a charging order and its terms, shall be entitled to pay or deposit any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the charged transferable interest into the hands of the clerk of the court so issuing the charging order, and the payment or deposit shall discharge the limited liability company and the judgment debtor from liability for the amount so paid or deposited and any interest that might accrue thereon. Upon receipt of the payment or deposit, the clerk of the court shall notify the judgment creditor of the receipt of the payment or deposit. The judgment creditor shall, after any payment or deposit into the court, petition the court for payment of so much of the amount paid or deposited as is held by the court as may be necessary to pay the judgment creditor's judgment. To the extent the court has excess amounts paid or deposited on hand after the payment to the judgment creditor, the excess amounts paid or deposited shall be distributed to the judgment debtor and the charging order shall be extinguished. The court, may in its discretion, order the clerk to deposit, pending the judgment creditor's petition, any money paid or deposited with the clerk, in an interest bearing account at a bank authorized to receive deposits of public funds.

(c) A charging order constitutes a lien on the judgment debtor's transferable interest.

(d) Subject to subsection (c):

(1) a judgment debtor that is a member retains the rights of a member and remains subject to all duties and obligations of a member; and

(2) a judgment debtor that is a transferee retains the rights of a transferee and remains subject to all duties and obligations of a transferee.

(e) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(f) This section provides the exclusive remedy by which a judgment creditor of a member or transferee may satisfy a judgment out of the judgment debtor's transferable interest and the judgment creditor shall have no right to foreclose, under this chapter or any other law, upon the charging order, the charging order lien, or the judgment debtor's transferable interest. A judgment creditor of a member or transferee shall have no right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a limited liability company. Court orders for actions or requests for accounts and inquiries that the judgment debtor might have made, are not available to the judgment creditor attempting to satisfy the

judgment out of the judgment debtor's transferable interest and may not be ordered by a court.

§ 10A-5A-5.04. Power of personal representative of deceased member.

If a member dies, the deceased member's personal representative or other legal representative may, for purposes of settling the estate, exercise the rights of a current member under *Section 10A-5A-4.09*.

§ 10A-5-6.06. Cessation of membership.

(a) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(1) The member ceases to be a member by voluntary act as provided in subsection (d).

(2) The member ceases to be a member of the limited liability company as provided in *Section 10A-5-6.03*.

(3) The member is removed as a member in either of the following manners:

a. In accordance with the operating agreement.

b. Subject to contrary provisions in the operating agreement, when the member assigns all of the member's interest in the limited liability company, by an affirmative vote of a majority in number of the members who have not assigned their interests.

(b) Subject to contrary provisions in the operating agreement, or written consent of all members at the time, a person ceases to be a member upon the occurrence of one or more of the following events listed in the following subdivision or paragraphs:

(1) The member:

a. Makes an assignment for the benefit of creditors.

b. Files a voluntary petition in bankruptcy.

c. Is adjudicated bankrupt or insolvent.

d. Files a petition or answer seeking for the member any

§ 10A-5A-6.01. Member's power to dissociate; wrongful dissociation.

(a) A person has the power to dissociate as a member.

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

(1) it is in breach of an express provision of the limited liability company agreement;

(2) the person is expelled as a member by judicial determination under *Section 10A-5A-6.02(e)*; or

(3) the person is dissociated by becoming a debtor in bankruptcy or making a general assignment for the benefit of creditors.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to *Section 10A-5A-9.01*, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member to the limited liability company or the other members.

§ 10A-5A-6.02. Event causing dissociation.

A person is dissociated as a member from a limited liability company when any of the following occurs:

(a) the limited liability company has notice of the person's express will to dissociate as a member, except that if the person specifies a dissociation date later than the date the limited liability company had notice, then the person is dissociated as a member on that later date;

(b) an event stated in the limited liability company agreement as causing the person's dissociation occurs;

(c) the person is expelled as a member pursuant to the limited liability company agreement;

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

(1) it is unlawful to carry on the limited liability company's activities and affairs with the

reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.

e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding in the nature of the proceedings listed in paragraph d.

f. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties.

(2) Any of the following time periods have elapsed:

a. 120 days have elapsed after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, unless the proceeding has been dismissed.

b. 90 days have elapsed after the appointment, without the consent of the member, of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, unless the appointment is vacated or stayed.

c. 90 days have elapsed after the expiration of any stay, unless the appointment is vacated.

(3) In the case of a member who is an individual:

a. The member dies.

b. A court of competent jurisdiction adjudicates the member incompetent to manage the member's person or property.

(4) In the case of a member who is a trustee or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.

(5) In the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company.

(6) In the case of a member that is a corporation:

a. The filing of articles of dissolution or the equivalent for the corporation.

b. The revocation of its charter and the lapse of 90 days

person as a member;

(2) there has been a transfer of all of the person's transferable interest other than a transfer for security purposes;

(3) the person is an organization and, within 90 days after the limited liability company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, or its right to conduct activities and affairs has been suspended by its jurisdiction of formation, the statement of dissolution or the equivalent has not been revoked or its right to conduct activities and affairs has not been reinstated; or

(4) the person is an organization and, within 90 days after the limited liability company notifies the person that it will be expelled as a member because the person has been dissolved and its activities and affairs are being wound up, the organization has not been reinstated or the dissolution and winding up have not been revoked or cancelled;

(e) on application by the limited liability company, the person is expelled as a member by judicial order because the person:

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

(2) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the limited liability company agreement or the person's duty or obligation under this chapter or other applicable law; or

(3) has engaged, or is engaging, in conduct relating to the limited liability company's activities and affairs that makes it not reasonably practicable to carry on the activities and affairs with the person as a member;

(f) in the case of a person who is an individual, the person dies, there is appointed a guardian or general conservator for the person or there is a judicial determination that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the limited liability company agreement;

(g) the person becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property, but this subsection (g) shall not apply to a person who is the sole remaining member of a limited liability company;

(h) 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 limited liability company is distributed, but not solely by reason of the substitution of a successor trustee;

(i) 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 limited liability company is distributed, but not solely by reason of the substitution of a successor

after notice to the corporation of revocation without a reinstatement of its charter.

(7) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(8) In the case of a limited liability company performing professional services, at the time a member's license or registration to perform the professional services is terminated or suspended for a period of more than 12 months.

(9) In the case of a general partnership, a limited partnership, or a registered limited liability partnership, the dis-solution and commencement of winding up of the partnership.

(c) The members may provide in the operating agreement for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(d) Unless the operating agreement provides that a member has no power to cease being a member of a limited liability company by voluntary act, the member may do so at any time by giving notice as provided in the operating agreement, or, if there is no such provision, 30 days written notice to the other members. If the member has the power to cease being a member by a voluntary act but the cessation is a breach of the operating agreement, or the cessation occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover damages from the member whose membership has ceased for breach of the operating agreement, including the reasonable cost of obtaining replacement for the services the member was obligated to perform. Unless otherwise provided in the governing documents, in the case of a limited liability company for a definite term or particular undertaking, cessation of membership by voluntary act of a member before the expiration of that term is a breach of the governing documents.

(e) Upon a member's cessation of membership each of the following applies:

(1) The member's governance rights terminate.

(2) The member's duty of loyalty under subsection (f) of *Section 10A-5-3.03* terminates.

personal representative;

(j) in the case of a member that is not an individual, the legal existence of the person otherwise terminates;

(k) the transfer of a member's entire remaining transferable interest to another member; or

(l) the transfer of a member's entire remaining transferable interest to a transferee upon the transferee's becoming a member.

§ 10A-5A-6.03. Effect of person's dissociation as a member.

(a) A person who has dissociated as a member shall have no right to participate in the direction and oversight of the activities and affairs of the limited liability company and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated.

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

(3) The member's duty of loyalty under subsection (f) of *Section 10A-5-3.03* and duty of care under subsection (g) of *Section 10A-5-3.03* continue only with regard to matters arising and events occurring before the member's cessation of membership, unless the member participates in the winding up of the limited liability company's business pursuant to *Sections 10A-1-9.12* and *10A-5-7.03*.

(4) The member's duty of loyalty with respect to information shall be the same as that of a member who is not a manager under subdivision (1) of subsection (k) of *Section 10A-5-3.03*, unless the member participates in the winding up of the limited liability company's business pursuant to *Sections 10A-1-9.12* and *10A-5-7.03*, in which event subdivision (3) of this subsection applies.

§ 10A-5-7.01. Events of dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon occurrence of the first of the following events:

- (1) Events specified in the governing documents.
- (2) Written consent of all members to dissolve.
- (3) When there is no remaining member, unless either of the following applies:
 - a. The holders of all the financial rights in the limited liability company agree in writing, within 90 days after the cessation of membership of the last member, to continue the legal existence and business of the limited liability company and to appoint one or more new members.
 - b. The legal existence and business of the limited liability company is continued and one or more new members are appointed in the manner stated in the governing documents.
- (4) When the limited liability company is not the successor limited liability company in the merger or consolidation with one or more limited liability companies or other entities.
- (5) Entry of a decree of judicial dissolution under *Section*

§ 10A-5A-7.01. Events of dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon the occurrence of the first of the following events:

- (a) An event or circumstance that the limited liability company agreement states causes dissolution.
- (b) Consent of all members to dissolve.
- (c) When there is no remaining member, unless either of the following applies:
 - (1) The holders of all the transferable interests in the limited liability company agree in writing, within 90 days after the dissociation of the last member, to continue the legal existence and activities and affairs of the limited liability company and to appoint one or more new members.
 - (2) The legal existence and activities and affairs of the limited liability company are continued and one or more new members are appointed in the manner stated in the limited liability company agreement.
- (d) On application by a member, the entry of an order dissolving the limited liability company on the grounds that it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the limited liability company agreement, which order is entered by the circuit court for the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state then by the circuit court

10A-5-7.02.

§ 10A-5-7.02. Judicial dissolution.

~~On application by or for a member, the circuit court for the county in which the certificate of formation is filed may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the governing documents.~~

§ 10A-5-7.06. Articles of dissolution.

(a) After the dissolution of the limited liability company pursuant to Section 10A-5-7.01, the limited liability company shall file articles of dissolution in the office of the probate judge of the county in which the articles of organization were filed. The articles of dissolution shall set forth:

- (1) The name of the limited liability company.*
- (2) The date of filing its articles of organization.*
- (3) The reason for filing the articles of dissolution.*
- (4) The effective date of the articles of dissolution, which shall be a date certain, if they are not to be effective immediately.*

(5) Any other information the members or managers filing the articles deem appropriate.

(b) The articles of dissolution and two copies shall be delivered to the judge of probate. If the judge of probate finds that the articles of dissolution conform to law and that all fees prescribed in this chapter have been paid, the judge of probate shall:

- (1) Endorse on the articles of dissolution and on each copy the word "Filed" and the hour, day, month, and year of the filing.*
- (2) File the articles of dissolution in the office of the judge of probate and certify two copies.*
- (3) Issue a certificate of dissolution to which a certified copy*

for the county in which the limited liability company's most recent registered office is located.

§ 10A-5A-7.02. Effect of dissolution.

Notwithstanding *Section 10A-1-9.12*:

(a) A dissolved limited liability company continues its existence as a limited liability company but may not carry on any activities and affairs except as is appropriate to wind up and liquidate its activities and affairs, including:

- (1)** collecting its assets;
- (2)** disposing of its properties that will not be distributed in kind to persons owning transferable interests;
- (3)** discharging or making provisions for discharging its liabilities;
- (4)** distributing its remaining property in accordance with *Section 10A-5A-7.06*; and
- (5)** doing every other act necessary to wind up and liquidate its activities and affairs.

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

- (1)** deliver for filing a statement of dissolution to the filing officer provided for in subsection (e) setting forth:
 - (A)** The name of the limited liability company.
 - (B)** The date of filing its certificate of formation.
 - (C)** That the limited liability company has dissolved.
 - (D)** The effective date of the statement of dissolution, which shall be a date certain, if it is not to be effective immediately.
 - (E)** Any other information the limited liability company deems appropriate.
- (2)** preserve the limited liability company's activities and affairs and property as a going concern for a reasonable time;
- (3)** prosecute, defend, or settle actions or proceedings whether civil, criminal or administrative;
- (4)** transfer the limited liability company's assets;

of the articles of dissolution shall be affixed, and re-turn the certificate of dissolution with the certified copy of the articles of dissolution affixed to the representative of the dissolved limited liability company.

(4) Within 10 days after the issuance of a certificate of dissolution, transmit to the Secretary of State a certified copy of the articles of dissolution, indicating the place, date, and time of filing of the certificate.

§ 10A-5-7.03. Winding up.

(a) Except as otherwise provided in the governing documents, the members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's business and affairs.

(b) A person winding up a limited liability company's business may: Preserve the company business or property as a going concern for a reasonable time; prosecute and defend actions and proceedings, whether civil, criminal, or administrative; settle and close the limited liability company's business; dispose of and transfer property; discharge the limited liability company's liabilities; distribute the assets of the limited liability company pursuant to *Section 10A-5-7.05*; and perform other necessary and appropriate acts.

- (5) resolve disputes by mediation or arbitration; and
- (6) merge or convert in accordance with Article 10.
- (c) The dissolution of a limited liability company does not:
 - (1) transfer title to the limited liability company's property;
 - (2) prevent the commencement of a proceeding by or against the limited liability company in its limited liability company name;
 - (3) terminate, abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;
 - (4) terminate the authority of its registered agent; or
 - (5) abate, suspend or otherwise alter the application of *Section 10A-5A-3.01*.
- (d) A statement of dissolution shall be deemed to be a filing instrument under Chapter 1.
- (e) If a limited liability company is not an organization described in *Section 10A-1-4.02(c)(4)*, then that limited liability company shall deliver the statement of dissolution for filing to the judge of probate in whose office the original certificate of formation is filed. If a limited liability company is an organization described in *Section 10A-1-4.02(c)(4)*, then that limited liability company shall deliver the statement of dissolution for filing to the Secretary of State.

§ 10A-5A-7.03. Right to wind up activities and affairs.

(a) The person or persons designated in the limited liability company agreement to wind up the activities and affairs of the dissolved limited liability company shall wind up the activities and affairs of the limited liability company in accordance with *Section 10A-5A-7.02*. If no person or persons are designated in the limited liability company agreement to wind up the activities and affairs of the dissolved limited liability company, then the remaining members of the dissolved limited liability company shall wind up the activities and affairs of the limited liability company in accordance with *Section 10A-5A-7.02*. If no person or persons are designated in the limited liability company agreement to wind up the activities and affairs of the dissolved limited liability company and there are no remaining members of the dissolved limited liability company, then all of the holders of the transferable interests of the limited liability company, or their designee, shall wind up the activities and affairs of the limited liability company in accordance with *Section 10A-5A-7.02*.

(b) The circuit court for the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state then the circuit court for the county in which the limited liability company's most recent registered office is located, may order judicial supervision of the winding up of a dissolved limited liability company, including the

appointment of a person to wind up the limited liability company's activities and affairs:

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

(2) on application of a transferee, if:

(A) the limited liability company does not have any members; and

(B) within a reasonable time following the dissolution no person having the authority to wind up the activities and affairs of the limited liability company pursuant to subsection (a) is winding up the activities and affairs of the limited liability company; or

(3) in connection with a proceeding under *Section 10A-5A-7.01(d)*.

§ 10A-5-7.04. Survival of remedy after dissolution.

(a) A dissolved limited liability company continues its existence but may not carry on any business except that necessary or appropriate to wind up and liquidate its business and affairs.

(b) Dissolution of a limited liability company does not:

(1) Transfer title to the limited liability company assets.

(2) Terminate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution.

(3) Terminate the authority of the registered agent of the limited liability company.

§ 10A-5A-7.04. Known claims against dissolved limited liability company.

Notwithstanding *Sections 10A-1-9.01* and *10A-1-9.21*:

(a) A dissolved limited liability company may dispose of any known claims against it by following the procedures described in subsection (b) at any time after the effective date of the dissolution of the limited liability company.

(b) A dissolved limited liability company may give notice of the dissolution in a record to the holder of any known claim. The notice must:

(1) identify the dissolved limited liability company;

(2) describe the information required to be included in a claim;

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

(4) state the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the dissolved limited liability company must receive the claim; and

(5) state that if not sooner barred, the claim will be barred if not received by the deadline.

(c) Unless sooner barred by any other statute limiting actions, a claim against a dissolved limited liability company is barred:

(1) if a claimant who was given notice under subsection (b) does not deliver the claim to the dissolved limited liability company by the deadline; or

(2) if a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, "known claim" or "claim" includes unliquidated claims, but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

(e) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

§ 10A-5A-7.05. Other claims against dissolved limited liability company.

Notwithstanding *Sections 10A-1-9.01 and 10A-1-9.22*:

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

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

(1) be published at least one time in a newspaper of general circulation in the county 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 limited liability company's registered office is or was last located;

(2) describe the information that must be included in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that if not sooner barred, a claim against the dissolved limited liability company will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If a dissolved limited liability company publishes a newspaper notice in accordance with subsection (b), unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within two years after the publication date of the newspaper notice:

(1) a claimant who was not given notice under *Section 10A-5A-7.04(b)*;

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

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

(d) A claim that is not barred under this section, any other statute limiting actions, or *Section 10A-5A-7.04* may be enforced:

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

(2) except as provided in subsection (h), if the assets of a dissolved limited liability company have been distributed after dissolution, against the person or persons owning the transferable interests to the extent of that person's proportionate share of the claim or of the assets distributed to that person after dissolution, whichever is less, but a person's total liability for all claims under subsection (d) may not exceed the total amount of assets distributed to that

person after dissolution of the limited liability company.

(e) A dissolved limited liability company that published a notice under this section may file an application with the circuit court in the county in which the dissolved limited liability company's principal place of business is located and if the limited liability company does not have a principal place of business within this state, in the county in which the dissolved limited liability company's most recent registered office 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 limited liability company or that are based on an event occurring after the effective date of the dissolution of the limited liability company but that, based on the facts known to the dissolved limited liability company, are reasonably estimated to arise after the effective date of the dissolution of the limited liability company. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (c).

(f) Within ten days after the filing of the application provided for in subsection (e), notice of the proceeding shall be given by the dissolved limited liability company to each potential claimant as described in subsection (e).

(g) The circuit court under subsection (e) 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 the guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited liability company.

(h) Provision by the dissolved limited liability company for security in the amount and the form ordered by the circuit court under subsection (e) shall satisfy the dissolved limited liability company's obligation with respect to claims that are contingent, have not been made known to the dissolved limited liability company, or are based on an event occurring after the effective date of the dissolution of the limited liability company, and those claims may not be enforced against a person owning a transferable interest to whom assets have been distributed by the dissolved limited liability company after the effective date of the dissolution of the limited liability company.

(i) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

(j) If a claim has been satisfied, disposed of, or barred under *Section 10A-5A-7.04*, this section, or other law, the person or persons designated to wind up the affairs of a limited liability company, and the owners of the transferable interests receiving assets from the limited liability company, shall not be liable for that claim.

§ 10A-5-7.05. Distribution of assets upon dissolution.

§ 10A-5A-7.06. Application of assets in winding up limited liability company's activities and affairs.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed in the following order of priority:

(1) To creditors, including members who are creditors to the extent allowed by *Section 10A-5-3.01* or otherwise permitted by law, in order of priority as provided by law, except those liabilities to members of the limited liability company for interim distributions or on account of their contributions.

(2) Except as otherwise provided in the governing documents, to members of the limited liability company and former members for interim distributions and in respect of their contributions.

(3) Except as otherwise provided in the governing documents, to members first for the return of their contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.

§ 10A-5-7.06. Articles of dissolution. (Now 7.02)

Notwithstanding *Section 10A-1-9.12*, upon the winding up of a limited liability company, the assets shall be applied as follows:

(a) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company.

(b) After a limited liability company complies with subsection (a), any surplus must be distributed:

(1) first, to each person owning a transferable interest that reflects contributions made on account of the transferable interest and not previously returned, an amount equal to the value of the person's unreturned contributions; and

(2) then to each person owning a transferable interest in the proportions in which the owners of transferable interests share in distributions before dissolution.

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

§ 10A-5A-7.07. Reinstatement after dissolution.

Notwithstanding *Sections 10A-1-9.31* and *10A-1-9.32*, a limited liability company that has been dissolved may be rein-stated upon compliance with the following conditions:

(a) the consent shall have been obtained from the members or other persons entitled to consent at the time that is:

(1) required for reinstatement under the limited liability company agreement; or

(2) if the limited liability company agreement does not state the consent required for reinstatement, sufficient for dissolution under the limited liability company agreement; or

(3) if the limited liability company agreement neither states the consent required for reinstatement nor for dissolution, sufficient for dissolution under this chapter;

(b) in the case of a written objection to reinstatement having been delivered to the limited liability company be-fore or at the time of the consent required by subsection (a) by the members or other persons having authority under the limited liability company agreement to bring about or prevent dissolution of the limited liability company, those members or persons withdrawing that written objection effective at the time of the consent required by subsection (a);

(c) in the case of a limited liability company dissolved in a judicial proceeding initiated by one or more of the members, the consent of each of those members shall have been obtained

and shall be included in the consent required by subsection (a); and

(d) the filing of a certificate of reinstatement in accordance with *Section 10A-5A-7.08*.

§ 10A-5A-7.08. Certificate of reinstatement.

(a) In order to reinstate a limited liability company under this article, a certificate of reinstatement shall be delivered for filing to the filing officer provided for in subsection (d) which certificate of reinstatement shall have attached thereto a true and complete copy of the limited liability company's certificate of formation. The certificate of reinstatement shall state:

(1) the name of the limited liability company before reinstatement;

(2) the name of the limited liability company following reinstatement, which limited liability company name shall comply with *Section 10A-5A-7.09*;

(3) the date of formation of the limited liability company;

(4) the date of dissolution of the limited liability company, if known;

(5) a statement that all applicable conditions of *Section 10A-5A-7.07* have been satisfied; and

(6) the address of the registered office and the name of the registered agent at that address in compliance with Article 5 of Chapter 1.

(b) A limited liability company shall not be required to file a statement of dissolution in order to file a certificate of reinstatement.

(c) A certificate of reinstatement shall be deemed to be a filing instrument under Chapter 1.

(d) If a limited liability company is not an organization described in *Section 10A-1-4.02(c)(4)*, then that limited liability company shall deliver the certificate of reinstatement for filing to the judge of probate in whose office the original certificate of formation is filed. If a limited liability company is an organization described in *Section 10A-1-4.02(c)(4)*, then that limited liability company shall deliver the certificate of reinstatement for filing to the Secretary of State.

§ 10A-5A-7.09. Limited liability company name upon reinstatement.

The name of a limited liability company following reinstatement shall be determined as follows:

(a) If the limited liability company remains in the Secretary of State's records as a limited liability company which has not been dissolved, then the name of the limited liability company following reinstatement shall be that limited liability company name at the time of reinstatement.

(b) If the limited liability company is listed in the Secretary of State's records as a limited liability company that has been dissolved, then the name of a limited liability company following reinstatement shall be that limited liability company name at the time of reinstatement if that limited liability company name complies with Article 5 of Chapter 1 at the time of reinstatement. If that limited liability company name does not comply with Article 5 of Chapter 1, the name of the limited liability company following reinstatement shall be that limited liability company name followed by the word "reinstated."

(c) A limited liability company shall not be required to file a statement of dissolution in order to retain or obtain the name of the limited liability company.

§ 10A-5A-7.10. Effect of reinstatement.

(a) Subject to subsection (b), upon reinstatement, the limited liability company shall be deemed for all purposes to have continued its activities and affairs as if dissolution had never occurred; and each right inuring to, and each debt, obligation, and liability incurred by, the limited liability company after the dissolution shall be determined as if the dissolution had never occurred.

(b) The rights of persons acting in reliance on the dissolution before those persons had notice of the reinstatement shall not be adversely affected by the reinstatement.

§ 10A-5-8.01. Special rules for limited liability companies performing professional services.

(a) A limited liability company shall have the power to render professional services if each member or employee who renders professional services in Alabama is licensed or registered to render those professional services pursuant to applicable Alabama law and if the limited liability company complies with the limitations of this section.

(b) Every individual who renders professional services as a member or as an employee of a limited liability company shall be liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent the individual would be liable if the individual rendered the services as a sole practitioner.

§ 10A-5A-8.01. Special rules for limited liability companies performing professional services.

(a) A limited liability company shall have the power to render professional services if it complies with the rules of the licensing authority for such profession.

(b) Every individual who renders professional services as a member or as an employee of a limited liability company shall be liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent the individual would be liable if the individual rendered the services as a sole practitioner.

(c) Except as otherwise provided in subsection (b), the personal liability of a member of any limited liability company engaged in providing professional services shall be governed by *Section 10A-5A-3.01*.

(d) The personal liability of a member, manager, or employee of a foreign limited liability company engaged in providing professional services shall be determined under the law of the jurisdiction in which the foreign limited liability company is organized.

(c) The personal liability of a member, manager, or other employee of any limited liability company engaged in providing professional services shall be no greater than that of a shareholder, employee, director, or officer of a corporation organized under the Alabama Business Corporation Law or any successor act.

(d) The personal liability of a member, manager, or employee of a foreign limited liability company shall be determined under the law of the jurisdiction in which it is organized.

(e) Nothing in this chapter shall restrict or limit in any manner the authority or duty of a licensing authority with respect to individuals rendering a professional service within the jurisdiction of the licensing authority. Nothing in this chapter shall restrict or limit any law, rule, or regulation pertaining to standards of professional conduct.

(f) Nothing in this chapter shall limit the authority of a licensing authority to impose requirements in addition to those stated in this chapter on any limited liability company or foreign limited liability company rendering professional services within the jurisdiction of the licensing authority.

(g) A limited liability company organized to render professional services under this chapter may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them. In addition, a limited liability company organized to render professional services shall be subject to the restrictions imposed on professional corporations by the Alabama Professional Corporation Law, as amended from time to time.

(h) A limited liability company organized to render professional services, domestic or foreign, may render professional services in Alabama only through individuals

(e) Nothing in this article shall restrict or limit in any manner the authority or duty of a licensing authority with respect to individuals rendering a professional service within the jurisdiction of the licensing authority. Nothing in this article shall restrict or limit any law, rule, or regulation pertaining to standards of professional conduct.

(f) Nothing in this article shall limit the authority of a licensing authority to impose requirements in addition to those stated in this chapter on any limited liability company or foreign limited liability company rendering professional services within the jurisdiction of the licensing authority.

(g) A member's transferrable interest in a limited liability company organized to render professional services may be voluntarily transferred only to a qualified person.

§ 10A-5A-8.02. Death or disqualification of member.

(a) In the case of a limited liability company performing professional services, upon the death of a member, upon a member becoming a disqualified person, or upon a transferable interest being transferred by operation of law or court decree to a disqualified person, the transferable interest of the deceased member or of the disqualified person may be transferred to a qualified person and, if not so transferred, subject to *Section 10A-5A-4.06*, shall be purchased by the limited liability company as provided in this section.

(b) If the price of the transferable interest is not fixed by the limited liability company agreement, the limited liability company, within six months after the death or 30 days after the disqualification or transfer, as the case may be, shall make a written offer to pay to the holder of the transferable interest a specified price deemed by the limited liability company to be the fair value of the transferable interest as of the date of the death, disqualification, or transfer. The offer shall be given to the personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, and shall be accompanied by a balance sheet of the limited liability company, as of the latest available date and not more than 12 months prior to the making of the offer, and a profit and loss statement of the limited liability company for the 12 months' period ended on the date of the balance sheet.

(c) If within 30 days after the date of the written offer from the limited liability company the fair value of the transferable interest is agreed upon between the personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, and the limited liability company, payment therefor shall be made within 90 days, or such other period as the parties may agree, after the date of the offer. Upon payment of the agreed value, the personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, shall cease to have any interest in, or claim to, the transferable

permitted to render those services in Alabama; but nothing in this chapter shall be construed to require that any individual who is employed by a limited liability company rendering professional services be licensed to perform services for which no license is otherwise required or to prohibit the rendering of professional services by a licensed individual acting in an individual capacity, notwithstanding that the individual may be a member, manager, employee or agent of a domestic or foreign limited liability company rendering professional services.

(i) A member's interest in a limited liability company organized to render professional services may be voluntarily transferred only to a person who is licensed or registered to render the professional services for which the company was organized.

(j) If a membership interest is transferred by gift or inheritance to a person who is not licensed or registered to render the professional services for which the limited liability company was organized or if a member's license or registration to perform the professional services for which the limited liability company was organized is terminated or suspended for a period of more than 12 months, the person or member shall not be treated as owning financial rights or an ownership interest in the limited liability company and shall be entitled only to receive the fair value of the membership interest determined in the same manner as the fair value of interests in professional corporations is determined under *Section 10A-4-3.02*.

interest.

(d) If within 30 days from the date of the written offer from the limited liability company, the personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, and the limited liability company do not so agree as to the fair value of the transferable interest, then either party may commence a civil action in the circuit court in the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state, then the circuit court for the county in which the limited liability company's most recent registered office is located requesting that the fair value of the transferrable interest be found and determined. The personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, wherever residing, shall be made a party to the proceeding as an action against that person's transferable interest quasi in rem. Service shall be made in accordance with the rules of civil procedure. The personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, shall be entitled to a judgment against the limited liability company for the amount of the fair value of that person's transferable interest as of the date of death, disqualification, or transfer. The court may, in its discretion, order that the judgment be paid in installments and with interest and on terms as the court may determine. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) The judgment shall include an allowance for interest at the rate the court finds to be fair and equitable in all the circumstances, from the date of death, disqualification, or transfer.

(f) The costs and expenses of any proceeding shall be determined by the court and shall be assessed against the parties in a manner the court deems equitable.

(g) The expenses shall include reasonable compensation for and reasonable expenses of the appraisers and a reasonable attorney's fee but shall exclude the fees and expenses of counsel for and of experts employed by any party; but: (1) if the fair value of the transferable interest as determined materially exceeds the amount which the limited liability company offered to pay therefor, or if no offer was made by the limited liability company, the court in its discretion may award to the personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, the sum the court determines to be reasonable compensation to any expert or experts employed by the personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, in the proceeding; and (2) if the offer of the limited liability company for the transferable interest materially exceeds the amount of the fair value of the transferable interest as determined, the court in its discretion may award to the limited liability company the sum the court determines

to be reasonable compensation to any expert or experts employed by the limited liability company, in the proceeding.

(h) If the purchase or transfer of the transferable interest of a deceased member, a disqualified person or a transferee is not completed within 12 months after the death of the deceased member or 12 months after the disqualification or transfer, as the case may be, the limited liability company shall forthwith cancel the transferable interest on its books and the personal representative of the estate of the deceased member, the disqualified person, or the transferee, as the case may be, shall have no further interest in the transferable interest other than that person's right to payment for the transferable interest under this section.

(i) This section shall not require a limited liability company to purchase a transferable interest of a disqualified person if the disqualification is for less than 12 months from the date of disqualification. A limited liability company may require the disqualified person to sell the disqualified person's transferable interest to the limited liability company upon any disqualification.

(j) Any provision of a limited liability company agreement regarding the purchase or transfer of a transferable interest of a limited liability company performing professional services shall be specifically enforceable in the courts of Alabama.

(k) Nothing in this section shall prevent or relieve a limited liability company from paying pension benefits or other deferred compensation.

§ 10A-5-4.04. Derivative actions.

(a) A member may bring an action in the right of a limited liability company to recover a judgment in its favor if the members or managers with authority to do so have refused to bring the action or if an effort to cause those members or managers to bring the action is not likely to succeed.

(b) In a derivative action, the plaintiff shall be a member (1) at the time of bringing the action or have succeeded to the right of a member by operation of law or pursuant to the terms of the operating agreement from a person who was a member and (2) at the time of the transaction of which he or she complains.

(c) In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by the members or managers with authority to do so, or

§ 10A-5A-9.01. Direct action by members.

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

(b) A member maintaining a direct action under subsection (a) 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, or series thereof.

(c) (1) A member may maintain a direct action to enforce a right of a limited liability company if all members at the time of suit are parties to the action.

(2) A member associated with a series may maintain a direct action to enforce a right of the series if all members associated with the series at the time of suit are parties to the action.

(d) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law.

the reasons for not making the effort.

(d) If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of those proceeds.

§ 10A-5A-9.02. Right of derivative action.

(a) A member may commence or maintain a derivative action in the right of a limited liability company to enforce a right of the limited liability company by complying with this article.

(b) A member associated with a series of a limited liability company may commence or maintain a derivative action in the right of the series to enforce a right of the series by complying with this article.

§ 10A-5A-9.03. Standing.

(a) A member may commence or maintain a derivative action in the right of the limited liability company only if the member:

(1) fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company; and

(2) either:

(A) was a member of the limited liability company at the time of the act or omission of which the member complains; or

(B) whose status as a member devolved upon the person by operation of law or pursuant to the terms of the limited liability company agreement from a person who was a member at the time of the act or omission of which the member complains.

(b) A member associated with a series of a limited liability company may commence or maintain a derivative action in the right of the series only if the member:

(1) fairly and adequately represents the interests of the series in enforcing the right of the series; and

(2) either:

(A) was associated with the series at the time of the act or omission of which the member complains; or

(B) whose status as a member associated with the series devolved upon the person by operation of law or pursuant to the terms of the limited liability company agreement from a person who was a member associated with the series at the time of the act or omission of which the member complains.

§ 10A-5A-9.04. Demand.

A member may commence a derivative action in the right of the limited liability company, or a series thereof, if:

(a) the member first makes a written demand upon the limited liability company or the series, as the case may be, to bring an action to enforce the right and the limited liability company or the series, as the case may be, does not bring the action within a reasonable time; or

(b) a demand under subsection (a) would be futile.

§ 10A-5A-9.05. Pleading.

In a derivative action, the complaint must state with particularity:

(a) the date and content of plaintiff's demand and the response by the limited liability company or the series, as the case may be, to the demand; or

(b) why the demand should be excused as futile.

§ 10A-5A-9.06. Stay of proceedings.

For the purpose of allowing the limited liability company or the series thereof, as the case may be, time to undertake an inquiry into the allegations made in the demand or complaint commenced pursuant to this article, the court may stay any derivative action for the period the court deems appropriate.

§ 10A-5A-9.07. Discontinuance or settlement.

A derivative action may not be dismissed or compromised without the approval of the court, and notice of the pro-posed dismissal or compromise shall be given to members of the limited liability company or the members associated with the series of the limited liability company, as the case may be, in such manner as the court directs.

§ 10A-5A-9.08. Proceeds and expenses.

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

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company or series thereof, as the case may be, and not to the derivative plaintiff; and

(2) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited liability company or series thereof, as the case may be.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited liability company or the series thereof, as the case may be.

§ 10A-5A-9.09. Applicability to foreign limited liability companies.

In any derivative action in the right of a foreign limited liability company, or a series thereof, the right of a person to commence or maintain a derivative action in the right of a foreign limited liability company, or a series thereof, and any matters raised in the action covered by Sections 10A-5A-9.02 through 10A-5A-9.08 shall be governed by the law of the jurisdiction under which the foreign limited liability company was formed; except that any matters raised in the action covered by Sections 10A-5A-9.06, 10A-5A-9.07, and 10A-5A-9.08 shall be governed by the law of this state.

§ 10A-5A-10.01. Conversion.

(a) An organization other than a limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a limited liability company pursuant to this section, Sections 10A-5A-10.02 through 10A-5A-10.03, and a plan of conversion, if:

(1) the governing statute of the organization that is not a limited liability company authorizes the conversion;

(2) the law of the jurisdiction governing the converting organization and the converted organization does not prohibit the conversion; and

(3) the converting organization and the converted organization each comply with the governing statute and organizational documents applicable to that organization in effecting the conversion.

(b) A plan of conversion must be in writing and must include:

(1) the name, type of organization, and mailing address of the principal office of the converting organization before conversion;

(2) the name, type of organization, and mailing address of the principal office of the converted 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 allowed in *Section 10A-5A-10.01(c)*; and

(4) the organizational documents of the converted organization.

(c) In connection with a conversion, rights or securities of or interests in the converting organization may be ex-changed for or converted into cash, property, or rights or securities of or interests in the converted organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another organization or may be cancelled.

§ 10A-5A-10.02. Action on plan of conversion by converting limited liability company.

(a) Subject to *Section 10A-5A-10.09*, a plan of conversion must be consented to by all the members of a converting limited liability company.

(b) Subject to *Section 10A-5A-10.09* and any contractual rights, after a conversion is approved, and at any time before a filing is made under *Section 10A-5A-10.03*, a converting limited liability company may amend the plan or abandon the planned conversion:

(1) as provided in the plan; and

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

§ 10A-5A-10.03. Filings required for conversion; effective date.

(a) After a plan of conversion is approved:

(1) if the converting organization is an organization formed under the laws of this state, the converting organization shall file a statement of conversion in accordance with subsection (c), which statement of conversion must be signed in accordance with *Section 10A-5A-2.04(a)* and which must include:

(A) the name of the converting organization;

(B) the date of the filing of the certificate of formation of the converting organization, if any, and all prior amendments and the filing office or offices, if any, where such is filed;

(C) a statement that the converting organization has been converted into the converted organization;

(D) the name and type of organization of the converted organization and the jurisdiction of

its governing statute;

(E) the street and mailing address of the principal office of the converted organization;

(F) the date the conversion is effective under the governing statute of the converted organization;

(G) a statement that the conversion was approved as required by this chapter;

(H) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(I) if the converted organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of *Section 10A-5A-10.04(b)*; and

(2) if the converted organization is a limited liability company, the converting organization shall file a certificate of formation in accordance with subsection (d), which certificate of formation must include, in addition to the information required by *Section 10A-5A-2.01(a)*:

(A) a statement that the limited liability company was converted from the converting organization;

(B) the name and type of organization of the converting organization and the jurisdiction of the converting organization's 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 formation takes effect; and

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

(c) If the converting organization is an organization formed under the laws of this state and the converting organization is not an organization described in *Section 10A-1-4.02(c)(4)*, then the converting organization shall file the statement of conversion required under subsection (a)(1) in the office of the judge of probate in the county required by this title for the filing of its organizational documents, if any, and if the organizational documents were not required by this title to be filed in the office of the judge of probate, then the converting organization shall file the statement of conversion required under subsection (a)(1) with the Secretary of State. If the converting organization is an organization formed under the laws of this state and the converting organization is an organization described in *Section 10A-1-4.02(c)(4)*, then the converting organization shall file the statement of conversion required under subsection (a)(1) with the Secretary of State.

(d) If the converted organization is a limited liability company, the converting organization is an organization formed under the laws of this state, and the converting organization is not an

organization described in *Section 10A-1-4.02(c)(4)*, then the converting organization shall file the certificate of formation required under subsection (a)(2) with the judge of probate of the county in which a certificate of formation of a limited liability company is filed under this chapter. If the converted organization is a limited liability company, the converting organization is an organization formed under the laws of this state, and the converting organization is an organization described in *Section 10A-1-4.02(c)(4)*, then the converting organization shall file the certificate of formation required under subsection (a)(2) with the Secretary of State. If the converted organization is a limited liability company and the converting organization is not an organization formed under the laws of this state, then the converting organization shall file the certificate of formation required under subsection (a)(2) with the judge of probate of the county in which a certificate of formation of a limited liability company is filed under this chapter.

(e) In the case of a statement of conversion or a certificate of formation that is to be filed with the judge of probate pursuant to subsections (c) and (d), the judge of probate shall within 10 days transmit a certified copy of the statement of conversion or certificate of formation to the Secretary of State, along with the proper fee.

(f) In the case of a statement of conversion that is to be filed with the Secretary of State pursuant to subsections (c):

(1) if the converting organization is, immediately prior to the conversion becoming effective, an organization de-scribed in *Section 10A-1-4.02(c)(4)*, but which has a certificate of formation filed with the judge of probate, the Secretary of State shall within 10 days transmit a certified copy of the statement of conversion to the office of the judge of probate in the county in which the certificate of formation for such converting organization was filed along with the proper fee for the probate judge.

(2) if the converting organization is, immediately prior to the conversion becoming effective, an organization de-scribed in *Section 10A-1-4.02(c)(4)*, and did not file its certificate of formation with the probate judge, but rather in accordance with *Section 10A-1-4.02(c)(4)* filed its certificate of formation with the Secretary of State, the Secretary of State shall not transmit a certified copy of the statement of conversion to the office of the judge of probate and shall not collect any fee for the judge of probate.

(3) if the converting organization is, immediately prior to the conversion becoming effective, an organization de-scribed in *Section 10A-1-4.02(c)(4)*, but is not required under this title to file its organizational documents with the judge of probate, the Secretary of State shall not transmit a certified copy of the statement of the statement of conversion to the office of the judge of probate and shall not collect any fee for the judge of probate.

(g) In the case of a certificate of formation that is to be filed with the Secretary of State pursuant to subsection (d), the Secretary of State shall not transmit a certified copy of the

statement of conversion to the office of the judge of pro-bate and shall not collect any fee for the judge of probate.

(h) After a conversion becomes effective, if the converted organization is a limited liability company, then all filing instruments required to be filed under this title regarding that converted organization shall be filed with the Secretary of State.

(i) If:

(1) the converting organization is a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(2) the converted organization will be a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(3) the name of the converting organization and the converted organization are to be the same, other than words, phrases or abbreviations indicating the type of entity; and

(4) the name of the converted organization complies with Division A of Article 5 of Chapter 1 or *Section 10A-1-7.07*, as the case may be; then notwithstanding Division B of Article 5 of Chapter 1, no name reservation shall be required and the converted organization shall for all purpose of this title be entitled to utilize the name of the converting organization without any further action by the converting organization or the converted organization.

(j) A certified copy of any document required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which the converting organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect a filing fee of five dollars (\$5). Any such filing shall evidence chain of title, but lack of filing shall not affect the converted organization's title to such real property.

(k) A statement of conversion shall be a filing instrument under Chapter 1.

(l) Except as set forth in subsection (f)(2), the filing fees for a statement of conversion shall be the same fee as pro-vided in *Section 10A-1-4.31(a)(5)*.

§ 10A-5A-10.04. Effect of conversion.

(a) When a conversion takes effect:

(1) all property owned by the converting organization, or series thereof, remains vested in the converted organization without reservation or impairment and the title to any property vested by deed or otherwise in the converting organization shall not revert or be in any way impaired by reason of the conversion;

(2) all debts, obligations, or other liabilities of the converting organization, or series thereof, continue as debts, obligations, or other liabilities of the converted organization and neither the

rights of creditors, nor the liens upon the property of the converting organization shall be impaired by the conversion;

(3) an action or proceeding pending by or against the converting organization, or series thereof, continues as if the conversion had not occurred;

(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization, or series thereof, 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;

(6) except as otherwise agreed, for all purposes of the laws of this state, the converting organization, and any series thereof, shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting organization, or series thereof;

(7) for all purposes of the laws of this state, the rights, privileges, powers, interests in property, debts, liabilities and duties of the converting organization, and all series thereof, shall be the rights, privileges, powers, interests in property, debts, liabilities and duties of the converted organization, and shall not be deemed as a consequence of the conversion, to have been transferred to the converted organization;

(8) if the converted organization is a limited liability company, for all purposes of the laws of this state, the limited liability company shall be deemed to be the same organization as the converting organization, and the conversion shall constitute a continuation of the existence of the converting organization in the form of a limited liability company;

(9) if the converted organization is a limited liability company, the existence of the limited liability company shall be deemed to have commenced on the date the converting organization commenced its existence in the jurisdiction in which the converting organization was first created, formed, organized, incorporated, or otherwise came into being; and

(10) the conversion shall not affect the choice of law applicable to matters arising prior to conversion.

(b) A converted organization that is a foreign entity 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, or series thereof, 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. If a converted organization that is a foreign entity fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served, then service of process on that converted organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in *Section 10A-1-5.35*.

§ 10A-5-9.01. Merger and consolidation.

(a) Pursuant to any agreement, a domestic limited liability company may merge or consolidate with or into one or more limited liability companies or other business entities formed or organized under the laws of this state, any other state, the United States, or any foreign jurisdiction, with the domestic limited liability company or the other business entity being the surviving or resulting domestic limited liability company or other business entity. Except as otherwise specifically provided for in the operating agreement, a merger shall be approved by each domestic limited liability company which is to merge by all the members at the time approval of the merger is voted on.

(b) Notwithstanding prior approval, an agreement of merger may be terminated prior to filing articles of merger with the Secretary of State or amended pursuant to a provision for the termination or amendment contained in the agreement of merger.

§ 10A-5-9.02. Requirements for articles of merger; effective date.

(a) If a domestic limited liability company is merging under this chapter, the domestic limited liability company or other business entity surviving or resulting from the merger shall file articles of merger in the Office of the Secretary of State. If a domestic limited liability company is filing the articles of

§ 10A-5A-10.05. Merger.

(a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, *Sections 10A-5A-10.06 through 10A-5A-10.08*, 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 those 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 writing and must include:

- (1) the name, type of organization, and mailing address of the principal office of each constituent organization;
 - (2) the name, type of organization, and mailing address of the principal office of the surviving organization and, if the surviving organization is to be created pursuant to 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 as allowed by subsection (c);
 - (4) if the surviving organization is to be created pursuant to the merger, the surviving organization's organization-al documents; and
 - (5) if the surviving organization is not to be created pursuant to the merger, any amendments to be made by the merger to the surviving organization's organizational documents.
- (c) In connection with a merger, rights or securities of or interests in a constituent organization may be exchanged for or converted into cash, property, or rights or securities of or interests in the surviving organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another organization or may be cancelled.

§ 10A-5A-10.06. Action on plan of merger by constituent limited liability company.

(a) Subject to *Section 10A-5A-10.09*, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to *Section 10A-5A-10.09* and any contractual rights, after a merger is approved, and at any time before a filing is made under *Section 10A-5A-10.07*, a constituent limited liability company may amend the plan or abandon the merger:

- (1) as provided in the plan; and

merger, the articles of merger shall be signed by at least one member of the domestic limited liability company, and if another business entity is filing the articles of merger, the articles of merger shall be signed by a person authorized by the other business entity. The articles of merger shall state all of the following:

- (1) The name, jurisdiction, and date of formation or organization of each of the domestic limited liability companies or other business entities that are to merge.
- (2) That an agreement of merger has been approved and executed by each of the domestic limited liability companies or other business entities that are to merge.
- (3) The name of the surviving or resulting domestic limited liability company or other business entity.
- (4) The future effective date or time, which shall be a date or time certain, of the merger if it is not to be effective upon the filing of the articles of merger.
- (5) That the agreement of merger is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the street address of that place of business.
- (6) That a copy of the agreement of merger will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is a party to the merger.
- (7) If the surviving or resulting entity is not a domestic limited liability company or other business entity organized under the laws of this state, a statement that the foreign business entity consents to service of process on it by registered mail addressed to the foreign business entity at the office required to be maintained in the state or other jurisdiction where it is organized by the laws of that state or, other jurisdiction, or, if not so required, at its principal office, if it has not appointed an agent under *Section 10A-1-5.31* or if that agent cannot be found or served with the exercise of

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

§ 10A-5A-10.07. Filings required for merger; effective date.

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

- (1) each constituent limited liability company, as provided in *Section 10A-5A-2.04(a)*; and
- (2) each other constituent organization, as provided by its governing statute.

(b) A statement of merger under this section must include:

- (1) the name, type of organization, and mailing address of the principal office of each constituent organization and the jurisdiction of its governing statute;
 - (2) the name, type of organization, and mailing address of the principal office of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created pursuant to the merger, a statement to that effect;
 - (3) the date of the filing of the certificate of formation, if any, and all prior amendments and the filing office or offices, if any, and where such is filed of each constituent organization which was formed under the laws of this state;
 - (4) the date the merger is effective under the governing statute of the surviving organization;
 - (5) if the surviving organization is to be created pursuant to the merger:
 - (A) if it will be a limited liability company, the limited liability company's certificate of formation; or
 - (B) if it will be an organization other than a limited liability company, any organizational document that creates the organization that is required to be in a public writing;
 - (6) if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public writing;
 - (7) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;
 - (8) if the surviving organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of *Section 10A-5A-10.08(b)*; and
 - (9) any additional information required by the governing statute of any constituent organization.
- (c) Each constituent organization which is formed under the laws of this state shall file the statement of merger with the Secretary of State. For each constituent organization which is

reasonable diligence.

(b) A merger shall be effective upon the filing in the Office of the Secretary of State of the articles of merger unless a future effective date or time is provided in the articles of merger, in which event the merger shall be effective at the future date or time specified.

§ 10A-5-9.03. Vesting of certain rights, privileges, powers, property, liabilities and duties.

(a) When any merger has become effective under this chapter, for all purposes of the laws of the state, all the rights, privileges, and powers of each of the domestic limited liability companies and other business entities that have merged, and all property, real, personal, and mixed, and all debts due to any of the domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of the domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged. The title to any real property vested by deed or otherwise in any of the domestic limited liability companies and other business entities shall not revert or be in any way impaired by reason of this chapter.

(b) All rights of creditors and all liens upon any property of any of the domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the domestic limited liability companies and other business entities that have merged shall attach to the surviving or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

formed under the laws of this state and which is not, immediately prior to the merger becoming effective, an organization described in *Section 10A-1-4.02(c)(4)*, the Secretary of State shall within 10 days transmit a certified copy of the statement of merger to the office of the judge of probate in the county in which the certificate of formation for each such constituent organization was filed along with the proper fee for the probate judge. For each constituent organization which is formed under the laws of this state and which is, immediately prior to the merger becoming effective, an organization described in *Section 10A-1-4.02(c)(4)*, but which has a certificate of formation filed with the judge of probate, the Secretary of State shall transmit a certified copy of the statement of merger to the office of the judge of probate in the county in which the certificate of formation for each such constituent organization was filed along with the proper fee for the judge of probate. For each constituent organization which (1) is formed under the laws of this state, (2) is, immediately prior to the merger becoming effective, an organization described in *Section 10A-1-4.02(c)(4)*, and (3) did not file its certificate of formation with the probate judge, but rather in accordance with *Section 10A-1-4.02(c)(4)* filed its certificate of formation with the Secretary of State, the Secretary of State shall not transmit a certified copy of the statement of merger to the office of the judge of probate and shall not collect any fee for the judge of probate.

(d) A merger becomes effective under this article:

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

(A) the filing of the statement of merger with the Secretary of State; or

(B) as specified in the statement of merger; or

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

(e) After a merger becomes effective, if the surviving organization is a limited liability company, then all filing instruments required to be filed under this Title regarding that surviving organization shall be filed with the Secretary of State.

(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect the filing fee of five dollars (\$5). Any such filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to such real property.

(g) A statement of merger shall be a filing instrument under Chapter 1.

(h) Except as provided in the last sentence of subsection (c), the filing fees for a statement of merger shall be the same fees as provided in *Section 10A-1-4.31(a)(5)*.

(c) Unless otherwise provided in the articles of merger, a merger, of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger, shall not require the domestic limited liability company to wind up its business and affairs, or pay its liabilities and distribute its assets.

§ 10A-5-9.04. Recording of articles of merger; effect when Secretary of State files articles; copy of certified articles conclusive evidence of matters.

The articles of merger required by this chapter to be filed with the Secretary of State shall also be recorded in the office of the judge of probate in the county in which the limited liability company is required to file its certificate of formation and in each county in which a limited liability company which is a party to the merger is required to file its certificate of formation; provided, however, that when the articles are filed by the Secretary of State, the matters covered by the articles shall be effective as stated therein, and a copy of the articles certified by the Secretary of State shall be conclusive evidence of the matters covered therein.

§ 10A-5-9.05. Applicability of Chapter 2; merger and conversion provisions to limited liability companies. (Repealed effective January 1, 2017)

To the extent applicable, the provisions and requirements of Article 11, commencing with *Section 10A-2-11.01*, of Chapter 2, relating to mergers of corporations, shall apply to mergers between corporations, domestic limited liability companies, and other business entities as defined by this chapter. Domestic limited liability companies and other business entities shall be treated as corporations for the purposes of applying the procedures, requirements, and effects pre-scribed

§ 10A-5A-10.08. Effect of merger.

(a) When a merger becomes effective:

(1) the surviving organization continues or, in the case of a surviving organization created pursuant to the merger, 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, or series thereof, that ceases to exist vests in the surviving organization without reservation or impairment and the title to any property vested by deed or otherwise in the surviving organization shall not revert or be in any way impaired by reason of the merger;

(4) all debts, obligations or other liabilities of each constituent organization, or series thereof, that ceases to exist continue as debts, obligations or other liabilities of the surviving organization and neither the rights of creditors, nor any liens upon the property of any constituent organization, shall be impaired by the merger;

(5) an action or proceeding pending by or against any constituent organization, or series thereof, continues as if the merger had not occurred;

(6) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of each constituent organization, or series thereof, 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;

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dis-solve the limited liability company for the purposes of Article 7 and does not dissolve a series for purposes of Article 11;

(9) if the surviving organization is created pursuant to the merger:

(A) if it is a limited liability company, the certificate of formation 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 existed before the merger, any amendments provided for in the statement of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign entity consents to the jurisdiction 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. If a surviving organization that is a foreign entity fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served,

in that article.

§ 10A-5-9.06. Nonexclusivity.

The provisions of this article pertaining to mergers of limited liability companies are not exclusive. A domestic limited liability company may merge with or convert to another type of entity as permitted by Article 8 of Chapter 1.

then the service of process on that surviving organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in *Section 10A-1-5.35*.

§ 10A-5A-10.09. Restrictions on approval of mergers and conversions.

- (a) If a member of a converting or constituent limited liability company will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or plan of merger are ineffective without that member's consent to the plan.
- (b) A member does not give the consent required by subsection (a) merely by consenting to a provision of the limited liability company agreement that permits the limited liability company agreement to be amended with the consent of fewer than all the members.

§ 10A-5A-10.10. Article not exclusive.

This article is not exclusive. This article does not preclude an entity from being converted or merged under law other than this chapter.

§ 10A-5A-11.01. Series of assets.

- (a) If a limited liability company complies with *Section 10A-5A-11.02*, a limited liability company agreement may establish or provide for the establishment of one or more designated series of assets that:
 - (1) has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or
 - (2) has a separate purpose or investment objective.
- (b) A series established in accordance with subsection (a) may carry on any activity, whether or not for profit.
- (c) After a person is admitted as a member of a limited liability company in accordance with *Section 10A-5A-4.01*, a member is associated with a series of the limited liability company:
 - (1) as provided in the limited liability agreement;

- (2) as the result of a transaction effective under Article 10; or
- (3) with the consent of all members associated with that series.

§ 10A-5A-11.02. Enforceability of obligations and expenses of series against assets.

(a) Subject to subsection (b):

(1) the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series thereof; and

(2) none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of a series.

(b) Subsection (a) applies only if:

(1) the records maintained for that series account for the assets of that series separately from the other assets of the limited liability company or any other series;

(2) the limited liability company agreement contains a statement to the effect of the limitations provided in sub-section (a); and

(3) the limited liability company's certificate of formation contains a statement that the limited liability company may have one or more series of assets subject to the limitations provided in subsection (a).

§ 10A-5A-11.03. Assets of series.

(a) Assets of a series may be held directly or indirectly, including being held in the name of the series or in the name of the limited liability company.

(b) If the records of a series are maintained in a manner so that the assets of the series can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percent-age or share of any assets, or by any other method in which the identity of the assets can be objectively determined, the records are considered to satisfy the requirements of *Section 10A-5A-11.02(b)(1)*.

§ 10A-5A-11.04. Statement of limitation on liabilities of series.

The statement of limitation on liabilities of a series required by *Section 10A-5A-11.02(b)(3)* is sufficient regardless of whether:

(a) the limited liability company has established any series under this chapter when the statement of limitations is contained in the certificate of formation; and

(b) the statement of limitations makes reference to a specific series of the limited liability company.

§ 10A-5A-11.05. Member's power to dissociate as a member associated with a series; wrongful dissociation.

(a) A person has the power to dissociate as a member associated with a series.

(b) A person's dissociation from a series is wrongful only if:

(1) it is in breach of an express provision of the limited liability company agreement; or

(2) the person is expelled as a member associated with the series by judicial determination under *Section 10A-5A-11.06(f)*; or

(3) the person is dissociated as a member associated with a series by becoming a debtor in bankruptcy or making a general assignment for the benefit of creditors.

(c) A person that wrongfully dissociates as a member associated with a series is liable to the series and, subject to *Section 10A-5A-9.01*, to the other members associated with that series for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member associated with a series to the series or the other members associated with that series.

§ 10A-5A-11.06. Event causing dissociation of a member associated with a series.

A person is dissociated as a member associated with a series when any of the following occurs:

(a) the series has notice of the person's express will to dissociate from the series, except if the person specifies a dissociation date later than the date the series had notice, then the person is dissociated from the series on that later date;

(b) an event stated in the limited liability company agreement as causing the person's dissociation from the series occurs;

(c) the person is dissociated as a member of the limited liability company pursuant to *Section 10A-5A-6.02*;

(d) the person is expelled as a member associated with that series pursuant to the limited

liability company agreement;

(e) the person is expelled as a member associated with the series by the unanimous consent of the other members associated with that series if:

(1) it is unlawful to carry on the series' activities and affairs with the person as a member associated with that series; or

(2) there has been a transfer of all of the person's transferable interest other than a transfer for security purposes; or

(3) the person is an organization and, within 90 days after the series notifies the person that it will be expelled as a member associated with that series because the person has filed a statement of dissolution or the equivalent, or its right to conduct activities and affairs has been suspended by its jurisdiction of formation, the statement of dissolution or the equivalent has not been revoked or its right to conduct activities and affairs has not been reinstated; or

(4) the person is an organization and, within 90 days after the series notifies the person that it will be expelled as a member associated with that series because the person has been dissolved and its activities and affairs are being wound up, the organization has not been reinstated or the dissolution and winding up have not been revoked or can-celled;

(f) on application by the series, the person is expelled as a member associated with that series by judicial order because the person:

(1) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, that series' activities and affairs;

(2) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the limited liability company agreement or the person's duty or obligation under this chapter or other applicable law; or

(3) has engaged, or is engaging, in conduct relating to that series' activities and affairs that makes it not reasonably practicable to carry on the activities and affairs with the person as a member associated with that series;

(g) in the case of a person who is an individual, the person dies, there is appointed a guardian or general conservator for the person or there is a judicial determination that the person has otherwise become incapable of performing the person's duties as a member associated with a series under this chapter or the limited liability company agreement;

(h) the person becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property but this subsection shall not apply to a person who is the sole remaining member associated with a series;

(i) 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 is distributed, but not solely by reason of the substitution of a successor trustee;

(j) 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 is distributed, but not solely by reason of the substitution of a successor personal representative;

(k) in the case of a member associated with a series that is not an individual, the legal existence of the person otherwise terminates;

(l) the transfer of a member's entire remaining transferable interest but not until the later of (1) the transferee's be-coming a member associated with the series or (2) the time the transfer is completed.

§ 10A-5A-11.07. Effect of person's dissociation as a member

(a) A person who has dissociated as a member associated with a series shall have no right to participate in the direction and oversight of the activities and affairs of that series and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated from that series.

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

(c) A member's dissociation from a series does not, in itself, cause the member to dissociate from any other series or require the winding up of the series.

(d) A member's dissociation from a series does not, in itself, cause the member to dissociate from the limited liability company.

§ 10A-5A-11.08. Dissolution and winding up of series.

A series may be dissolved and its activities and affairs may be wound up without causing the dissolution of the limited liability company. The dissolution and winding up of a series does not abate, suspend, or otherwise affect the limitation on liabilities of the series provided by *Section 10A-5A-11.02*.

§ 10A-5A-11.09. Event requiring dissolution.

A series is dissolved and its activities and affairs shall be wound up upon the first to occur of the following:

- (a) the dissolution of the limited liability company under *Section 10A-5A-7.01*;
- (b) an event or circumstance that the limited liability company agreement states causes dissolution of the series;
- (c) the consent of all of the members associated with the series;
- (d) the passage of 90 days after the occurrence of the dissociation of the last remaining member associated with the series; or
- (e) on application by a member associated with the series, an order dissolving the series on the grounds that it is not reasonably practicable to carry on the series' activities and affairs in conformity with the limited liability company agreement which order is entered by the circuit court for the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state then by the circuit court for the county in which the limited liability company's most recent registered office is located.

§ 10A-5A-11.10. Effect of dissolution of series.

Notwithstanding *Section 10A-1-9.12*:

- (a) A dissolved series continues its existence as a series but may not carry on any activities and affairs except as is appropriate to wind up and liquidate its activities and affairs, including:
 - (1) collecting the assets of the series;
 - (2) disposing of the properties of the series that will not be distributed in kind to persons owning transferable interests;
 - (3) discharging or making provisions for discharging the liabilities of the series;
 - (4) distributing the remaining property of the series in accordance with *Section 10A-5A-11.14*; and
 - (5) doing every other act necessary to wind up and liquidate the series' activities and affairs.
- (b) In winding up a series' activities and affairs, a series may:
 - (1) preserve the series' activities and affairs and property as a going concern for a reasonable time;
 - (2) prosecute, defend, or settle actions or proceedings whether civil, criminal or administrative;
 - (3) transfer the series' property; and
 - (4) resolve disputes by mediation or arbitration.
- (c) The dissolution of a series does not:
 - (1) transfer title to the series' property;
 - (2) prevent the commencement of a proceeding by or against the series in the series' name;

(3) terminate, abate or suspend a proceeding pending by or against the series on the effective date of dissolution; or

(4) abate, suspend, or otherwise alter the application of *Section 10A-5A-3.01*.

§ 10A-5A-11.11. Right to wind up activities and affairs of series.

(a) The person or persons designated in the limited liability company agreement to wind up the activities and affairs of the dissolved series shall wind up the activities and affairs of the dissolved series in accordance with *Section 10A-5A-11.10*. If no person or persons are designated in the limited liability company agreement to wind up the activities and affairs of the dissolved series, then the remaining members associated with the dissolved series shall wind up the activities and affairs of the dissolved series in accordance with *Section 10A-5A-11.10*. If no person or persons are designated in the limited liability company agreement to wind up the activities and affairs of the dissolved series and there are no remaining members associated with the dissolved series, then all of the holders of the transferable interests associated with the series, or their designee, shall wind up the activities and affairs of the dissolved series in accordance with *Section 10A-5A-11.10*.

(b) The circuit court for the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state then the circuit court for the county in which the limited liability company's most recent registered office is located may order judicial supervision of the winding up of a dissolved series, including the appointment of a person to wind up the series' activities and affairs:

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

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

(A) there are no members associated with the series; and

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

(3) in connection with a proceeding under *Section 10A-5A-11.09(e)*.

§ 10A-5A-11.12. Known claims against dissolved series.

Notwithstanding *Sections 10A-1-9.01* and *10A-1-9.21*:

(a) A dissolved series may dispose of any known claims against it by following the

procedures described in sub-section (b), at any time after the effective date of the dissolution of the series.

(b) A dissolved series may give notice of the dissolution in a writing to the holder of any known claim. The notice must:

- (1) identify the limited liability company and the dissolved series;
- (2) describe the information required to be included in a claim;
- (3) provide a mailing address to which the claim is to be sent;
- (4) state the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the dissolved series must receive the claim; and
- (5) state that if not sooner barred, the claim will be barred if not received by the deadline.

(c) Unless sooner barred by any other statute limiting actions, a claim against a dissolved series is barred:

- (1) If a claimant who was given notice under subsection (b) does not deliver the claim to the dissolved series by the deadline; or
- (2) If a claimant whose claim was rejected by the dissolved series does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejected notice.

(d) For purposes of this section, "known claim" or "claim" includes unliquidated claims, but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

(e) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

§ 10A-5A-11.13. Other claims against dissolved series.

Notwithstanding *Sections 10A-1-9.01 and 10A-1-9.22*:

(a) A dissolved series may publish notice of its dissolution and request that persons with claims against the dissolved series present them in accordance with the notice.

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

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

(2) describe the information that must be included in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that if not sooner barred, a claim against the dissolved series will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If a dissolved series publishes a newspaper notice in accordance with subsection (b), unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved series within two years after the publication date of the newspaper notice:

(1) a claimant who was not given notice under *Section 10A-5A-11.12(b)*;

(2) a claimant whose claim was timely sent to the dissolved series but not acted on by the dissolved series; and

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

(d) A claim that is not barred under this section, any other statute limiting actions, or *Section 10A-5A-11.12* may be enforced:

(1) against a dissolved series, to the extent of its undistributed assets associated with the series; and

(2) except as provided in subsection (h), if the assets of a dissolved series have been distributed after dissolution, against the person or persons owning the transferable interests associated with the series to the extent of that person's proportionate share of the claim or of the assets of the series distributed to that person after dissolution, whichever is less, but a person's total liability for all claims under this subsection (d) may not exceed the total amount of assets of the series distributed to that person after dissolution of the series.

(e) A dissolved series that published a notice under this section may file an application with the circuit court in the county in which the limited liability company's principal place of business office is located and if the limited liability company does not have a principal place of business within this state then the circuit court for the county in which the limited liability company's most recent registered office 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 series or that are based on an event occurring after the effective date of the dissolution of the series but that, based on the facts known to the dissolved series, are reasonably estimated to arise after the effective date of the dissolution of the series. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (c).

(f) Within 10 days after the filing of the application provided for in subsection (e), notice of the proceeding shall be given by the dissolved series to each potential claimant as described in subsection (e).

(g) The circuit court under subsection (e) 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 the guardian, including all reasonable expert witness fees, shall be paid by the dissolved series.

(h) Provision by the dissolved series for security in the amount and the form ordered by the circuit court under subsection (e) shall satisfy the dissolved series' obligation with respect to claims that are contingent, have not been made known to the dissolved series or are based on an event occurring after the effective date of the dissolution of the series, and those claims may not be enforced against a person owning a transferable interest to whom assets have been distributed by the dissolved series after the effective date of the dissolution of the series.

(i) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

(j) If a claim has been satisfied, disposed of, or barred under *Section 10A-5A-11.12*, this *Section 10A-5A-11.13* or other law, the person or persons designated to wind up the affairs of a limited liability company, and the owners of the transferable interests receiving assets from the limited liability company, shall not be liable for that claim.

§ 10A-5A-11.14. Application of assets in winding up series' activities and affairs.

Notwithstanding *Section 10A-1-9.12*, upon the winding up of a series, the assets of the series shall be applied as follows:

(a) Payment, or adequate provision for payment, shall be made to creditors of the series, including, to the extent permitted by law, members who are associated with the series and who are also creditors of the series, in satisfaction of liabilities of the series.

(b) After a series complies with subsection (a), any surplus must be distributed:

(1) first, to each person owning a transferable interest associated with that series that reflects contributions made on account of that transferable interest and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) then to each person owning a transferable interest associated with that series in the proportions in which the owners of transferable interests associated with that series share in distributions prior to the dissolution of the series.

(c) If the series does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests associated with that series in proportion to the value of their respective unreturned contributions.

§ 10A-5A-11.15. Reinstatement after dissolution of a series.

Notwithstanding *Sections 10A-1-9.31* and *10A-1-9.32*, a series that has been dissolved may be reinstated upon compliance with the following conditions:

(a) the consent shall have been obtained from the members or other persons associated with the series entitled to consent at the time that is:

(1) required for reinstatement of the series under the limited liability company agreement; or

(2) if the limited liability company agreement does not state the consent required for reinstatement, sufficient for dissolution of the series under the limited liability company agreement; or

(3) if the limited liability company agreement neither states the consent required for reinstatement nor for dissolution, sufficient for dissolution of the series under this chapter;

(b) in the case of a written objection to reinstatement having been delivered to the series before or at the time of the consent required by subsection (a) by the members or other persons having authority under the limited liability company agreement to bring about or prevent dissolution of the series, those members or persons withdrawing that written objection effective at the time of the consent required by subsection (a); and

(c) In the case of a series dissolved in a judicial proceeding initiated by one or more of the members associated with the series, the consent of each of those members shall have been obtained and shall be included in the consent required by subsection (a)(1).

§ 10A-5A-11.16. Effect of reinstatement.

(a) Subject to subsection (b), upon reinstatement, a series shall be deemed for all purposes to have continued its activities and affairs as if dissolution had never occurred; each right inuring to, and each debt, obligation, and liability incurred by, the series after the dissolution shall be determined as if the dissolution had never occurred.

(b) The rights of persons acting in reliance on the dissolution of the series before those persons had notice of the re-instatement shall not be adversely affected by the reinstatement.

§ 10A-5A-12.01. Application to existing relationships.

(a) Before January 1, 2017, this chapter governs only:

(1) a limited liability company formed on or after January 1, 2015 ; and

(2) except as otherwise provided in subsection (c), a limited liability company formed before January 1, 2015, which elects, in the manner provided in the limited liability company's operating agreement or as provided for by law for amending or restating the limited liability company's operating agreement, to be subject to this chapter.

(b) Except as otherwise provided in subsection (c), on and after January 1, 2017, this chapter governs all limited liability companies.

(c) For purposes of applying this chapter to a limited liability company formed before January 1, 2015:

(1) the limited liability company's formation document, whether articles of organization or certificate of formation, is deemed to be the company's certificate of formation;

(2) if the limited liability company's formation document, whether articles of organization or certificate of formation, contains the information required in *Section 10A-5A-2.01(a)(1)(5)*, the limited liability company shall not be required to amend or restate its formation document, whether articles of organization or certificate of formation, to conform with this chapter;

(3) provisions in the limited liability company's formation documents, whether articles of organization or certificate of formation, shall operate as if those provisions were in the limited liability company's limited liability agreement;

(4) if the limited liability company's formation document, whether articles of organization or certificate of formation, is amended or restated on or after January 1, 2015, and the limited liability company's formation document, whether articles of organization or certificate of formation, is in conflict with the limited liability company's limited liability agreement, then *Section 10A-5A-1.10(d)* shall govern; and

(5) any amendment or restatement of the limited liability company's formation document, whether articles of organization or certificate of formation, on or after January 1, 2015, shall conform with this chapter.

§ 10A-5A-12.02. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, *15 U.S.C.S. § 7001* et seq., but does not modify, limit, or supersede Section 101(c) of that act, *15 U.S.C.S. § 7001(c)*, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, *15 U.S.C.S. § 7003(b)*.

§ 10A-5A-12.03. Interstate application.

A limited liability company formed and existing under this chapter may conduct its activities and affairs, carry on its operations, and have and exercise the powers granted by this chapter in any state, foreign country, or other jurisdiction.

§ 10A-5A-12.04. Savings clause.

(a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

(1) the operation of the statute or any action taken under it before its repeal;

(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

§ 10A-5A-12.05. Reserved power of the state to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed and all rights of members and agents are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and agents whether or not existing as such at the time of the enactment of any such amendment.

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