

1 HB202
2 173107-4
3 By Representative Poole
4 RFD: Judiciary
5 First Read: 11-FEB-16

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8 SYNOPSIS: This bill would revise the Alabama Limited
9 Partnership Law as Chapter 9A of Title 10A of the
10 Code of Alabama 1975.

11 This bill would harmonize the existing
12 limited partnership law and the existing limited
13 liability company law by reducing the differences
14 between the two laws.

15 This bill would harmonize, to the extent
16 possible, the various processes of formation,
17 filings, notice, amendment and restatement of
18 certificates of formation, admission of limited
19 partners and general partners, contributions and
20 distributions, dissociation of partners and the
21 effects thereof, transfers of interests, charging
22 orders, rights of personal representatives,
23 dissolution and winding up, direct and derivative
24 actions, and conversions and mergers.

25 This bill would continue to specify various
26 default provisions which would apply to a

1 partnership agreement unless modified by the
2 partners in the partnership agreement.

3 This bill would continue to provide that
4 certain obligations, such as the implied
5 contractual covenant of good faith and fair
6 dealing, could not be modified in the partnership
7 agreement.

8 This bill would continue the requirement the
9 filings necessary to form, dissolve, merge, or
10 convert a limited partnership include information
11 necessary to notify the state and third parties
12 that the limited partnership exists and how to
13 contact it.

14 This bill would continue to require the
15 details related to the operation would be contained
16 in the partnership agreement.

17 This bill would continue to require the
18 certificate of formation to list all of the general
19 partners.

20 This bill would specify that a partnership
21 could be dissolved by filing a statement of
22 dissolution rather than by amending the certificate
23 of formation.

24 This bill would specify that when both the
25 converting entity and the converted entity are
26 domestic entities, the statement of conversion and

1 the certificate of formation would be filed
2 simultaneously with the Secretary of State.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To adopt a revised Alabama Limited Partnership Law
9 as Chapter 9A of Title 10A of the Code of Alabama 1975; to
10 provide for the various processes of formation of a limited
11 partnership; to provide default provisions; to provide that
12 certain obligations of a limited partnership may not be
13 modified in the agreement; to specify the information required
14 to be included in various filings; to specify that when both
15 the converting entity and the converted entity are domestic
16 entities, the statement of conversion and the certificate of
17 formation would be filed simultaneously with the Secretary of
18 State; to make various harmonizing changes to the limited
19 liability company law; to amend Sections 10A-1-1.03,
20 10A-1-1.06, 10A-1-1.08, 10A-1-4.26, 10A-1-6.02, 10A-1-6.13,
21 10A-1-6.25, 10A-1-7.07, 10A-5A-1.10, 10A-5A-4.01, 10A-5A-5.04,
22 10A-5A-7.01, 10A-5A-7.02, 10A-5A-10.03, 10A-5A-10.04,
23 10A-5A-10.07, and 10A-5A-10.08, Code of Alabama 1975; and to
24 repeal Sections 10A-9-1.01 to 10A-9-12.08, inclusive, Code of
25 Alabama 1975.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Chapter 9A of Title 10A, comprised of
2 Articles 1 to 11, inclusive, is added to the Code of Alabama
3 1975, as follows:

4 Chapter 9A. Alabama Limited Partnership Law.

5 Article 1. General Provisions.

6 § 10A-9A-1.01. Short title. This chapter and the
7 provisions of Chapter 1, to the extent applicable to limited
8 partnerships, shall be known and may be cited as the Alabama
9 Limited Partnership Law.

10 § 10A-9A-1.02. Definitions. Notwithstanding Section
11 10A-1-1.03, as used in this chapter, unless the context
12 otherwise requires, the following terms mean:

13 (1) "Certificate of Formation" with respect to a
14 limited partnership means the certificate of formation
15 required by Section 10A-9A-2.01, and the certificate of
16 formation as amended or restated.

17 (2) "Distribution" except as otherwise provided in
18 Section 10A-9A-5.08(f), means a transfer of money or other
19 property from a limited partnership to another person on
20 account of a transferable interest.

21 (3) "Foreign limited liability limited partnership"
22 means a foreign limited partnership whose general partners
23 have limited liability for the obligations of the foreign
24 limited partnership under a provision similar to Section
25 10A-9A-4.04(c).

26 (4) "Foreign limited partnership" means a
27 partnership formed under the laws of a jurisdiction other than

1 this state and required by those laws to have one or more
2 general partners and one or more limited partners. The term
3 includes a foreign limited liability limited partnership.

4 (5) "General partner" means:

5 (A) with respect to a limited partnership, a person
6 that:

7 (i) is admitted as a general partner under Section
8 10A-9A-4.01;

9 or

10 (ii) was a general partner in a limited partnership
11 when the limited partnership became subject to this chapter
12 under Section 10A-9A-11.01(a); and

13 (B) with respect to a foreign limited partnership, a
14 person that has rights, powers, and obligations similar to
15 those of a general partner in a limited partnership.

16 (6) "Limited liability limited partnership," except
17 in the phrase "foreign limited liability limited partnership,"
18 means a limited partnership whose certificate of formation
19 states that the limited partnership is a limited liability
20 limited partnership.

21 (7) "Limited partner" means:

22 (A) with respect to a limited partnership, a person
23 that:

24 (i) is admitted as a limited partner under Section
25 10A-9A-3.01; or

1 (ii) was a limited partner in a limited partnership
2 when the limited partnership became subject to this chapter
3 under Section 10A-9A-11.01(a); and

4 (B) with respect to a foreign limited partnership, a
5 person that has rights, powers, and obligations similar to
6 those of a limited partner in a limited partnership.

7 (8) "Limited partnership," except in the phrases
8 "foreign limited partnership" and "foreign limited liability
9 limited partnership," means an entity, having one or more
10 general partners and one or more limited partners, which is
11 formed under this chapter by two or more persons or becomes
12 subject to this chapter under Article 10 or Section
13 10A-9A-11.01(a). The term includes a limited liability
14 limited partnership.

15 (9) "Partner" means a limited partner or general
16 partner.

17 (10) "Partnership agreement" means any agreement
18 (whether referred to as a partnership agreement or otherwise),
19 written, oral or implied, of the partners as to the activities
20 and affairs of a limited partnership. The partnership
21 agreement includes any amendments to the partnership
22 agreement.

23 (11) "Person dissociated as a general partner" means
24 a person dissociated as a general partner of a limited
25 partnership.

1 (12) "Required information" means the information
2 that a limited partnership is required to maintain under
3 Section 10A-9A-1.11.

4 (13) "Transfer" means an assignment, conveyance,
5 deed, bill of sale, lease, mortgage, security interest,
6 encumbrance, gift, or transfer by operation of law.

7 (14) "Transferable interest" means a partner's right
8 to receive distributions from a limited partnership.

9 (15) "Transferee" means a person to which all or
10 part of a transferable interest has been transferred, whether
11 or not the transferor is a partner.

12 § 10A-9A-1.03. Knowledge and notice.

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

14 (1) has actual knowledge of it; or

15 (2) is deemed to know it under law other than this
16 chapter.

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

18 (1) knows of it;

19 (2) receives notification of it;

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

22 (4) is deemed to have notice of the fact under
23 subsection (d).

24 (c) A person notifies or gives a notification to
25 another person by taking steps reasonably required to inform
26 the other person in ordinary course, whether or not the other
27 person knows the fact.

1 (d) A person is deemed to have notice of a limited
2 partnership's:

3 (1) matters included in the certificate of formation
4 under Sections 10A-9A-2.01(a) (1), (a) (2), (a) (3), (a) (4), if
5 applicable, (a) (5), and (a) (6) upon filing;

6 (2) general partner dissociating as a general
7 partner, 90 days after the effective date of an amendment to
8 the certificate of formation which states that the general
9 partner has dissociated or 90 days after the effective date of
10 a statement of dissociation pertaining to the general partner,
11 whichever occurs first;

12 (3) dissolution, 90 days after a statement of
13 dissolution under Section 10A-9A-8.02 or Section 10A-9A-8.03
14 becomes effective;

15 (4) merger or conversion under Article 10 or under
16 Article 8 of Chapter 1, 90 days after the statement of merger
17 or conversion becomes effective; or

18 (5) reinstatement, 90 days after a certificate of
19 reinstatement under Section 10A-9A-8.11 becomes effective.

20 (e) A general partner's knowledge, notice, or
21 receipt of a notification of a fact relating to the limited
22 partnership is effective immediately as knowledge of, notice
23 to, or receipt of a notification by the limited partnership,
24 except in the case of a fraud on the limited partnership
25 committed by or with the consent of the general partner. A
26 limited partner's knowledge, notice, or receipt of a
27 notification of a fact relating to the limited partnership is

1 not effective as knowledge of, notice to, or receipt of a
2 notification by the limited partnership solely by reason of
3 the partner's capacity as a limited partner.

4 § 10A-9A-1.04. Nature and purpose.

5 (a) A limited partnership is a separate legal
6 entity. A limited partnership's status for tax purposes shall
7 not affect its status as a separate legal entity formed under
8 this chapter. A limited partnership is the same entity
9 regardless of whether its certificate of formation states that
10 the limited partnership is a limited liability limited
11 partnership. A partner has no interest in any specific
12 property of a limited partnership.

13 (b) A limited partnership may carry on any lawful
14 activity, whether or not for profit, except a banking or
15 insurance business.

16 § 10A-9A-1.05. Powers; Indemnification.

17 (a) A limited partnership shall possess and may
18 exercise all the powers and privileges granted and enumerated
19 by Chapter 1 or by any other law or by its partnership
20 agreement, together with any powers incidental thereto,
21 including those powers and privileges necessary or convenient
22 to the conduct, promotion, or attainment of the business,
23 purposes, or activities and affairs of the limited partnership
24 and including the power to sue, be sued, and defend in its own
25 name and to maintain an action against a partner for harm
26 caused to the limited partnership by a breach of the

1 partnership agreement or violation of a duty to the
2 partnership.

3 (b) A limited partnership may indemnify and hold
4 harmless a partner or other person, pay in advance or
5 reimburse expenses incurred by a partner or other person, and
6 purchase and maintain insurance on behalf of a partner or
7 other person.

8 § 10A-9A-1.06. Governing law.

9 (a) The law of this state governs:

10 (1) the organization and internal affairs of a
11 limited partnership;

12 (2) the liability of a partner as a partner for the
13 debts, obligations, or other liabilities of a limited
14 partnership; and

15 (3) the authority of the partners of a limited
16 partnership.

17 (b) The law of the state or other jurisdiction under
18 which a foreign limited partnership is formed governs:

19 (1) the organization and internal affairs of a
20 foreign limited partnership;

21 (2) the liability of a partner as a partner for the
22 debts, obligations, or other liabilities of a foreign limited
23 partnership; and

24 (3) the authority of the partners of a foreign
25 limited partnership.

26 § 10A-9A-1.07. Supplemental principles of law; rate
27 of interest.

1 (a) It is the policy of this chapter and this state
2 to give maximum effect to the principles of freedom of
3 contract and to the enforceability of partnership agreements.

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

7 (c) If an obligation to pay interest arises under
8 this chapter and the rate is not specified, the rate is the
9 applicable federal rate as determined from time to time by the
10 United States Treasury pursuant to 26 U.S.C. § 1274(d) or any
11 successor law.

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

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

19 (f) Sections 7-9A-406 and 7-9A-408 of the Uniform
20 Commercial Code, and all successor statutes thereto, do not
21 apply to any interest in a limited partnership, including all
22 rights, powers, and interests arising under a partnership
23 agreement or this chapter. This provision prevails over
24 Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code,
25 and all successor statutes thereto, and is expressly intended
26 to permit the enforcement of the provisions of a partnership
27 agreement that would otherwise be ineffective under Sections

1 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all
2 successor statutes thereto.

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

5 (h) Sections 10A-1-1.03(73), (81), (88), and (91)
6 shall have no application to this chapter.

7 (i) Section 10A-1-2.13(c) shall have no application
8 to this chapter.

9 § 10A-9A-1.08. Effect of partnership agreement;
10 nonwaivable provisions.

11 (a) Except as otherwise provided in Subsections (b)
12 and (c):

13 (1) the partnership agreement governs relations
14 among the partners as partners and between the partners and
15 the partnership; and

16 (2) to the extent the partnership agreement does not
17 otherwise provide for a matter described in Subsection (a)(1),
18 this chapter governs the matter.

19 (b)(1) To the extent that, at law or in equity, a
20 partner or other person has duties, including fiduciary
21 duties, to a limited partnership or to another partner or to
22 another person that is a party to or is otherwise bound by a
23 partnership agreement, the partner's or other person's duties
24 may be expanded or restricted or eliminated by provisions in a
25 written partnership agreement, but the implied contractual
26 covenant of good faith and fair dealing may not be eliminated.

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

11 (3) A partner or other person shall not be liable to
12 a limited partnership or to another partner or to another
13 person that is a party to or is otherwise bound by a
14 partnership agreement for breach of fiduciary duty for the
15 partner's or other person's good faith reliance on the
16 partnership agreement.

17 (4) A partnership agreement may provide that:

18 (A) a partner or transferee who fails to perform in
19 accordance with, or to comply with the terms and conditions
20 of, the partnership agreement shall be subject to specified
21 penalties or specified consequences; and

22 (B) at the time or upon the happening of events
23 specified in the partnership agreement, a partner or
24 transferee may be subject to specified penalties or specified
25 consequences.

26 (5) A penalty or consequence that may be specified
27 under paragraph (4) of this subsection may include and take

1 the form of reducing or eliminating the defaulting partner's
2 or transferee's proportionate interest in a limited
3 partnership, subordinating the partner's or transferee's
4 transferable interest to that of non-defaulting partners or
5 transferees, forcing a sale of that transferable interest,
6 forfeiting the defaulting partner's or transferee's
7 transferable interest, the lending by other partners or
8 transferees of the amount necessary to meet the defaulting
9 partner's or transferee's commitment, a fixing of the value of
10 the defaulting partner's or transferee's transferable interest
11 by appraisal or by formula and redemption or sale of the
12 transferable interest at that value, or other penalty or
13 consequence.

14 (6) A written partnership agreement may supersede,
15 in whole or in part, the provisions of Division C and Division
16 D of Article 3 of Chapter 1.

17 (c) A partnership agreement may not:

18 (1) vary the nature of the limited partnership as a
19 separate legal entity under Section 10A-9A-1.04(a);

20 (2) vary a limited partnership's power under Section
21 10A-9A-1.05 to sue, be sued, and defend in its own name;

22 (3) vary the law applicable to a limited partnership
23 under Section 10A-9A-1.06;

24 (4) restrict rights under this chapter of a person
25 other than a partner, a dissociated partner, or a transferee;

26 (5) vary the requirements of Section 10A-9A-2.03;

1 (6) vary the information required under Section
2 10A-9A-1.11 or unreasonably restrict the right to information
3 under Sections 10A-9A-3.04 or 10A-9A-4.07, but the partnership
4 agreement may impose reasonable restrictions on the
5 availability and use of information obtained under those
6 sections and may define appropriate remedies, including
7 liquidated damages, for a breach of any reasonable restriction
8 on use;

9 (7) vary the power of the court under Section
10 10A-9A-2.04;

11 (8) eliminate the implied contractual covenant of
12 good faith and fair dealing as provided under Section
13 10A-9A-1.08(b) (1);

14 (9) eliminate or limit the liability of a partner or
15 other person for any act or omission that constitutes a bad
16 faith violation of the implied contractual covenant of good
17 faith and fair dealing as provided under Section
18 10A-9A-1.08(b) (2);

19 (10) waive the requirements of Section
20 10A-9A-5.02(e);

21 (11) reduce the limitations period specified under
22 Section 10A-9A-5.08(d) for an action commenced under other
23 applicable law;

24 (12) waive the prohibition on issuance of a
25 certificate of a transferable interest in bearer form under
26 Section 10A-9A-7.02(c);

1 (13) vary the power of a person to dissociate as a
2 general partner under Section 10A-9A-6.04(a) except that the
3 partnership agreement may require that the notice under
4 Section 10A-9A-6.03(1) be in a writing or in a specific form
5 thereof;

6 (14) vary the power of a court to decree dissolution
7 in the circumstances specified in Section 10A-9A-8.01(f);

8 (15) vary the requirement to wind up the
9 partnership's activities and affairs as specified in Section
10 10A-9A-8.02; or

11 (16) vary the rights of a partner under Section
12 10A-9A-10.10.

13 § 10A-9A-1.09. Partnership agreement; effect on
14 limited partnership and persons admitted as partners.

15 (a) A limited partnership is bound by and may
16 enforce the partnership agreement, whether or not the limited
17 partnership has itself manifested assent to the partnership
18 agreement.

19 (b) A person that is admitted as a partner of a
20 limited partnership becomes a party to and assents to the
21 partnership agreement except as provided in Section
22 10A-9A-7.02(g).

23 (c) Two or more persons intending to be the initial
24 general partner and the initial limited partner of a limited
25 partnership may make an agreement providing that upon the
26 formation of the limited partnership, the agreement will
27 become the partnership agreement.

1 § 10A-9A-1.10. Partnership agreement; effect on
2 third parties and relationship to writings effective on behalf
3 of limited partnership.

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

12 (b) A partnership agreement may provide rights to
13 any person, including a person who is not a party to the
14 partnership agreement, to the extent set forth in the
15 partnership agreement.

16 (c) The obligations of a limited partnership and its
17 partners to a person in the person's capacity as a transferee
18 or dissociated partner are governed by the partnership
19 agreement. A transferee and a dissociated partner are bound by
20 the partnership agreement.

21 (d) If a writing that has been delivered by a
22 limited partnership for filing in accordance with Chapter 1
23 and has become effective conflicts with a provision of the
24 partnership agreement:

25 (1) The partnership agreement prevails as to
26 partners, dissociated partners, and transferees; and

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

3 § 10A-9A-1.11. Required information. A limited
4 partnership shall maintain the following information:

5 (1) A current list of the full name and last known
6 business or residential street and mailing address of each
7 partner, separately identifying the general partners, in
8 alphabetical order, and the limited partners, in alphabetical
9 order.

10 (2) Copies of the filed certificate of formation and
11 all amendments thereto, together with signed copies of any
12 powers of attorney under which any certificate of formation,
13 amendment, or restatement has been signed.

14 (3) Copies of any filed statement of conversion or
15 merger.

16 (4) Copies of the limited partnership's federal,
17 state, and local income tax returns and reports, if any, for
18 the three most recent years.

19 (5) Copies of the then effective partnership
20 agreement and any amendment thereto.

21 (6) Copies of any financial statement of the limited
22 partnership for the three most recent years.

23 (7) Copies of any writing made by the limited
24 partnership during the past three years of any approval or
25 consent given by or taken of any partner pursuant to this
26 chapter or the partnership agreement.

1 (8) Unless contained in a partnership agreement made
2 in a writing, a writing stating:

3 (A) the amount of cash, and a description and
4 statement of the agreed value of the other benefits,
5 contributed and agreed to be contributed by each partner;

6 (B) the times at which, or events on the happening
7 of which, any additional contributions agreed to be made by
8 each partner are to be made;

9 (C) for any person that is both a general partner
10 and a limited partner, a specification of what transferable
11 interest the person owns in each capacity; and

12 (D) any events upon the happening of which the
13 limited partnership is to be dissolved and its activities and
14 affairs wound up.

15 § 10A-9A-1.12. Transactions of partner with
16 partnership. A partner may lend money to and transact other
17 activities or affairs with the limited partnership and has the
18 same rights and obligations with respect to the loan or other
19 transaction as a person that is not a partner.

20 § 10A-9A-1.13. Dual capacity. A person may be both a
21 general partner and a limited partner. A person that is both a
22 general and limited partner has the rights, powers, duties,
23 and obligations provided by this chapter and the partnership
24 agreement in each of those capacities. When the person acts as
25 a general partner, the person is subject to the obligations,
26 duties and restrictions under this chapter and the partnership
27 agreement for general partners. When the person acts as a

1 limited partner, the person is subject to the obligations,
2 duties, and restrictions under this chapter and the
3 partnership agreement for limited partners.

4 § 10A-9A-1.14. Consent and proxies of partners.
5 Action requiring the consent of partners under this chapter
6 may be taken without a meeting, and a partner may appoint a
7 proxy to consent or otherwise act for the partner by signing a
8 writing of appointment, either personally or by the partner's
9 attorney in fact.

10 Article 2. Formation; Certificate of Formation and
11 other Filings.

12 § 10A-9A-2.01. Formation of limited partnership;
13 certificate of formation.

14 (a) In order to form a limited partnership, a person
15 must deliver a certificate of formation for filing to the
16 filing officer as provided in subsection (e). Notwithstanding
17 Section 10A-1-3.05, the certificate of formation shall set
18 forth:

19 (1) the name of the limited partnership, which must
20 comply with Article 5 of Chapter 1;

21 (2) the address of the registered office required by
22 Article 5 of Chapter 1;

23 (3) the name of the registered agent at the
24 registered office as required by Article 5 of Chapter 1;

25 (4) the name and the street and mailing address of
26 each general partner;

1 (5) whether the limited partnership is a limited
2 liability limited partnership;

3 (6) any additional information required by Article 8
4 of Chapter 1 or by Article 10 of this Chapter; and

5 (7) any other matters the partners determine to
6 include therein which comply with Section 10A-9A-1.08.

7 (b) A limited partnership is formed when the
8 certificate of formation becomes effective in accordance with
9 Article 4 of Chapter 1.

10 (c) The fact that a certificate of formation has
11 been filed and is effective in accordance with Article 4 of
12 Chapter 1 is notice of the matters required to be included by
13 Subsections (a) (1), (a) (2), (a) (3), (a) (4), if applicable,
14 (a) (5), and (a) (6), but is not notice of any other fact.

15 (d) A partnership agreement shall be entered into
16 either before, after, or at the time of filing the certificate
17 of formation and, whether entered into before, after, or at
18 the time of filing, may be made effective as of the filing of
19 the certificate of formation or at any other time or date
20 provided in the partnership agreement.

21 (e) A certificate of formation shall be delivered
22 for filing to the judge of probate of the county in which the
23 initial registered office of the limited partnership is
24 located pursuant to Article 4 of Chapter 1 unless the
25 certificate of formation is required to be delivered for
26 filing to a different filing officer under Article 8 of
27 Chapter 1 or Article 10 of this Chapter.

1 § 10A-9A-2.02. Amendment or restatement of
2 certificate of formation.

3 Notwithstanding Division B of Article 3 of Chapter
4 1:

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

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

9 (c) To amend its certificate of formation, a limited
10 partnership must deliver a certificate of amendment for filing
11 to the filing officer provided for in subsection (j) which
12 certificate of amendment shall state:

13 (1) the name of the limited partnership;

14 (2) the date of filing of its certificate of
15 formation, and of all prior amendments and the office or
16 offices where filed; and

17 (3) the changes the amendment makes to the
18 certificate of formation as most recently amended or restated.

19 (d) Prior to a statement of dissolution being
20 delivered to the filing officer for filing, a limited
21 partnership shall promptly deliver a certificate of amendment
22 for filing with the filing officer provided for in subsection
23 (j) to reflect:

24 (1) the admission of a new general partner; or

25 (2) the dissociation of a person as a general
26 partner.

1 (e) Prior to a statement of dissolution being
2 delivered to the filing officer for filing, if a general
3 partner knows that any information in a filed certificate of
4 formation was inaccurate when the certificate of formation was
5 filed or has become inaccurate due to changed circumstances
6 and if such information is required to be set forth in a newly
7 filed certificate of formation under this Chapter, the general
8 partner shall promptly:

9 (1) cause the certificate of formation to be
10 amended; or

11 (2) if appropriate, deliver for filing with the
12 filing officer provided for in subsection (j) a statement of
13 change in accordance with Division D of Article 4 of Chapter 1
14 or a statement of correction in accordance with Division C of
15 Article 5 of Chapter 1.

16 (f) A certificate of formation may be amended at any
17 time pursuant to this section for any other proper purpose as
18 determined by the limited partnership. A certificate of
19 formation may also be amended in a statement of merger
20 pursuant to Article 8 of Chapter 1 or Article 10 of this
21 Chapter.

22 (g) In order to restate its certificate of
23 formation, a limited partnership must deliver a restated
24 certificate of formation for filing with the filing officer
25 provided for in subsection (j). A restated certificate of
26 formation must:

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

1 (2) state the name of the limited partnership;

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

5 (4) set forth any amendment or change effected in
6 connection with the restatement of the certificate of
7 formation. Any such restatement that effects an amendment
8 shall be subject to any other provision of this chapter not
9 inconsistent with this section, which would apply if a
10 separate certificate of amendment were filed to effect the
11 amendment or change.

12 (h) The original certificate of formation, as
13 theretofore amended, shall be superseded by the restated
14 certificate of formation and thenceforth, the restated
15 certificate of formation, including any further amendment or
16 changes made thereby, shall be the certificate of formation of
17 the limited partnership, but the original effective date of
18 formation shall remain unchanged.

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

24 (j) If a limited partnership is not an organization
25 described in Section 10A-1-4.02(c)(4), then that limited
26 partnership shall deliver the certificate of amendment or
27 restated certificate of formation for filing with the judge of

1 probate in whose office the original certificate of formation
2 is filed. If a limited partnership is an organization
3 described in Section 10A-1-4.02(c) (4), then that limited
4 partnership shall deliver the certificate of amendment or
5 restated certificate of formation for filing with the
6 Secretary of State.

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

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

13 § 10A-9A-2.03. Execution of documents.

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

17 (1) A limited partnership's initial certificate of
18 formation must be signed by all general partners listed in the
19 certificate of formation.

20 (2) An amendment adding or deleting a statement that
21 the limited partnership is a limited liability limited
22 partnership must be signed by all general partners listed in
23 the certificate of formation.

24 (3) An amendment designating as general partner a
25 person admitted under Section 10A-9A-8.01(c) following the
26 dissociation of a limited partnership's last general partner
27 must be signed by the person or persons so designated.

1 (4) Any other amendment must be signed by:

2 (A) at least one general partner; and

3 (B) each other person designated in the amendment as
4 a new general partner.

5 (5) A restated certificate of formation must be
6 signed by at least one general partner and, to the extent the
7 restated certificate of formation effects a change under any
8 other paragraph of this subsection, the restated certificate
9 of formation must be signed in a manner that satisfies that
10 paragraph.

11 (6) a statement of dissolution must be signed by all
12 general partners or by the person or persons appointed
13 pursuant to Section 10A-9A-8.03(b) or (c) to wind up the
14 dissolved limited partnership's activities and affairs.

15 (7) A statement of conversion must be signed by each
16 general partner of the limited partnership.

17 (8) A statement of merger must be signed by each
18 general partner of the limited partnership.

19 (9) Any other writing delivered on behalf of a
20 limited partnership for filing must be signed by at least one
21 general partner.

22 (10) A statement of withdrawal by a person pursuant
23 to Section 10A-9A-3.06 must be signed by that person.

24 (11) A writing delivered on behalf of a foreign
25 limited partnership to the Secretary of State for filing must
26 be signed by at least one general partner of the foreign
27 limited partnership.

1 (12) Any other writing delivered on behalf of any
2 person for filing must be signed by that person.

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

7 (c) Any writing which is required in this chapter to
8 be signed by a person need not be signed by any person:

9 (1) who is deceased or dissolved or for whom a
10 guardian or general conservator has been appointed, if the
11 record so states; or

12 (2) who has previously delivered for filing with the
13 filing officer pursuant to Article 4 of Chapter 1 a statement
14 of dissociation or withdrawal.

15 § 10A-9A-2.04. Signing and filing pursuant to
16 judicial order.

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

27 (1) the person to sign the writing;

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

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

4 (b) If a petitioner under subsection (a) is not the
5 limited partnership or foreign limited partnership to whom the
6 writing pertains, the petitioner shall make the limited
7 partnership or foreign limited partnership a party to the
8 action. A person aggrieved under subsection (a) may seek the
9 remedies provided in subsection (a) in a separate action
10 against the person required to sign or deliver the writing or
11 as a part of any other action concerning the limited
12 partnership or foreign limited partnership in which the person
13 required to sign or deliver the writing is made a party.

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

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

20 § 10A-9A-2.05. Liability for false information in a
21 filed writing.

22 If a writing delivered for filing under this chapter
23 and filed under this chapter contains information which is
24 false in any material respect and if such information is
25 required to be set forth on a newly filed certificate of
26 formation under this chapter, a person that suffers loss by

1 reasonable reliance on the information may recover damages for
2 the loss from:

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

7 (2) a general partner that has notice that the
8 information was false when the writing was filed or has become
9 false because of changed circumstances, if the general partner
10 has notice for a reasonably sufficient time before the
11 information is relied upon to enable the general partner to
12 effect an amendment under Section 10A-9A-2.02, file a petition
13 pursuant to Division B of Article 5 of Chapter 1, or deliver
14 for filing a statement of change or a statement of correction
15 pursuant to Division C of Article 5 of Chapter 1.

16 § 10A-9A-2.06. Certificate of existence or
17 authorization.

18 (a) The Secretary of State, upon request and payment
19 of the requisite fee, shall furnish to any person a
20 certificate of existence for a limited partnership if the
21 writings filed in the office of the Secretary of State show
22 that the limited partnership has been formed under the laws of
23 this state. A certificate of existence shall reflect only the
24 information on file with the Secretary of State. To the extent
25 writings have been delivered to the Secretary of State, the
26 certificate of existence must state:

27 (1) the limited partnership's name;

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

4 (3) whether a statement of dissolution of the
5 limited partnership has been delivered to the Secretary of
6 State for filing;

7 (4) whether the limited partnership has delivered to
8 the Secretary of State for filing a certificate of
9 reinstatement; and

10 (5) other facts of record in the office of the
11 Secretary of State which may be requested by the applicant.

12 (b) The Secretary of State, upon request and payment
13 of the requisite fee, shall furnish to any person a
14 certificate of authorization for a foreign limited partnership
15 if the writings filed in the Office of the Secretary of State
16 show that the Secretary of State has filed a certificate of
17 authority, has not revoked the certificate of authority, and
18 has not filed a notice of cancellation. A certificate of
19 authorization must state:

20 (1) the foreign limited partnership's name and any
21 alternate name for use in this state under Article 5 of
22 Chapter 1;

23 (2) that the foreign limited partnership is
24 authorized to conduct activities and affairs in this state;

25 (3) that the Secretary of State has not revoked the
26 foreign limited partnership's certificate of authority;

1 (4) that the foreign limited partnership has not
2 filed with the Secretary of State a certificate of withdrawal,
3 a notice of cancellation, or otherwise terminated its
4 certificate of authority; and

5 (5) other facts of record in the office of the
6 Secretary of State which may be requested by the applicant.

7 (c) Subject to any qualification stated in the
8 certificate, a certificate of existence or authorization
9 issued by the Secretary of State may be relied upon as
10 conclusive evidence that the limited partnership or foreign
11 limited partnership is in existence or is authorized to
12 transact activities and affairs in this state.

13 (d) The Secretary of State shall not be required to
14 issue a certificate of existence for a limited partnership if
15 its certificate of formation was filed prior to January 1,
16 2011; provided, however, that the Secretary of State shall
17 issue a certificate of existence upon the filing by the
18 limited partnership of a certificate of information with the
19 Secretary of State which must:

20 (1) state all information required in Section
21 10A-9A-2.01(a) (1), (a) (2), (a) (3), (a) (4), (a) (5) and (a) (6);
22 and

23 (2) list and attach certified copies of all writings
24 filed as to the limited partnership.

25 Article 3. Limited Partners.

26 § 10A-9A-3.01. Admission of limited partner.

1 (a) The initial limited partner or limited partners
2 of a limited partnership are admitted as a limited partner or
3 limited partners upon the formation of the limited
4 partnership.

5 (b) After formation, a person is admitted as a
6 limited partner of the limited partnership:

7 (1) as provided in the partnership agreement;

8 (2) as the result of a transaction effective under
9 Article 10 of this chapter or Article 8 of Chapter 1;

10 (3) with the consent of all the partners; or

11 (4) as provided in Section 10A-9A-8.01(d) or (e).

12 (c) A person may be admitted as a limited partner
13 without:

14 (1) acquiring a transferable interest; or

15 (2) making or being obligated to make a contribution
16 to the limited partnership.

17 § 10A-9A-3.02. No right or power as limited partner
18 to bind limited partnership.

19 A limited partner does not have the right or the
20 power as a limited partner to act for or bind the limited
21 partnership.

22 § 10A-9A-3.03. No Liability as Limited Partner for
23 Limited Partnership Obligation.

24 A debt, obligation, or other liability of a limited
25 partnership, whether arising in contract, tort, or otherwise,
26 is not the debt, obligation, or other liability of a limited
27 partner. A limited partner is not personally liable, directly

1 or indirectly, by way of contribution or otherwise, for a
2 debt, obligation, or other liability of the limited
3 partnership solely by reason of being a limited partner, even
4 if the limited partner participates in the management and
5 control of the limited partnership.

6 § 10A-9A-3.04. Right of limited partner and former
7 limited partner to information.

8 Notwithstanding the provisions of Sections
9 10A-1-3.32 and 10A-1-3.33:

10 (a) Subject to subsection (g), on 10 days' demand,
11 made in a writing received by the limited partnership, a
12 limited partner may inspect and copy required information
13 during regular business hours and at a reasonable location
14 specified by the limited partnership. The limited partner need
15 not have any particular purpose for seeking the information.

16 (b) Subject to subsection (g), during regular
17 business hours and at a reasonable location specified by the
18 limited partnership, a limited partner may obtain from the
19 limited partnership and inspect and copy true and full
20 information regarding the state of the activities and affairs
21 and financial condition of the limited partnership and other
22 information regarding the activities and affairs of the
23 limited partnership as is just and reasonable if:

24 (1) the limited partner seeks the information for a
25 purpose reasonably related to the partner's interest as a
26 limited partner;

1 (2) the limited partner makes a demand in a writing
2 received by the limited partnership, describing with
3 reasonable particularity the information sought and the
4 purpose for seeking the information; and

5 (3) the information sought is directly connected to
6 the limited partner's purpose.

7 (c) Within 10 days after receiving a demand pursuant
8 to subsection (b), the limited partnership in a writing shall
9 inform the limited partner that made the demand:

10 (1) what information the limited partnership will
11 provide in response to the demand;

12 (2) when and where the limited partnership will
13 provide the information;

14 (3) if the limited partnership declines to provide
15 any demanded information, the limited partnership's reasons
16 for declining; and

17 (4) what, if any, restrictions will be imposed
18 pursuant to the partnership agreement or subsection (g).

19 (d) Subject to subsections (f) and (g), a person
20 dissociated as a limited partner may inspect and copy required
21 information during regular business hours and at a reasonable
22 location specified by the limited partnership if:

23 (1) the required information pertains to the period
24 during which the person was a limited partner;

25 (2) the person seeks the required information in
26 good faith; and

1 (3) the person meets the requirements of subsection
2 (b).

3 (e) The limited partnership shall respond to a
4 demand made pursuant to subsection (d) in the same manner as
5 provided in subsection (c).

6 (f) If a limited partner dies, Section 10A-9A-7.04
7 applies.

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

12 (1) impose reasonable restrictions and conditions on
13 access to and use of information to be furnished under this
14 Section, including designating information confidential and
15 imposing nondisclosure and safeguarding obligations on the
16 recipient; and

17 (2) keep confidential from the partners and any
18 other person, for such period of time as the limited
19 partnership deems reasonable, any information that the limited
20 partnership reasonably believes to be in the nature of trade
21 secrets or other information that disclosure of which the
22 limited partnership in good faith believes is not in the best
23 interest of the limited partnership or could damage the
24 limited partnership or its activities and affairs, or that the
25 limited partnership is required by law or by agreement with a
26 third party to keep confidential.

1 In a dispute concerning the reasonableness of a
2 restriction under this subsection, the limited partnership has
3 the burden of proving reasonableness. Any general partner, or
4 any agent, officer or employee of a general partner or any
5 agent of a limited partnership, who, without reasonable cause,
6 refuses to allow any limited partner or the limited partner's
7 agent or attorney to inspect or copy any information of the
8 limited partnership to which such limited partner is entitled
9 under subsection (a) or (b) shall be personally liable to the
10 limited partner for a penalty in an amount not to exceed ten
11 percent of the fair market value of the limited partnership
12 interest of the limited partner in addition to any other
13 damages or remedy.

14 (h) A limited partnership may charge a person that
15 makes a demand under this section the reasonable costs of
16 copying, limited to the costs of labor and material.

17 (i) A limited partner or person dissociated as a
18 limited partner may exercise the rights under this section
19 through an attorney or other agent. Any restriction imposed
20 under subsection (g) or by the partnership agreement applies
21 both to the attorney or other agent and to the limited partner
22 or person dissociated as a limited partner.

23 (j) The rights stated in this section do not extend
24 to a person as transferee, but may be exercised by the legal
25 representative of an individual under legal disability who is
26 a limited partner or person dissociated as a limited partner.

27 § 10A-9A-3.05. Limited duties of limited partners.

1 (a) Except as otherwise provided in subsection (b),
2 a limited partner does not have any duty to the limited
3 partnership or to any other partner solely by reason of being
4 a limited partner.

5 (b) A limited partner shall discharge the duties to
6 the limited partnership and the other partners under the
7 partnership agreement and exercise any rights under this
8 chapter or the partnership agreement consistently with the
9 implied contractual covenant of good faith and fair dealing.

10 (c) A limited partner does not violate a duty or
11 obligation under this chapter or under the partnership
12 agreement merely because the limited partner's conduct
13 furthers the limited partner's own interest.

14 § 10A-9A-3.06. Person erroneously believing self to
15 be limited partner.

16 (a) Except as otherwise provided in subsection (b),
17 a person that makes an investment in an organization and
18 erroneously but in good faith believes that the person has
19 become a limited partner in the organization is not liable for
20 the organization's obligations by reason of making the
21 investment, receiving distributions from the organization, or
22 exercising any rights of or appropriate to a limited partner,
23 if, on ascertaining the mistake, the person:

24 (1) causes an appropriate certificate of formation,
25 amendment, or statement of correction to be signed and filed
26 with the filing officer in accordance with Article 4 of
27 Chapter 1; or

1 (2) withdraws from future participation as an owner
2 in the organization by signing a statement of withdrawal and
3 filing it with the Secretary of State.

4 (b) A person that makes an investment described in
5 subsection (a) is liable to the same extent as a general
6 partner to any third party that enters into a transaction with
7 the organization, believing in good faith that the person is a
8 general partner, before the statement of withdrawal,
9 certificate of formation, amendment, or statement of
10 correction to show that the person is not a general partner is
11 filed with the filing officer in accordance with Article 4 of
12 Chapter 1.

13 (c) If a person makes a diligent effort in good
14 faith to comply with subsection (a)(1) and is unable to cause
15 the appropriate certificate of formation, amendment, or
16 statement of correction to be signed and filed with the filing
17 officer in accordance with Article 4 of Chapter 1, the person
18 has the right to withdraw from the organization pursuant to
19 subsection (a)(2) even if the withdrawal would otherwise
20 breach an agreement with others that are or have agreed to
21 become co-owners of the organization.

22 Article 4. General Partners.

23 § 10A-9A-4.01. Admission of general partner.

24 (a) Upon formation of a limited partnership, a
25 person is admitted as a general partner as agreed among the
26 persons that are to be the initial partners.

1 (b) After formation of a limited partnership, a
2 person is admitted as a general partner:

3 (1) as provided in the partnership agreement;

4 (2) as the result of a transaction effective under
5 Article 10 or Article 8 of Chapter 1;

6 (3) with the consent of all the partners; or

7 (4) as provided in Section 10A-9A-8.01(c) or (e).

8 (c) A person may be admitted as a general partner
9 without:

10 (1) acquiring a transferable interest; or

11 (2) making or being obligated to make a contribution
12 to the partnership.

13 § 10A-9A-4.02. General partner agent of limited
14 partnership.

15 (a) Each general partner is an agent of the limited
16 partnership for the purposes of its activities and affairs. An
17 act of a general partner, including the signing of a writing
18 in the partnership's name, for apparently carrying on in the
19 ordinary course the limited partnership's activities and
20 affairs or activities and affairs of the kind carried on by
21 the limited partnership binds the limited partnership, unless
22 the general partner did not have authority to act for the
23 limited partnership in the particular matter and the person
24 with which the general partner was dealing knew, had received
25 a notification, or had notice under Section 10A-9A-1.03(d)
26 that the general partner lacked authority.

1 (b) An act of a general partner which is not
2 apparently for carrying on in the ordinary course the limited
3 partnership's activities and affairs or activities and affairs
4 of the kind carried on by the limited partnership binds the
5 limited partnership only if the act was actually authorized by
6 all the other partners.

7 § 10A-9A-4.03. Limited partnership liable for
8 general partner's actionable conduct.

9 (a) A limited partnership is liable for loss or
10 injury caused to a person, or for a penalty incurred, as a
11 result of a wrongful act or omission, or other actionable
12 conduct, of a general partner acting in the ordinary course of
13 activities and affairs of the limited partnership or with
14 authority of the limited partnership.

15 (b) If, in the course of the limited partnership's
16 activities and affairs or while acting with authority of the
17 limited partnership, a general partner receives or causes the
18 limited partnership to receive money or property of a person
19 not a partner, and the money or property is misapplied by a
20 general partner, the limited partnership is liable for the
21 loss.

22 § 10A-9A-4.04. General partner's liability.

23 (a) Except as otherwise provided in subsections (b)
24 and (c), all general partners are liable jointly and severally
25 for all debts, obligations, and liabilities of the limited
26 partnership unless otherwise agreed by the claimant or
27 provided by law.

1 (b) A person that becomes a general partner of an
2 existing limited partnership is not personally liable for any
3 debt, obligation, or liability of a limited partnership
4 incurred before the person became a general partner.

5 (c) A debt, obligation, or liability of a limited
6 partnership incurred while the limited partnership is a
7 limited liability limited partnership, whether arising in
8 contract, tort, or otherwise, is solely the debt, obligation,
9 or liability of the limited partnership. A general partner of
10 a limited liability limited partnership is not personally
11 liable, directly or indirectly, by way of indemnification,
12 contribution, assessment or otherwise, for such a debt,
13 obligation, or liability solely by reason of being or acting,
14 or omitting to act, as a general partner. This subsection
15 applies despite anything inconsistent in the partnership
16 agreement that existed immediately before the consent required
17 to become a limited liability limited partnership under
18 Section 10A-9A-4.06(b) (2).

19 § 10A-9A-4.05. Actions by and against partnership
20 and partners.

21 (a) To the extent not inconsistent with Section
22 10A-9A-4.04, a general partner may be joined in an action
23 against the limited partnership or named in a separate action.

24 (b) A judgment against a limited partnership is not
25 by itself a judgment against a general partner. A judgment
26 against a limited partnership may not be satisfied from a

1 general partner's assets unless there is also a judgment
2 against the general partner.

3 (c) A judgment creditor of a general partner may not
4 levy execution against the assets of the general partner to
5 satisfy a judgment based on a claim against the limited
6 partnership, unless the partner is personally liable for the
7 claim under Section 10A-9A-4.04 and either:

8 (1) a judgment based on the same claim has been
9 obtained against the limited partnership and a writ of
10 execution on the judgment has been returned unsatisfied in
11 whole or in part;

12 (2) the limited partnership is a debtor in
13 bankruptcy;

14 (3) the general partner has agreed that the creditor
15 need not exhaust limited partnership assets;

16 (4) a court grants permission to the judgment
17 creditor to levy execution against the assets of a general
18 partner based on a finding that limited partnership assets
19 subject to execution are clearly insufficient to satisfy the
20 judgment, that exhaustion of limited partnership assets is
21 excessively burdensome, or that the grant of permission is an
22 appropriate exercise of the court's equitable powers; or

23 (5) liability is imposed on the general partner by
24 law or contract independent of the existence of the limited
25 partnership.

26 § 10A-9A-4.06. Management rights of general partner.

1 (a) Each general partner has equal rights in the
2 management and conduct of the limited partnership's activities
3 and affairs. Except as expressly provided in this chapter, any
4 matter relating to the activities and affairs of the limited
5 partnership is decided exclusively by the general partner or,
6 if there is more than one general partner, by a majority of
7 the general partners.

8 (b) The consent of all of the partners is necessary
9 to:

10 (1) amend the partnership agreement;

11 (2) amend the certificate of formation to add or
12 delete a statement that the limited partnership is a limited
13 liability limited partnership; and

14 (3) sell, lease, exchange, or otherwise dispose of
15 all, or substantially all, of the limited partnership's
16 property, with or without the good will, other than in the
17 usual and regular course of the limited partnership's
18 activities and affairs.

19 (c) A limited partnership shall reimburse a general
20 partner for payments made and indemnify a general partner for
21 liabilities incurred by the general partner in the ordinary
22 course of the activities and affairs of the limited
23 partnership or for the preservation of its activities and
24 affairs or its property.

25 (d) A limited partnership shall reimburse a general
26 partner for an advance to the limited partnership beyond the
27 amount of capital the general partner agreed to contribute.

1 (e) A payment or advance made by a general partner
2 which gives rise to an obligation of the limited partnership
3 under subsection (c) or (d) constitutes a loan to the limited
4 partnership which accrues interest from the date of the
5 payment or advance.

6 (f) A general partner is not entitled to
7 remuneration for services performed for the partnership.

8 (g) Notwithstanding the provisions of Article 6 of
9 Chapter 1, a limited partnership may indemnify and hold
10 harmless a partner or other person, pay in advance or
11 reimburse expenses incurred by a partner or other person, and
12 purchase and maintain insurance on behalf of a partner or
13 other person.

14 § 10A-9A-4.07. Right of general partner and former
15 general partner to information.

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

17 (a) Subject to subsection (f), a general partner,
18 without having any particular purpose for seeking the
19 information, may inspect and copy during regular business
20 hours at a reasonable location specified by the limited
21 partnership, required information and any other records
22 maintained by the limited partnership regarding the limited
23 partnership's activities and affairs and financial condition.

24 (b) Subject to subsection (f), each general partner
25 and the limited partnership shall furnish to a general
26 partner:

1 (1) without demand, any information concerning the
2 limited partnership's activities and affairs and activities
3 and affairs reasonably required for the proper exercise of the
4 general partner's rights and duties under the partnership
5 agreement or this chapter; and

6 (2) on demand, any other information concerning the
7 limited partnership's activities and affairs, except to the
8 extent the demand or the information demanded is unreasonable
9 or otherwise improper under the circumstances.

10 (c) Subject to subsections (e) and (f), on 10 days'
11 demand made in a writing received by the limited partnership,
12 a person dissociated as a general partner may have access to
13 the information and records described in subsection (a) at the
14 location specified in subsection (a) if:

15 (1) the information or writing pertains to the
16 period during which the person was a general partner;

17 (2) the person seeks the information or record in
18 good faith; and

19 (3) the person satisfies the requirements imposed on
20 a limited partner by Section 10A-9A-3.04(b).

21 (d) The limited partnership shall respond to a
22 demand made pursuant to subsection (c) in the same manner as
23 provided in Section 10A-9A-3.04(c).

24 (e) If a general partner dies, Section 10A-9A-7.04
25 applies.

26 (f) In addition to any restriction or condition
27 stated in its limited partnership agreement, a limited

1 partnership, as to a matter within the ordinary course of its
2 activities and affairs, may:

3 (1) impose reasonable restrictions and conditions on
4 access to and use of information to be furnished under this
5 Section, including designating information confidential and
6 imposing nondisclosure and safeguarding obligations on the
7 recipient; and

8 (2) keep confidential from the partners and any
9 other person, for such period of time as the limited
10 partnership deems reasonable, any information that the limited
11 partnership reasonably believes to be in the nature of trade
12 secrets or other information the disclosure of which the
13 limited partnership in good faith believes is not in the best
14 interest of the limited partnership or could damage the
15 limited partnership or its activities and affairs, or that the
16 limited partnership is required by law or by agreement with a
17 third party to keep confidential.

18 In any dispute concerning the reasonableness of a
19 restriction under this subsection, the limited partnership has
20 the burden of proving reasonableness.

21 (g) A limited partnership may charge a person that
22 makes a demand under this section reasonable costs of copying,
23 limited to the costs of labor and material.

24 (h) A general partner or person dissociated as a
25 general partner may exercise the rights under this section
26 through an attorney or other agent. Any restriction imposed
27 under subsection (f) or by the partnership agreement applies

1 both to the attorney or other agent and to the general partner
2 or person dissociated as a general partner.

3 (i) The rights under this section do not extend to a
4 person as transferee, but the rights under subsection (c) of a
5 person dissociated as a general partner may be exercised by
6 the legal representative of an individual who dissociated as a
7 general partner under Section 10A-9A-6.03(6).

8 (j) Any general partner who, without reasonable
9 cause, refuses to allow any general partner or person
10 dissociated as a general partner, or their agent or attorney
11 to inspect or copy any records of the limited partnership to
12 which such general partner or person disassociated as a
13 general partner is entitled under this section, shall be
14 personally liable to the general partner or person dissociated
15 as a general partner for a penalty in an amount not to exceed
16 10 percent of the fair market value of the partnership
17 interest of the general partner or person dissociated as a
18 general partner, in addition to any other damages or remedy.

19 § 10A-9A-4.08. General standards of general
20 partner's conduct.

21 (a) The duties that a general partner has to the
22 limited partnership and to the other partners include the duty
23 of loyalty and the duty of care as described in subsections
24 (b) and (c).

25 (b) A general partner's duty of loyalty to the
26 limited partnership and to the other partners includes each of
27 the following:

1 (1) to account to the limited partnership and to
2 hold as trustee for it any property, profit, or benefit
3 derived by the general partner in the conduct or winding up of
4 the limited partnership's activities and affairs or derived
5 from a use by the general partner of limited partnership
6 property, including the appropriation of a limited partnership
7 opportunity;

8 (2) to refrain from dealing with the limited
9 partnership in the conduct or winding up of the limited
10 partnership's activities and affairs as or on behalf of a
11 party having an interest adverse to the limited partnership;
12 and

13 (3) to refrain from competing with the limited
14 partnership in the conduct or winding up of the limited
15 partnership's activities and affairs.

16 (c) A general partner's duty of care to the limited
17 partnership and to the other partners in the conduct or
18 winding up of the limited partnership's activities and affairs
19 includes refraining from engaging in grossly negligent or
20 reckless conduct, intentional misconduct, or a knowing
21 violation of law.

22 (d) A general partner shall discharge the duties to
23 the limited partnership and to the other partners under this
24 chapter and under the partnership agreement and exercise any
25 rights consistently with the implied contractual covenant of
26 good faith and fair dealing.

1 (e) A general partner does not violate a duty or
2 obligation under this chapter or under the partnership
3 agreement merely because the general partner's conduct
4 furthers the general partner's own interest.

5 § 10A-9A-4.09 Reliance on reports and information.

6 A general partner of a limited partnership shall be
7 fully protected in relying in good faith upon the records of
8 the limited partnership and upon information, opinions,
9 reports, or statements presented by another general partner or
10 agent of the limited partnership, or by any other person as to
11 matters the general partner reasonably believes are within
12 that other person's professional or expert competence,
13 including information, opinions, reports, or statements as to
14 the value and amount of the assets, liabilities, profits, or
15 losses of the limited partnership, or the value and amount of
16 assets or reserves or contracts, agreements, or other
17 undertakings that would be sufficient to pay claims and
18 obligations of the limited partnership, or to make reasonable
19 provision to pay those claims and obligations, or any other
20 facts pertinent to the existence and amount of assets from
21 which distributions to partners or creditors might properly be
22 paid.

23 Article 5. Contributions and Distributions.

24 § 10A-9A-5.01. Form of contribution. A contribution
25 by a partner may be made to a limited partnership as agreed by
26 the partners.

27 § 10A-9A-5.02. Liability for contribution.

1 (a) A partner's obligation to make a contribution to
2 a limited partnership is not excused by the partner's death,
3 disability, or other inability to perform personally.

4 (b) If a partner does not make a contribution
5 required by an enforceable promise, the partner or the
6 partner's estate is obligated, at the election of the limited
7 partnership, to contribute money equal to the value of the
8 portion of the contribution that has not been made. The
9 foregoing election shall be in addition to, and not in lieu
10 of, any other rights, including the right to specific
11 performance, that the limited partnership may have under the
12 partnership agreement or applicable law.

13 (c) The obligation of a partner to make a
14 contribution to a limited partnership may be compromised only
15 by consent of all partners. A conditional obligation of a
16 partner to make a contribution to a limited partnership may
17 not be enforced unless the conditions of the obligation have
18 been satisfied or waived as to or by that partner. Conditional
19 obligations include contributions payable upon a discretionary
20 call of a limited partnership before the time the call occurs.

21 (d) A creditor of a limited partnership which
22 extends credit or otherwise acts in reliance on an obligation
23 described in subsection (a), without notice of any compromise
24 under this subsection, may enforce the original obligation.

25 (e) A promise by a partner to make a contribution to
26 a limited partnership is not enforceable unless set forth in a
27 writing signed by the partner.

1 § 10A-9A-5.03. Sharing of distributions before
2 dissolution.

3 All partners shall share equally in any
4 distributions made by a limited partnership before its
5 dissolution and winding up.

6 § 10A-9A-5.04. Interim distributions.

7 A partner has a right to a distribution before the
8 dissolution and winding up of a limited partnership as
9 provided in the partnership agreement. A decision to make a
10 distribution before the dissolution and winding up of the
11 limited partnership is a decision in the ordinary course of
12 the activities and affairs of the limited partnership.

13 § 10A-9A-5.05. No distribution on account of
14 dissociation.

15 A partner's dissociation does not entitle the
16 dissociated partner to a distribution.

17 § 10A-9A-5.06. Distribution in kind.

18 A partner does not have a right to demand and
19 receive a distribution from a limited partnership in any form
20 other than money. Except as otherwise provided in Section
21 10A-9A-8.09(c), a limited partnership may distribute an asset
22 in kind if each partner receives a percentage of the asset in
23 proportion to the partner's share of distributions.

24 § 10A-9A-5.07. Right to distribution.

25 If a partner becomes entitled to receive a
26 distribution, the partner has the status of, and is entitled
27 to all remedies available to, a creditor of the limited

1 partnership with respect to the distribution. However, the
2 limited partnership's obligation to make a distribution is
3 subject to offset for any amount owed to the limited
4 partnership by the partner or dissociated partner on whose
5 account the distribution is made.

6 § 10A-9A-5.08. Limitations on distribution and
7 liability for improper distributions.

8 (a) A limited partnership shall not make a
9 distribution to a partner to the extent that at the time of
10 the distribution, after giving effect to the distribution, all
11 liabilities of the limited partnership, other than liabilities
12 to partners on account of their transferable interests and
13 liabilities for which the recourse of creditors is limited to
14 specific property of the limited partnership, exceed the fair
15 value of the assets of the limited partnership, except that
16 the fair value of the property that is subject to a liability
17 for which recourse of creditors is limited shall be included
18 in the assets of the limited liability partnership only to the
19 extent that the fair value of the property exceeds that
20 liability.

21 (b) A general partner who consents to a distribution
22 in violation of subsection (a) or the partnership agreement,
23 and who knew at the time of the distribution that the
24 distribution violated subsection (a) or the partnership
25 agreement, shall be liable to the limited partnership for the
26 amount of that distribution.

1 (c) A limited partner who receives a distribution in
2 violation of subsection (a) or the partnership agreement, and
3 who knew at the time of the distribution that the distribution
4 violated subsection (a) or the partnership agreement, shall be
5 liable to the limited partnership for the amount of the
6 distribution received by that partner. A limited partner who
7 receives a distribution in violation of subsection (a) or the
8 partnership agreement, and who did not know at the time of the
9 distribution that the distribution violated subsection (a) or
10 the partnership agreement, shall not be liable for the amount
11 of the distribution received by that partner.

12 (d) Except as provided in subsection (e), this
13 section shall not affect any obligation or liability of a
14 partner under other applicable law for the amount of a
15 distribution.

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

19 (f) For purposes of subsection (a), "distribution"
20 does not include amounts constituting reasonable compensation
21 for present or past services or reasonable payments made in
22 the ordinary course of the limited partnership's activities
23 and affairs under a bona fide retirement plan or other
24 benefits program.

25 (g) This section shall not apply to distributions
26 made in accordance with Section 10A-9A-8.09.

27 Article 6. Dissociation.

1 § 10A-9A-6.01. Dissociation as limited partner.

2 (a) A person does not have a right to dissociate as
3 a limited partner before the dissolution and winding up of the
4 limited partnership.

5 (b) A person is dissociated from a limited
6 partnership as a limited partner upon the occurrence of any of
7 the following events:

8 (1) an event stated in the partnership agreement as
9 causing the person's dissociation as a limited partner;

10 (2) the person is expelled as a limited partner
11 pursuant to the partnership agreement;

12 (3) the person is expelled as a limited partner by
13 the unanimous consent of the other partners if:

14 (A) it is unlawful to carry on the limited
15 partnership's activities and affairs with the person as a
16 limited partner;

17 (B) there has been a transfer of all of the person's
18 transferable interest in the limited partnership, other than a
19 transfer for security purposes;

20 (C) the person is an organization and, within 90
21 days after the limited partnership notifies the person that it
22 will be expelled as a limited partner because it has filed a
23 statement of dissolution or the equivalent, or its right to
24 conduct activities and affairs has been suspended by its
25 jurisdiction of formation, the statement of dissolution or the
26 equivalent has not been revoked or its right to conduct
27 activities and affairs has not been reinstated; or

1 (D) the person is an organization and, within 90
2 days after the limited partnership notifies the person that it
3 will be expelled as a limited partner because the person has
4 been dissolved and its activities and affairs are being wound
5 up, the organization has not been reinstated or the
6 dissolution and winding up have not been revoked or cancelled;

7 (4) on application by the limited partnership, the
8 person is expelled as a limited partner by judicial order
9 because the person:

10 (A) has engaged, or is engaging, in wrongful conduct
11 that has adversely and materially affected, or will adversely
12 and materially affect, the limited partnership's activities
13 and affairs;

14 (B) has willfully or persistently committed, or is
15 willfully or persistently committing, a material breach of the
16 partnership agreement or the person's duty or obligation under
17 this chapter or other applicable law; or

18 (C) has engaged, or is engaging, in conduct relating
19 to the activities and affairs of the limited partnership that
20 makes it not reasonably practicable to carry on the activities
21 and affairs with the person as limited partner;

22 (5) in the case of a person who is an individual,
23 the person dies, there is appointed a guardian or general
24 conservator for the person or there is a judicial
25 determination that the person has otherwise become incapable
26 of performing the person's duties as a limited partner under
27 this chapter or the partnership agreement;

1 (6) the person becomes a debtor in bankruptcy,
2 executes an assignment for the benefit of creditors, or seeks,
3 consents, or acquiesces to the appointment of a trustee,
4 receiver, or liquidator of the person or of all or
5 substantially all of the person's property, but this
6 subsection (6) shall not apply to a person who is the sole
7 remaining limited partner of the limited partnership;

8 (7) in the case of a person that is a trust or is
9 acting as a limited partner by virtue of being a trustee of a
10 trust, the trust's entire transferable interest in the limited
11 partnership is distributed, but not solely by reason of the
12 substitution of a successor trustee;

13 (8) in the case of a person that is an estate or is
14 acting as a limited partner by virtue of being a personal
15 representative of an estate, the estate's entire transferable
16 interest in the limited partnership is distributed, but not
17 solely by reason of the substitution of a successor personal
18 representative;

19 (9) in the case of a person that is not an
20 individual, the legal existence of the person otherwise
21 terminates;

22 (10) the transfer of a limited partner's entire
23 remaining transferable interest to another partner;

24 (11) the transfer of a limited partner's entire
25 remaining transferable interest to a transferee upon the
26 transferee's becoming a partner; or

1 (12) the limited partnership's participation in a
2 conversion or merger under Article 10, or Article 8 of Chapter
3 1 of this title if the limited partnership:

4 (A) is not the converted or surviving entity; or

5 (B) is the converted or surviving entity but, as a
6 result of the conversion or merger, the person ceases to be a
7 limited partner.

8 § 10A-9A-6.02. Effect of dissociation as limited
9 partner.

10 (a) Upon a person's dissociation as a limited
11 partner:

12 (1) subject to Section 10A-9A-7.04, the person does
13 not have further rights as a limited partner;

14 (2) the person's implied contractual covenant of
15 good faith and fair dealing as a limited partner under Section
16 10A-9A-3.05(b) continues only as to matters arising and events
17 occurring before the dissociation; and

18 (3) subject to Section 10A-9A-7.04, and Article 10,
19 and Article 8 of Chapter 1 of this title, any transferable
20 interest owned by the person in the person's capacity as a
21 limited partner immediately before dissociation is owned by
22 the person immediately after dissociation as a mere
23 transferee.

24 (b) A person's dissociation as a limited partner
25 does not of itself discharge the person from any duty, debt,
26 obligation, or liability to the limited partnership or the

1 other partners that the person incurred while a limited
2 partner.

3 § 10A-9A-6.03. Dissociation as general partner.

4 A person is dissociated from a limited partnership
5 as a general partner when any of the following occurs:

6 (1) the limited partnership has notice of the
7 person's express will to dissociate as a general partner,
8 except that if the person specifies a dissociation date later
9 than the date the limited partnership had notice, then the
10 person is dissociated as a general partner on that later date;

11 (2) an event stated in the partnership agreement as
12 causing the person's dissociation as a general partner occurs;

13 (3) the person is expelled as a general partner
14 pursuant to the partnership agreement;

15 (4) the person is expelled as a general partner by
16 the unanimous consent of the other partners if:

17 (A) it is unlawful to carry on the limited
18 partnership's activities and affairs with the person as a
19 general partner;

20 (B) there has been a transfer of all of the person's
21 transferable interest in the limited partnership, other than a
22 transfer for security purposes;

23 (C) the person is an organization and, within 90
24 days after the limited partnership notifies the person that it
25 will be expelled as a general partner because it has filed a
26 statement of dissolution or the equivalent, or its right to
27 conduct activities and affairs has been suspended by its

1 jurisdiction of formation, the statement of dissolution or the
2 equivalent has not been revoked or its right to conduct
3 activities and affairs has not been reinstated; or

4 (D) the person is a limited liability company or
5 partnership that has been dissolved and whose activities and
6 affairs are being wound up;

7 (5) on application by the limited partnership, or a
8 partner in a direct action under Section 10A-9A-9.01, the
9 person's expulsion as a general partner by judicial order
10 because the person:

11 (A) has engaged, or is engaging, in wrongful conduct
12 that adversely and materially affected, or will adversely and
13 materially affect, the limited partnership's activities and
14 affairs;

15 (B) has willfully or persistently committed, or is
16 willfully or persistently committing, a material breach of the
17 partnership agreement or the person's duty or obligation under
18 this chapter or other applicable law; or

19 (C) has engaged, or is engaging, in conduct relating
20 to the limited partnership's activities and affairs which
21 makes it not reasonably practicable to carry on the activities
22 and affairs with the person as a general partner;

23 (6) in the case of a person who is an individual,
24 the person dies, there is appointed a guardian or general
25 conservator for the person or there is a judicial
26 determination that the person has otherwise become incapable

1 of performing the person's duties as a general partner under
2 this chapter or the partnership agreement;

3 (7) the person becomes a debtor in bankruptcy,
4 executes an assignment for the benefit of creditors, or seeks,
5 consents, or acquiesces to the appointment of a trustee,
6 receiver, or liquidator of the person or of all or
7 substantially all of the person's property;

8 (8) in the case of a person that is a trust or is
9 acting as a general partner by virtue of being a trustee of a
10 trust, the trust's entire transferable interest in the limited
11 partnership is distributed, but not merely by reason of the
12 substitution of a successor trustee;

13 (9) in the case of a person that is an estate or is
14 acting as a general partner by virtue of being a personal
15 representative of an estate, the estate's entire transferable
16 interest in the limited partnership is distributed, but not
17 merely by reason of the substitution of a successor personal
18 representative;

19 (10) in the case of a general partner that is not an
20 individual, the legal existence of the person otherwise
21 terminates;

22 (11) the transfer of a general partner's entire
23 remaining transferable interest to another partner;

24 (12) the transfer of a general partner's entire
25 remaining transferable interest to a transferee upon the
26 transferee's becoming a partner; or

1 (13) the limited partnership's participation in a
2 conversion or merger under Article 10 or Article 8 of Chapter
3 1 of this title, if the limited partnership:

4 (A) is not the converted or surviving entity; or

5 (B) is the converted or surviving entity but, as a
6 result of the conversion or merger, the person ceases to be a
7 general partner.

8 § 10A-9A-6.04. Person's power to dissociate as
9 general partner; wrongful dissociation.

10 (a) A person has the power to dissociate as a
11 general partner at any time, rightfully or wrongfully, by
12 express will pursuant to Section 10A-9A-6.03(1).

13 (b) A person's dissociation as a general partner is
14 wrongful only if:

15 (1) it is in breach of an express provision of the
16 limited partnership; or

17 (2) it occurs before the completion of the winding
18 up of the limited partnership, and:

19 (A) the person dissociates as a general partner by
20 express will;

21 (B) the person is expelled as a general partner by
22 judicial order under Section 10A-9A-6.03(5);

23 (C) the person is dissociated as a general partner
24 by becoming a debtor in bankruptcy; or

25 (D) in the case of a person that is not an
26 individual, trust other than a business trust, or estate, the

1 person is expelled or otherwise dissociated as a general
2 partner because it willfully dissolved or terminated.

3 (c) A person that wrongfully dissociates as a
4 general partner is liable to the limited partnership and,
5 subject to Section 10A-9A-9.01, to the other partners for
6 damages caused by the dissociation. The liability is in
7 addition to any other obligation of the general partner to the
8 limited partnership or to the other partners.

9 § 10A-9A-6.05. Effect of dissociation as general
10 partner.

11 (a) Upon a person's dissociation as a general
12 partner:

13 (1) the person's right to participate as a general
14 partner in the management and conduct of the partnership's
15 activities and affairs terminates;

16 (2) the person's duty to refrain from competing with
17 the limited partnership in the conduct or winding up of the
18 limited partnership's activities and affairs terminates;

19 (3) the person's following duties continue only with
20 regard to matters arising and events occurring before the
21 person's dissociation as a general partner:

22 (A) the duty to account to the limited partnership
23 and hold as trustee for it any property, profit, or benefit
24 derived by the general partner in the conduct and winding up
25 of the limited partnership's activities and affairs or derived
26 from a use by the general partner of limited partnership

1 property, including the appropriation of a limited partnership
2 opportunity;

3 (B) the duty to refrain from dealing with the
4 limited partnership in the conduct or winding up of the
5 limited partnership's activities and affairs as or on behalf
6 of a party having an interest adverse to the limited
7 partnership; and

8 (C) the duty of care under Section 10A-9A-4.08;

9 (4) the person may sign and deliver for filing in
10 accordance with Article 4 of Chapter 1, a statement of
11 dissociation pertaining to the person and, at the request of
12 the limited partnership, if the limited partnership has not
13 filed a statement of dissolution, shall sign an amendment to
14 the certificate of formation which states that the person has
15 dissociated; and

16 (5) subject to Section 10A-9A-7.04, Article 10, and
17 Article 8 of Chapter 1 of this title, any transferable
18 interest owned by the person immediately before dissociation
19 in the person's capacity as a general partner is owned
20 immediately after dissociation by the person as a mere
21 transferee.

22 (b) A person's dissociation as a general partner
23 does not of itself discharge the person from any duty, debt,
24 obligation, or liability to the limited partnership or the
25 other partners which the person incurred while a general
26 partner.

1 § 10A-9A-6.06. Power to bind and liability to
2 limited partnership before dissolution of partnership of
3 person dissociated as general partner.

4 (a) After a person is dissociated as a general
5 partner and before the limited partnership is dissolved,
6 converted under Article 10 or under Article 8 of Chapter 1 of
7 this title, or merged out of existence under Article 10 or
8 Article 8 of Chapter 1 of this title, the limited partnership
9 is bound by an act of the person only if:

10 (1) the act would have bound the limited partnership
11 under Section 10A-9A-4.02 before the dissociation; and

12 (2) at the time the other party enters into the
13 transaction the other party does not have notice of the
14 dissociation and reasonably believes that the person is a
15 general partner.

16 (b) If a limited partnership is bound under
17 subsection (a), the person dissociated as a general partner
18 which caused the limited partnership to be bound is liable:

19 (1) to the limited partnership for any damage caused
20 to the limited partnership arising from the obligation
21 incurred under subsection (a); and

22 (2) if a general partner or another person
23 dissociated as a general partner is liable for the obligation,
24 to the general partner or other person for any damage caused
25 to the general partner or other person arising from the
26 liability.

1 § 10A-9A-6.07. Liability to other persons of person
2 dissociated as general partner.

3 (a) A person's dissociation as a general partner
4 does not of itself discharge the person's liability as a
5 general partner for a debt, obligation, or liability of the
6 limited partnership incurred before dissociation. Except as
7 otherwise provided in subsections (b) and (c), the person is
8 not liable for a limited partnership's debts, obligations, or
9 liabilities incurred after dissociation.

10 (b) A person whose dissociation as a general partner
11 resulted in a dissolution and winding up of the limited
12 partnership's activities and affairs is liable to the same
13 extent as a general partner under Section 10A-9A-4.04 on an
14 obligation incurred by the limited partnership under Section
15 10A-9A-8.04.

16 (c) A person that has dissociated as a general
17 partner but whose dissociation did not result in a dissolution
18 and winding up of the limited partnership's activities and
19 affairs is liable on a transaction entered into by the limited
20 partnership after the dissociation only if:

21 (1) a general partner would be liable on the
22 transaction; and

23 (2) at the time the other party enters into the
24 transaction the other party does not have notice of the
25 dissociation and reasonably believes that the person is a
26 general partner.

1 (d) By agreement with a creditor of a limited
2 partnership and the limited partnership, a person dissociated
3 as a general partner may be released from liability for an
4 obligation of the limited partnership.

5 (e) A person dissociated as a general partner is
6 released from liability for a debt, obligation, or liability
7 of the limited partnership if the limited partnership's
8 creditor, with notice of the person's dissociation as a
9 general partner but without the person's consent, agrees to a
10 material alteration in the nature or time of payment of the
11 debt, obligation, or liability.

12 Article 7. Transferable Interests and Rights of
13 Transferees and Creditors.

14 § 10A-9A-7.01. Transferable interest. The only
15 interest of a partner which is transferable is the partner's
16 transferable interest. A transferable interest is personal
17 property.

18 § 10A-9A-7.02. Transfer of partner's transferable
19 interest.

20 (a) A transfer, in whole or in part, of a partner's
21 transferable interest:

22 (1) is permissible;

23 (2) does not by itself cause the partner's
24 dissociation;

25 (3) does not by itself cause a dissolution and
26 winding up of the limited partnership; and

1 (4) subject to Section 10A-9A-7.04, does not entitle
2 the transferee to:

3 (A) participate in the management or conduct of the
4 limited partnership's activities and affairs; or

5 (B) except as otherwise provided in subsection (d),
6 have access to required information, records, or other
7 information concerning the partnership's activities and
8 affairs.

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

12 (c) A transferable interest may be evidenced by a
13 certificate of transferable interest issued by the limited
14 partnership. A partnership agreement may provide for the
15 transfer of the transferable interest represented by the
16 certificate and make other provisions with respect to the
17 certificate. No certificate of transferable interest shall be
18 issued in bearer form.

19 (d) In a dissolution and winding up, a transferee is
20 entitled to an account of the limited partnership's
21 transactions only from the date of dissolution.

22 (e) Except as otherwise provided in Sections
23 10A-9A-6.01(b)(3), 10A-9A-6.01(b)(10), 10A-9A-6.01(b)(11),
24 10A-9A-6.03(4)(B), 10A-9A-6.03(11), and 10A-9A-6.03(12) when a
25 partner transfers a transferable interest, the transferor
26 retains the rights of a partner other than the right to

1 distributions transferred and retains all duties and
2 obligations of a partner.

3 (f) A limited partnership need not give effect to a
4 transferee's rights under this section until the limited
5 partnership has notice of the transfer.

6 (g) When a partner transfers a transferable interest
7 to a person that is admitted as a partner with respect to the
8 transferred interest, the transferee is liable for the
9 partner's obligations under Sections 10A-9A-5.02 and
10 10A-9A-5.08 to the extent that the obligations are known to
11 the transferee when the transferee voluntarily accepts
12 admission as a partner.

13 § 10A-9A-7.03. Rights of creditor of partner or
14 transferee.

15 (a) On application to a court of competent
16 jurisdiction by any judgment creditor of a partner or
17 transferee, the court may charge the transferable interest of
18 the judgment debtor with payment of the unsatisfied amount of
19 the judgment with interest. To the extent so charged and after
20 the limited partnership has been served with the charging
21 order, the judgment creditor has only the right to receive any
22 distribution or distributions to which the judgment debtor
23 would otherwise be entitled in respect of the transferable
24 interest.

25 (b) The limited partnership, after being served with
26 a charging order and its terms, shall be entitled to pay or
27 deposit any distribution or distributions to which the

1 judgment debtor would otherwise be entitled in respect of the
2 charged transferable interest into the hands of the clerk of
3 the court so issuing the charging order, and the payment or
4 deposit shall discharge the limited partnership and the
5 judgment debtor from liability for the amount so paid or
6 deposited and any interest that might accrue thereon. Upon
7 receipt of the payment or deposit, the clerk of the court
8 shall notify the judgment creditor of the receipt of the
9 payment or deposit. The judgment creditor shall, after any
10 payment or deposit into the court, petition the court for
11 payment of so much of the amount paid or deposited as is held
12 by the court as may be necessary to pay the judgment
13 creditor's judgment. To the extent the court has excess
14 amounts paid or deposited on hand after the payment to the
15 judgment creditor, the excess amounts paid or deposited shall
16 be distributed to the judgment debtor and the charging order
17 shall be extinguished. The court, may in its discretion, order
18 the clerk to deposit, pending the judgment creditor's
19 petition, any money paid or deposited with the clerk, in an
20 interest bearing account at a bank authorized to receive
21 deposits of public funds.

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

24 (d) Subject to subsection (c):

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

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

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

7 (f) This section provides the exclusive remedy by
8 which a judgment creditor of a partner or transferee may
9 satisfy a judgment out of the judgment debtor's transferable
10 interest and the judgment creditor shall have no right to
11 foreclose, under this chapter or any other law, upon the
12 charging order, the charging order lien, or the judgment
13 debtor's transferable interest. A judgment creditor of a
14 partner or transferee shall have no right to obtain possession
15 of, or otherwise exercise legal or equitable remedies with
16 respect to, the property of a limited partnership. Court
17 orders for actions or requests for accounts and inquiries that
18 the judgment debtor might have made, are not available to the
19 judgment creditor attempting to satisfy the judgment out of
20 the judgment debtor's transferable interest and may not be
21 ordered by a court.

22 § 10A-9A-7.04. Power of Personal Representative of
23 Deceased Partner. If a partner dies, the deceased partner's
24 personal representative or other legal representative may:

25 (a) for the period of time that the deceased
26 partner's personal representative or other legal

1 representative holds the deceased partner's transferable
2 interest:

3 (1) exercise the rights of a holder of transferable
4 interests under this chapter;

5 (2) exercise the rights of a transferee under
6 Section 10A-9A-7.02; and

7 (3) for purposes of settling the estate, exercise
8 the rights of a current limited partner under Section
9 10A-9A-3.04; and

10 (b) for the period of time that the deceased
11 partner's personal representative or other legal
12 representative does not hold the deceased partner's
13 transferable interest, for purposes of settling the estate,
14 exercise the rights of a person dissociated as a limited
15 partner under Section 10A-9A-3.04.

16 Article 8. Dissolution and Winding Up.

17 § 10A-9A-8.01. Events of Dissolution. A limited
18 partnership is dissolved and its activities and affairs shall
19 be wound up upon the occurrence of the first of the following
20 events:

21 (a) An event or circumstance that the partnership
22 agreement states causes dissolution.

23 (b) Consent of all partners to dissolve.

24 (c) When there is no remaining general partner, unless
25 either of the following applies:

26 (1) All of the limited partners agree in writing,
27 within 90 days after the dissociation of the last general

1 partner, to continue the activities and affairs of the limited
2 partnership and to admit one or more new general partners.

3 (2) The activities and affairs of the limited
4 partnership are continued and one or more new general partners
5 are admitted in the manner stated in the partnership
6 agreement.

7 (d) When there is no remaining limited partner,
8 unless either of the following applies:

9 (1) All of the general partners agree in writing,
10 within 90 days after the dissociation of the last limited
11 partner, to continue the activities and affairs of the limited
12 partnership and to admit one or more new limited partners.

13 (2) The activities and affairs of the limited
14 partnership are continued and one or more new limited partners
15 are admitted in the manner stated in the partnership
16 agreement.

17 (e) When there are no remaining partners, unless
18 either of the following applies:

19 (1) The holders of all of the transferable interests
20 in the limited partnership agree in writing, within 90 days
21 after the dissociation of the last general partner, to
22 continue the activities and affairs of the limited partnership
23 and to admit one or more new general partners and one or more
24 new limited partners.

25 (2) The activities and affairs of the limited
26 partnership are continued and one or more new general partners

1 and one or more new limited partners are admitted in the
2 manner stated in the partnership agreement.

3 (f) On application by a partner, the entry of an
4 order dissolving the limited partnership on the grounds that
5 it is not reasonably practicable to carry on the limited
6 partnership's activities and affairs in conformity with the
7 partnership agreement, which order is entered by the circuit
8 court for the county in which the limited partnership's
9 principal place of business within this state is located, and
10 if the limited partnership does not have a principal place of
11 business within this state then by the circuit court for the
12 county in which the limited partnership's most recent
13 registered office is located.

14 § 10A-9A-8.02. Effect of dissolution.

15 Notwithstanding Section 10A-1-9.12:

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

20 (1) collecting its assets;

21 (2) disposing of its properties that will not be
22 distributed in kind to persons owning transferable interests;

23 (3) discharging or making provisions for discharging
24 its liabilities;

25 (4) distributing its remaining property in
26 accordance with Section 10A-9A-8.09; and

1 (5) doing every other act necessary to wind up and
2 liquidate its activities and affairs.

3 (b) In winding up its activities and affairs, a
4 limited partnership may:

5 (1) deliver for filing a statement of dissolution to
6 the filing officer provided for in subsection (e) setting
7 forth:

8 (A) The name of the limited partnership;

9 (B) The date of filing its certificate of formation,
10 and all amendments and restatements thereof, and the office or
11 offices where filed;

12 (C) That the limited partnership has dissolved;

13 (D) The name and street mailing address of the
14 general partner who will be winding up the affairs of the
15 limited partnership pursuant to Section 10A-9A-8.03(a), and if
16 none, the name and street address of the person appointed
17 pursuant to Section 10A-9A-8.03(b) or (c) to wind up the
18 activities and affairs of the limited partnership; and

19 (E) Any other information the limited partnership
20 deems appropriate;

21 (2) preserve the limited partnership's activities
22 and affairs and property as a going concern for a reasonable
23 time;

24 (3) prosecute, defend, or settle actions or
25 proceedings whether civil, criminal or administrative;

26 (4) transfer the limited partnership's assets;

1 (5) resolve disputes by mediation or arbitration;

2 and

3 (6) merge or convert in accordance with Article 10
4 of this chapter or Article 8 of Chapter 1.

5 (c) The dissolution of a limited partnership does
6 not:

7 (1) transfer title to the limited partnership's
8 property;

9 (2) prevent the commencement of a proceeding by or
10 against the limited partnership in its limited partnership
11 name;

12 (3) terminate, abate, or suspend a proceeding
13 pending by or against the limited partnership on the effective
14 date of dissolution;

15 (4) terminate the authority of its registered agent;
16 or

17 (5) abate, suspend, or otherwise alter the
18 application of Sections 10A-9A-3.03 and 10A-9A-4.04(b) and
19 (c).

20 (d) A statement of dissolution shall be deemed to be
21 a filing instrument under Chapter 1.

22 (e) If a limited partnership is not an organization
23 described in Section 10A-1-4.02(c)(4), then that limited
24 partnership shall deliver the statement of dissolution for
25 filing to the judge of probate in whose office the original
26 certificate of formation is filed. If a limited partnership is
27 an organization described in Section 10A-1-4.02(c)(4), then

1 that limited partnership shall deliver the statement of
2 dissolution for filing to the Secretary of State.

3 § 10A-9A-8.03. Right to wind up activities and
4 affairs.

5 (a) If a dissolved limited partnership has a general
6 partner or general partners that have not dissociated, that
7 general partner or those general partners shall wind up the
8 activities and affairs of the limited partnership and shall
9 have the powers set forth in Section 10A-9A-8.04.

10 (b) If a dissolved limited partnership does not have
11 a general partner, a person or persons to wind up the
12 dissolved limited partnership's activities and affairs may be
13 appointed by the consent of a majority of the limited
14 partners.

15 (c) The circuit court for the county in which the
16 limited partnership's principal place of business within this
17 state is located, and if the limited partnership does not have
18 a principal place of business within this state then the
19 circuit court for the county in which the limited
20 partnership's most recent registered office is located, may
21 order judicial supervision of the winding up of a dissolved
22 limited partnership, including the appointment of a person to
23 wind up the limited partnership's activities and affairs:

24 (1) on application of a partner, if the applicant
25 establishes good cause;

26 (2) on application of a partner or transferee, if
27 the limited partnership does not have a general partner and

1 within a reasonable time following the dissolution no person
2 having the authority to wind up the activities and affairs of
3 the limited partnership has been appointed pursuant to
4 subsection (b);

5 (3) on application of a partner or transferee, if
6 the limited partnership does not have a general partner and
7 within a reasonable time following the dissolution the person
8 appointed pursuant to subsection (b) is not winding up the
9 activities and affairs of the limited partnership; or

10 (4) in connection with a proceeding under Section
11 10A-9A-8.01(f).

12 (d) A person appointed under subsection (b) or (c)
13 is not a general partner but:

14 (1) has the powers of a general partner under
15 Section 10A-9A-8.04 but is not liable for the debts,
16 liabilities, and other obligations of the limited partnership
17 solely by reason of having or exercising those powers or
18 otherwise acting to wind up the activities and affairs of the
19 dissolved limited partnership; and

20 (2) shall promptly deliver for filing a statement of
21 dissolution to the filing officer provided for in subsection
22 (e) setting forth the items listed in Section
23 10A-9A-8.02(b)(1) and the following:

24 (A) that the limited partnership does not have a
25 general partner;

1 (B) the name and street mailing address of each
2 person that has been appointed to wind up the activities and
3 affairs of the limited partnership;

4 (C) that each person has been appointed pursuant to
5 this subsection to wind up the activities and affairs of the
6 limited partnership; and

7 (D) pursuant to this Section, that each person has
8 the powers of a general partner under Section 10A-9A-8.04 but
9 is not liable for the debts, liabilities, and other
10 obligations of the limited partnership solely by reason of
11 having or exercising those powers or otherwise acting to wind
12 up the activities and affairs of the dissolved limited
13 partnership.

14 (e) If the limited partnership is not an
15 organization described in Section 10A-1-4.02(c)(4), then the
16 person or persons appointed pursuant to subsection (b) or (c)
17 shall deliver the statement of dissolution for filing to the
18 judge of probate in whose office the original certificate of
19 formation is filed. If the limited partnership is an
20 organization described in Section 10A-1-4.02(c)(4), then the
21 person or persons appointed pursuant to subsection (b) or (c)
22 shall deliver the statement of dissolution for filing to the
23 Secretary of State.

24 §10A-9A-8.04. Power of General Partner and Person
25 Dissociated as General Partner to Bind Partnership after
26 Dissolution.

1 (a) A limited partnership is bound by a general
2 partner's act after dissolution which:

3 (1) is appropriate for winding up the limited
4 partnership's activities and affairs; or

5 (2) would have bound the limited partnership under
6 Section 10A-9A-4.02 before dissolution, if, at the time the
7 other party enters into the transaction, the other party does
8 not have notice of the dissolution.

9 (b) A person dissociated as a general partner binds
10 a limited partnership through an act occurring after
11 dissolution only if:

12 (1) at the time the other party enters into the
13 transaction the other party does not have notice of the
14 dissociation and reasonably believes that the person is a
15 general partner; and

16 (2) the act:

17 (A) is appropriate for winding up the limited
18 partnership's activities and affairs; or

19 (B) would have bound the limited partnership under
20 Section 10A-9A-4.02 before dissolution and at the time the
21 other party enters into the transaction the other party does
22 not have notice of the dissolution.

23 §10A-9A-8.05. Liability after Dissolution of General
24 Partner and Person Dissociated as General Partner to Limited
25 Partnership, Other General Partners, and Persons Dissociated
26 as General Partner.

1 (a) If a general partner having knowledge of the
2 dissolution causes a limited partnership to incur an
3 obligation under Section 10A-9A-8.04(a) by an act that is not
4 appropriate for winding up the partnership's activities and
5 affairs, the general partner is liable:

6 (1) to the limited partnership for any damage caused
7 to the limited partnership arising from the obligation; and

8 (2) if another general partner or a person
9 dissociated as a general partner is liable for the obligation,
10 to that other general partner or person for any damage caused
11 to that other general partner or person arising from the
12 liability.

13 (b) If a person dissociated as a general partner
14 causes a limited partnership to incur an obligation under
15 Section 10A-9A-8.04(b), the person is liable:

16 (1) to the limited partnership for any damage caused
17 to the limited partnership arising from the obligation; and

18 (2) if a general partner or another person
19 dissociated as a general partner is liable for the obligation,
20 to the general partner or other person for any damage caused
21 to the general partner or other person arising from the
22 liability.

23 § 10A-9A-8.06. Known claims against dissolved
24 limited partnership.

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

26 (a) A dissolved limited partnership may dispose of
27 any known claims against it by following the procedures

1 described in subsection (b) at any time after the effective
2 date of the dissolution of the limited partnership.

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

6 (1) identify the dissolved limited partnership;

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

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

11 (4) state the deadline, which may not be fewer than
12 120 days from the effective date of the notice, by which the
13 dissolved partnership must receive the claim;

14 (5) state that if not sooner barred, the claim will
15 be barred if not received by the deadline; and

16 (6) unless the limited partnership has been
17 throughout its existence a limited liability limited
18 partnership, state that the barring of a claim against the
19 limited partnership will also bar any corresponding claim
20 against any general partner or person dissociated as a general
21 partner which is based on Section 10A-9A-4.04.

22 (c) Unless sooner barred by any other statute
23 limiting actions, a claim against a dissolved limited
24 partnership is barred:

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

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

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

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

12 § 10A-9A-8.07. Other claims against dissolved
13 limited partnership.

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

15 (a) A dissolved limited partnership may publish
16 notice of its dissolution and request that persons with claims
17 against the dissolved limited partnership present them in
18 accordance with the notice.

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

20 (1) be published at least one time in a newspaper of
21 general circulation in the county in which the dissolved
22 limited partnership's principal place of business is located
23 or, if it has none in this state, in the county in which the
24 limited partnership's registered office is or was last
25 located;

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

4 (3) state that if not sooner barred, a claim against
5 the dissolved limited partnership will be barred unless a
6 proceeding to enforce the claim is commenced within two years
7 after the publication of the notice; and

8 (4) unless the limited partnership has been
9 throughout its existence a limited liability limited
10 partnership, state that the barring of a claim against the
11 limited partnership will also bar any corresponding claim
12 against any general partner or person dissociated as a general
13 partner which is based on Section 10A-9A-4.04.

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

21 (1) a claimant who was not given notice under
22 Section 10A-9A-8.06;

23 (2) a claimant whose claim was timely sent to the
24 dissolved limited partnership but not acted on by the
25 dissolved limited partnership; and

26 (3) a claimant whose claim is contingent at the
27 effective date of the dissolution of the limited partnership,

1 or is based on an event occurring after the effective date of
2 the dissolution of the limited partnership.

3 (d) A claim that is not barred under this section,
4 any other statute limiting actions, or Section 10A-9A-8.06 may
5 be enforced:

6 (1) against a dissolved limited partnership, to the
7 extent of its undistributed assets;

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

18 (3) against any person liable on the claim under
19 Section 10A-9A-4.04 and 10A-9A-6.07.

20 (e) A dissolved limited partnership that published a
21 notice under this section may file an application with the
22 circuit court in the county in which the dissolved limited
23 partnership's principal place of business is located and if
24 the limited partnership does not have a principal place of
25 business within this state, in the county in which the
26 dissolved limited partnership's most recent registered office
27 is located, for a determination of the amount and form of

1 security to be provided for payment of claims that are
2 contingent or have not been made known to the dissolved
3 limited partnership or that are based on an event occurring
4 after the effective date of the dissolution of the limited
5 partnership but that, based on the facts known to the
6 dissolved limited partnership, are reasonably estimated to
7 arise after the effective date of the dissolution of the
8 limited partnership. Provision need not be made for any claim
9 that is or is reasonably anticipated to be barred under
10 subsection (c).

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

15 (g) The circuit court under subsection (e) may
16 appoint a guardian ad litem to represent all claimants whose
17 identities are unknown in any proceeding brought under this
18 section. The reasonable fees and expenses of the guardian,
19 including all reasonable expert witness fees, shall be paid by
20 the dissolved limited partnership.

21 (h) Provision by the dissolved limited partnership
22 for security in the amount and the form ordered by the circuit
23 court under subsection (e) shall satisfy the dissolved limited
24 partnership's obligation with respect to claims that are
25 contingent, have not been made known to the dissolved limited
26 partnership, or are based on an event occurring after the
27 effective date of the dissolution of the limited partnership,

1 and those claims may not be enforced against a person owning a
2 transferable interest to whom assets have been distributed by
3 the dissolved limited partnership after the effective date of
4 the dissolution of the limited partnership.

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

7 (j) If a claim has been satisfied, disposed of, or
8 barred under Section 10A-9A-8.06, this section, or other law,
9 the person or persons designated to wind up the affairs of a
10 limited partnership, and the owners of the transferable
11 interests receiving assets from the limited partnership, shall
12 not be liable for that claim.

13 § 10A-9A-8.08. Liability of General Partner and
14 Person Dissociated as General Partner When Claim against
15 Limited Partnership Barred. If a claim against a dissolved
16 limited partnership is barred under Section 10A-9A-8.06 or
17 10A-9A-8.07, any corresponding claim under Section 10A-9A-4.04
18 or 10A-9A-6.07 is also barred.

19 § 10A-9A-8.09. Disposition of Assets, When
20 Contributions Required. Notwithstanding Section 10A-1-9.12,
21 upon the winding up of a limited partnership, the assets of
22 the limited partnership, including any obligation under
23 Article 5 of this Chapter, and any contribution required by
24 this section, shall be applied as follows:

25 (a) Payment, or adequate provision for payment,
26 shall be made to creditors, including, to the extent permitted

1 by law, partners who are creditors, in satisfaction of
2 liabilities of the limited partnership.

3 (b) After a limited partnership complies with
4 subsection (a), any surplus must be distributed:

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

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

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

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

24 (1) Each person that was a general partner when the
25 obligation was incurred and that has not been released from
26 the obligation under Section 10A-9A-6.07 shall contribute to
27 the limited partnership for the purpose of enabling the

1 limited partnership to satisfy the obligation. The
2 contribution due from each of those persons is in proportion
3 to the right to receive distributions in the capacity of
4 general partner in effect for each of those persons when the
5 obligation was incurred.

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

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

20 (e) A person that makes an additional contribution
21 under subsection (d) (2) or (3) may recover from any person
22 whose failure to contribute under subsection (d) (1) or (2)
23 necessitated the additional contribution. A person may not
24 recover under this subsection more than the amount
25 additionally contributed. A person's liability under this
26 subsection may not exceed the amount the person failed to
27 contribute.

1 (f) The estate of a deceased individual is liable
2 for the person's obligations under this section.

3 (g) An assignee for the benefit of creditors of a
4 limited partnership or a partner, or a person appointed by a
5 court to represent creditors of a limited partnership or a
6 partner, may enforce a person's obligation to contribute under
7 subsection (d).

8 § 10A-9A-8.10. Reinstatement after dissolution.

9 Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32, a limited
10 partnership that has been dissolved may be reinstated upon
11 compliance with the following conditions:

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

15 (1) required for reinstatement under the partnership
16 agreement; or

17 (2) if the partnership agreement does not state the
18 consent required for reinstatement, sufficient for dissolution
19 under the partnership agreement; or

20 (3) if the partnership agreement neither states the
21 consent required for reinstatement nor for dissolution,
22 sufficient for dissolution under this chapter;

23 (b) in the case of a written objection to
24 reinstatement having been delivered to the limited partnership
25 before or at the time of the consent required by subsection
26 (a) by the partners or other persons having authority under
27 the partnership agreement to bring about or prevent

1 dissolution of the limited partnership, those partners or
2 persons withdrawing that written objection effective at the
3 time of the consent required by subsection (a);

4 (c) in the case of a limited partnership dissolved
5 in a judicial proceeding initiated by one or more of the
6 partners, the consent of each of those partners shall have
7 been obtained and shall be included in the consent required by
8 subsection (a); and

9 (d) the filing of a certificate of reinstatement in
10 accordance with Section 10A-9A-8.11.

11 § 10A-9A-8.11. Certificate of reinstatement.

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

19 (1) the name of the limited partnership before
20 reinstatement;

21 (2) the name of the limited partnership following
22 reinstatement, which limited partnership name shall comply
23 with Section 10A-9A-8.12;

24 (3) the date of formation of the limited
25 partnership;

26 (4) the date of dissolution of the limited
27 partnership, if known;

1 (5) a statement that all applicable conditions of
2 Section 10A-9A-8.10 have been satisfied; and

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

6 (b) A limited partnership shall not be required to
7 file a statement of dissolution in order to file a certificate
8 of reinstatement.

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

11 (d) If a limited partnership is not an organization
12 described in Section 10A-1-4.02(c)(4), then that limited
13 partnership shall deliver the certificate of reinstatement for
14 filing to the judge of probate in whose office the original
15 certificate of formation is filed. If a limited partnership is
16 an organization described in Section 10A-1-4.02(c)(4), then
17 that limited partnership shall deliver the certificate of
18 reinstatement for filing to the Secretary of State.

19 § 10A-9A-8.12. Limited partnership name upon
20 reinstatement. The name of a limited partnership following
21 reinstatement shall be determined as follows:

22 (a) If the limited partnership remains in the
23 Secretary of State's records as a limited partnership which
24 has not been dissolved, then the name of the limited
25 partnership following reinstatement shall be that limited
26 partnership name at the time of reinstatement.

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

11 (c) A limited partnership shall not be required to
12 file a statement of dissolution in order to retain or obtain
13 the name of the limited partnership.

14 § 10A-9A-8.13. Effect of reinstatement.

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

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

26 Article 9. Actions by Partners.

27 § 10A-9A-9.01. Direct action by partner.

1 (a) Subject to subsection (b), a partner may
2 maintain a direct action against another partner or partners
3 or the limited partnership, with or without an accounting as
4 to the partnership's activities and affairs, to enforce the
5 partner's rights and otherwise protect the partner's
6 interests, including rights and interests under the
7 partnership agreement or this chapter or arising independently
8 of the partnership relationship.

9 (b) A partner maintaining a direct action under
10 subsection (a) must plead and prove an actual or threatened
11 injury that is not solely the result of an injury suffered or
12 threatened to be suffered by the limited partnership.

13 (c) A partner may maintain a direct action to
14 enforce a right of a limited partnership if all partners at
15 the time of suit are parties to the action.

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

19 (e) A right to an accounting upon a dissolution and
20 winding up does not revive a claim barred by law.

21 § 10A-9A-9.02. Right of derivative action. A partner
22 may commence or maintain a derivative action in the right of a
23 limited partnership to enforce a right of the limited
24 partnership by complying with this article.

25 § 10A-9A-9.03. Standing. A partner may commence or
26 maintain a derivative action in the right of the limited
27 partnership only if the partner:

1 (1) fairly and adequately represents the interests
2 of the limited partnership in enforcing the right of the
3 limited partnership; and

4 (2) either:

5 (A) was a partner of the limited partnership at the
6 time of the act or omission of which the partner complains; or

7 (B) whose status as a partner devolved upon the
8 person by operation of law or pursuant to the terms of the
9 partnership agreement from a person who was a partner at the
10 time of the act or omission of which the partner complains.

11 § 10A-9A-9.04. Demand. A partner may commence a
12 derivative action in the right of the limited partnership, if:

13 (a) the partner first makes a written demand upon
14 general partners requesting that they cause the limited
15 partnership to bring an action to enforce the right and the
16 general partners do not bring the action within a reasonable
17 time; or

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

19 § 10A-9A-9.05. Pleading. In a derivative action, the
20 complaint must state with particularity:

21 (a) the date and content of plaintiff's demand and
22 the general partner's response by the limited partnership to
23 the demand; or

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

25 § 10A-9A-9.06. Stay of proceedings. For the purpose
26 of allowing the general partners and the limited partnership
27 time to undertake an inquiry into the allegations made in the

1 demand or complaint commenced pursuant to this article, the
2 court may stay any derivative action for the period the court
3 deems appropriate.

4 § 10A-9A-9.07. Discontinuance or settlement. A
5 derivative action may not be dismissed or compromised without
6 the approval of the court, and notice of the proposed
7 dismissal or compromise shall be given to partners of the
8 limited partnership in such manner as the court directs.

9 § 10A-9A-9.08. Proceeds and expenses.

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

11 (1) any proceeds or other benefits of a derivative
12 action, whether by judgment, compromise, or settlement, belong
13 to the limited partnership and not to the derivative
14 plaintiff; and

15 (2) if the derivative plaintiff receives any
16 proceeds, the derivative plaintiff shall immediately remit
17 them to the limited partnership.

18 (b) If a derivative action is successful in whole or
19 in part, the court may award the plaintiff reasonable
20 expenses, including reasonable attorney's fees, from the
21 recovery of the limited partnership.

22 § 10A-9A-9.09. Applicability to foreign limited
23 partnerships. In any derivative action in the right of a
24 foreign limited partnership, the right of a person to commence
25 or maintain a derivative action in the right of a foreign
26 limited partnership, and any matters raised in the action
27 covered by Sections 10A-9A-9.02 through 10A-9A-9.08, shall be

1 governed by the law of the jurisdiction under which the
2 foreign limited partnership was formed; except that any
3 matters raised in the action covered by Sections 10A-9A-9.06,
4 10A-9A-9.07, and 10A-9A-9.08 shall be governed by the law of
5 this state.

6 Article 10. Conversions and Mergers.

7 § 10A-9A-10.01. Definitions. Notwithstanding Section
8 10A-1-1.03, as used in this article, unless the context
9 otherwise requires, the following terms mean:

10 (1) "Constituent Limited Partnership" means a
11 constituent organization that is a limited partnership.

12 (2) "Constituent Organization" means an organization
13 that is party to a merger under this article.

14 (3) "Converted Organization" means the organization
15 into which a converting organization converts pursuant to this
16 article.

17 (4) "Converting Limited Partnership" means a
18 converting organization that is a limited partnership.

19 (5) "Converting Organization" means an organization
20 that converts into another organization pursuant to this
21 article.

22 (6) "General Partner" means a general partner of a
23 limited partnership.

24 (7) "Governing Statute" of an organization means the
25 statute that governs the organization's internal affairs.

26 (8) "Organization" means a general partnership,
27 including a limited liability partnership; limited

1 partnership, including a limited liability limited
2 partnership; limited liability company; business trust;
3 corporation; nonprofit corporation; professional corporation;
4 or any other person having a governing statute. The term
5 includes domestic and foreign organizations whether or not
6 organized for profit.

7 (9) "Organizational Documents" means:

8 (A) for a general partnership or foreign general
9 partnership, its partnership agreement and if applicable, its
10 registration as a limited liability partnership or a foreign
11 limited liability partnership;

12 (B) for a limited partnership or foreign limited
13 partnership, its certificate of formation and partnership
14 agreement, or comparable writings as provided in its governing
15 statute;

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

20 (D) for a business or statutory trust or foreign
21 business or statutory trust its agreement of trust and
22 declaration of trust, or comparable writings as provided in
23 its governing statute;

24 (E) for a corporation for profit or foreign
25 corporation for profit, its certificate of formation, bylaws,
26 and other agreements among its shareholders that are

1 authorized by its governing statute, or comparable writings as
2 provided in its governing statute;

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

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

12 (H) for any other organization, the basic writings
13 that create the organization and determine its internal
14 governance and the relations among the persons that own it,
15 have an interest in it, or are members of it.

16 (10) "Surviving Organization" means an organization
17 into which one or more other organizations are merged under
18 this article, whether the organization pre-existed the merger
19 or was created pursuant to the merger.

20 § 10A-9A-10.02. Conversion.

21 (a) An organization other than a limited partnership
22 may convert to a limited partnership, and a limited
23 partnership may convert to an organization other than a
24 limited partnership pursuant to this section, Sections
25 10A-9A-10.03 through 10A-9A-10.05, and a plan of conversion,
26 if:

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

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

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

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

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

15 (2) the name, type of organization, and mailing
16 address of the principal office of the converted organization
17 after conversion;

18 (3) the terms and conditions of the conversion,
19 including the manner and basis for converting interests in the
20 converting organization into any combination of money,
21 interests in the converted organization, and other
22 consideration allowed in Section 10A-9A-10.02(c); and

23 (4) the organizational documents of the converted
24 organization.

25 (c) In connection with a conversion, rights or
26 securities of or interests in the converting organization may
27 be exchanged for or converted into cash, property, or rights

1 or securities of or interests in the converted organization,
2 or, in addition to or in lieu thereof, may be exchanged for or
3 converted into cash, property, or rights or securities of or
4 interests in another organization or may be cancelled.

5 § 10A-9A-10.03. Action on plan of conversion by
6 converting limited partnership.

7 (a) Subject to Section 10A-9A-10.10, a plan of
8 conversion must be consented to by all the partners of a
9 converting limited partnership.

10 (b) Subject to Section 10A-9A-10.10 and any
11 contractual rights, after a conversion is approved, and at any
12 time before a filing is made under Section 10A-9A-10.4, a
13 converting limited partnership may amend the plan or abandon
14 the planned conversion:

15 (1) as provided in the plan; and

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

18 § 10A-9A-10.04. Filings required for conversion;
19 effective date.

20 (a) After a plan of conversion is approved:

21 (1) if the converting organization is an
22 organization formed under the laws of this state, the
23 converting organization shall file a statement of conversion
24 in accordance with subsection (c), which statement of
25 conversion must be signed in accordance with Section
26 10A-9A-2.03(a) and which must include:

27 (A) the name of the converting organization;

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

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

7 (D) the name and type of organization of the
8 converted organization and the jurisdiction of its governing
9 statute;

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

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

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

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

19 (I) if the converted organization is a foreign
20 organization not authorized to conduct activities and affairs
21 in this state, the street and mailing address of an office for
22 the purposes of Section 10A-9A-10.05(b); and

23 (2) if the converted organization is a limited
24 partnership, the converting organization shall file a
25 certificate of formation in accordance with subsection (d),
26 which certificate of formation must include, in addition to
27 the information required by Section 10A-9A-2.01(a):

1 (A) a statement that the limited partnership was
2 converted from the converting organization;

3 (B) the name and type of organization of the
4 converting organization and the jurisdiction of the converting
5 organization's governing statute; and

6 (C) a statement that the conversion was approved in
7 a manner that complied with the converting organization's
8 governing statute.

9 (b) A conversion becomes effective:

10 (1) if the converted organization is a limited
11 partnership, when the certificate of formation takes effect;
12 and

13 (2) if the converted organization is not a limited
14 partnership, as provided by the governing statute of the
15 converted organization.

16 (c) If the converting organization is an
17 organization formed under the laws of this state, then the
18 converting organization shall file the statement of conversion
19 required under subsection (a) (1) with the Secretary of State
20 in accordance with Section 10A-1-4.02(c) (1).

21 (d) If the converted organization is a limited
22 partnership, then, notwithstanding Section 10A-1-4.02(b), the
23 converting organization shall file the certificate of
24 formation required under subsection (a) (2) with the Secretary
25 of State in accordance with Section 10A-1-4.02(c) (5), along
26 with the fees specified in Section 10A-1-4.31 subject to
27 subsection (f) (3).

1 (e) If the converting organization is required to
2 file a statement of conversion and a certificate of formation
3 with the Secretary of State, then the converting organization
4 shall file the statement of conversion and the certificate of
5 formation with the Secretary of State simultaneously.

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

9 (1) if the converting organization has a certificate
10 of formation filed with the judge of probate, the Secretary of
11 State shall within 10 days transmit a certified copy of the
12 statement of conversion to the office of the judge of probate
13 in the county in which the certificate of formation for such
14 converting organization was filed along with the proper fee
15 for the judge of probate.

16 (2) if the converting organization did not file its
17 certificate of formation with the judge of probate, but rather
18 in accordance with this title filed its certificate of
19 formation with the Secretary of State, the Secretary of State
20 shall not transmit a certified copy of the statement of
21 conversion to the office of the judge of probate and shall not
22 collect any fee for the judge of probate.

23 (3) if the converting organization is, immediately
24 prior to the conversion becoming effective, an organization
25 described in Section 10A-1-4.02(c)(4), but is not required
26 under this title to file its organizational documents with the
27 judge of probate, the Secretary of State shall not transmit a

1 certified copy of the statement of the statement of conversion
2 to the office of the judge of probate and shall not collect
3 any fee for the judge of probate.

4 (g) In the case of a certificate of formation that
5 is to be filed with the Secretary of State pursuant to
6 subsection (d), the Secretary of State shall not transmit a
7 certified copy of the certificate of formation to the office
8 of the judge of probate and shall not collect any fee for the
9 judge of probate, but shall collect the fee provided for the
10 Secretary of State in Section 10A-1-4.31(a)(1).

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

16 (i) If:

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

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

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

26 (4) the name of the converted organization complies
27 with Division A of Article 5 of Chapter 1 or Section

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

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

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

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

22 § 10A-9A-10.05. Effect of conversion.

23 (a) When a conversion takes effect:

24 (1) all property owned by the converting
25 organization remains vested in the converted organization
26 without reservation or impairment and the title to any
27 property vested by deed or otherwise in the converting

1 organization shall not revert or be in any way impaired by
2 reason of the conversion;

3 (2) all debts, obligations, or other liabilities of
4 the converting organization continue as debts, obligations, or
5 other liabilities of the converted organization and neither
6 the rights of creditors, nor the liens upon the property of
7 the converting organization shall be impaired by the
8 conversion;

9 (3) an action or proceeding pending by or against
10 the converting organization continues as if the conversion had
11 not occurred;

12 (4) except as prohibited by law other than this
13 chapter, all of the rights, privileges, immunities, powers,
14 and purposes of the converting organization remain vested in
15 the converted organization;

16 (5) except as otherwise provided in the plan of
17 conversion, the terms and conditions of the plan of conversion
18 take effect;

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

24 (7) for all purposes of the laws of this state, the
25 rights, privileges, powers, interests in property, debts,
26 liabilities and duties of the converting organization, shall
27 be the rights, privileges, powers, interests in property,

1 debts, liabilities and duties of the converted organization,
2 and shall not be deemed as a consequence of the conversion, to
3 have been transferred to the converted organization;

4 (8) if the converted organization is a limited
5 partnership, for all purposes of the laws of this state, the
6 limited partnership shall be deemed to be the same
7 organization as the converting organization, and the
8 conversion shall constitute a continuation of the existence of
9 the converting organization in the form of a limited
10 partnership;

11 (9) if the converted organization is a limited
12 partnership, the existence of the limited partnership shall be
13 deemed to have commenced on the date the converting
14 organization commenced its existence in the jurisdiction in
15 which the converting organization was first created, formed,
16 organized, incorporated, or otherwise came into being;

17 (10) the conversion shall not affect the choice of
18 law applicable to matters arising prior to conversion; and

19 (11) if the Secretary of State has assigned a unique
20 identifying number or other designation to the converting
21 organization and (i) the converted organization is formed
22 pursuant to the laws of this state or (ii) the converted
23 organization is, within 30 days after the effective date of
24 the conversion, registered to transact business in this state,
25 then that unique identifying number or other designation shall
26 continue to be assigned to the converted organization.

1 (b) A converted organization that is a foreign
2 entity consents to the jurisdiction of the courts of this
3 state to enforce any debt, obligation or other liability for
4 which the converting limited partnership, or series thereof,
5 is liable if, before the conversion, the converting limited
6 partnership was subject to suit in this state on the debt,
7 obligation or other liability. If a converted organization
8 that is a foreign entity fails to designate or maintain a
9 registered agent, or the designated registered agent cannot
10 with reasonable diligence be served, then service of process
11 on that converted organization for the purposes of enforcing a
12 debt, obligation, or other liability under this subsection may
13 be made in the same manner and has the same consequences as
14 provided in Section 10A-1-5.35.

15 § 10A-9A-10.06. Merger.

16 (a) A limited partnership may merge with one or more
17 other constituent organizations pursuant to this section,
18 Sections 10A-9A-10.07 through 10A-9A-10.09, and a plan of
19 merger, if:

20 (1) the governing statute of each of the other
21 organizations authorizes the merger;

22 (2) the merger is not prohibited by the law of a
23 jurisdiction that enacted any of those governing statutes; and

24 (3) each of the other organizations complies with
25 its governing statute in effecting the merger.

26 (b) A plan of merger must be in writing and must
27 include:

1 (1) the name, type of organization, and mailing
2 address of the principal office of each constituent
3 organization;

4 (2) the name, type of organization, and mailing
5 address of the principal office of the surviving organization
6 and, if the surviving organization is to be created pursuant
7 to the merger, a statement to that effect;

8 (3) the terms and conditions of the merger,
9 including the manner and basis for converting the interests in
10 each constituent organization into any combination of money,
11 interests in the surviving organization, and other
12 consideration as allowed by subsection (c);

13 (4) if the surviving organization is to be created
14 pursuant to the merger, the surviving organization's
15 organizational documents; and

16 (5) if the surviving organization is not to be
17 created pursuant to the merger, any amendments to be made by
18 the merger to the surviving organization's organizational
19 documents.

20 (c) In connection with a merger, rights or
21 securities of or interests in a constituent organization may
22 be exchanged for or converted into cash, property, or rights
23 or securities of or interests in the surviving organization,
24 or, in addition to or in lieu thereof, may be exchanged for or
25 converted into cash, property, or rights or securities of or
26 interests in another organization or may be cancelled.

1 § 10A-9A-10.07. Action on plan of merger by
2 constituent limited partnership.

3 (a) Subject to Section 10A-9A-10.10, a plan of
4 merger must be consented to by all the partners of a
5 constituent limited partnership.

6 (b) Subject to Section 10A-9A-10.10 and any
7 contractual rights, after a merger is approved, and at any
8 time before a filing is made under Section 10A-9A-10.08, a
9 constituent limited partnership may amend the plan or abandon
10 the merger:

11 (1) as provided in the plan; and

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

14 § 10A-9A-10.08. Filings required for merger;
15 effective date.

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

19 (1) each constituent limited partnership, as
20 provided in Section 10A-9A-2.03(a); and

21 (2) each other constituent organization, as provided
22 by its governing statute.

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

25 (1) the name, type of organization, and mailing
26 address of the principal office of each constituent
27 organization and the jurisdiction of its governing statute;

1 (2) the name, type of organization, and mailing
2 address of the principal office of the surviving organization,
3 the jurisdiction of its governing statute, and, if the
4 surviving organization is created pursuant to the merger, a
5 statement to that effect;

6 (3) the date of the filing of the certificate of
7 formation, if any, and all prior amendments and the filing
8 office or offices, if any, and where such is filed of each
9 constituent organization which was formed under the laws of
10 this state;

11 (4) the date the merger is effective under the
12 governing statute of the surviving organization;

13 (5) if the surviving organization is to be created
14 pursuant to the merger:

15 (A) if it will be a limited partnership, the limited
16 partnership's certificate of formation; or

17 (B) if it will be an organization other than a
18 limited partnership, any organizational document that creates
19 the organization that is required to be in a public writing;

20 (6) if the surviving organization exists before the
21 merger, any amendments provided for in the plan of merger for
22 the organizational document that created the organization that
23 are in a public writing;

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

1 (8) if the surviving organization is a foreign
2 organization not authorized to conduct activities and affairs
3 in this state, the street and mailing address of an office for
4 the purposes of Section 10A-9A-10.09(b); and

5 (9) any additional information required by the
6 governing statute of any constituent organization.

7 (c) The statement of merger shall be delivered for
8 filing to the Secretary of State in accordance with Section
9 10A-1-4.02(c)(1), along with the fees specified in Section
10 10A-1-4.31, subject to the last sentence of this subsection
11 (c). For each constituent organization which is formed under
12 the laws of this state and which is not, immediately prior to
13 the merger becoming effective, an organization described in
14 Section 10A-1-4.02(c)(4), the Secretary of State shall within
15 10 days transmit a certified copy of the statement of merger
16 to the office of the judge of probate in the county in which
17 the certificate of formation for each such constituent
18 organization was filed along with the proper fee for the judge
19 of probate. For each constituent organization which is formed
20 under the laws of this state and which is, immediately prior
21 to the merger becoming effective, an organization described in
22 Section 10A-1-4.02(c)(4), but which has a certificate of
23 formation filed with the judge of probate, the Secretary of
24 State shall transmit a certified copy of the statement of
25 merger to the office of the judge of probate in the county in
26 which the certificate of formation for each such constituent
27 organization was filed along with the proper fee for the judge

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

11 (d) A merger becomes effective under this article:

12 (1) if the surviving organization is a limited
13 partnership, upon the later of:

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

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

17 (2) if the surviving organization is not a limited
18 partnership, as provided by the governing statute of the
19 surviving organization.

20 (e) After a merger becomes effective, if the
21 surviving organization is a limited partnership, then all
22 filing instruments required to be filed under this title
23 regarding that surviving organization shall be filed with the
24 Secretary of State.

25 (f) A certified copy of the statement of merger
26 required to be filed under this section may be filed in the
27 real estate records in the office of the judge of probate in

1 any county in which any constituent organization owned real
2 property, without payment and without collection by the judge
3 of probate of any deed or other transfer tax or fee. The judge
4 of probate, however, shall be entitled to collect the filing
5 fee of five dollars (\$5). Any such filing shall evidence chain
6 of title, but lack of filing shall not affect the surviving
7 organization's title to such real property.

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

10 (h) Except as provided in the last sentence of
11 subsection (c), the filing fees for a statement of merger
12 shall be the same fees as provided in Section
13 10A-1-4.31(a) (5).

14 § 10A-9A-10.09. Effect of merger.

15 (a) When a merger becomes effective:

16 (1) the surviving organization continues or, in the
17 case of a surviving organization created pursuant to the
18 merger, comes into existence;

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

22 (3) all property owned by each constituent
23 organization that ceases to exist vests in the surviving
24 organization without reservation or impairment and the title
25 to any property vested by deed or otherwise in the surviving
26 organization shall not revert or be in any way impaired by
27 reason of the merger;

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

7 (5) an action or proceeding pending by or against
8 any constituent organization continues as if the merger had
9 not occurred;

10 (6) except as prohibited by law other than this
11 chapter, all of the rights, privileges, immunities, powers,
12 and purposes of each constituent organization vest in the
13 surviving organization;

14 (7) except as otherwise provided in the plan of
15 merger, the terms and conditions of the plan of merger take
16 effect;

17 (8) except as otherwise agreed, if a constituent
18 limited partnership ceases to exist, the merger does not
19 dissolve the limited partnership;

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

22 (A) if it is a limited partnership, the certificate
23 of formation becomes effective; or

24 (B) if it is an organization other than a limited
25 partnership, the organizational document that creates the
26 organization becomes effective; and

1 (10) if the surviving organization existed before
2 the merger, any amendments provided for in the statement of
3 merger for the organizational document that created the
4 organization become effective.

5 (b) A surviving organization that is a foreign
6 entity consents to the jurisdiction of this state to enforce
7 any debt, obligation, or other liability owed by a constituent
8 organization, if before the merger the constituent
9 organization was subject to suit in this state on the debt,
10 obligation, or other liability. If a surviving organization
11 that is a foreign entity fails to designate or maintain a
12 registered agent, or the designated registered agent cannot
13 with reasonable diligence be served, then the service of
14 process on that surviving organization for the purposes of
15 enforcing a debt, obligation, or other liability under this
16 subsection may be made in the same manner and has the same
17 consequences as provided in Section 10A-1-5.35.

18 § 10A-9A-10.10. Restrictions on approval of mergers,
19 conversions and on relinquishing LLLP status.

20 (a) If a partner of a converting or constituent
21 limited partnership will have personal liability with respect
22 to a converted or surviving organization, approval and
23 amendment of a plan of conversion or plan of merger are
24 ineffective without that partner's consent to the plan.

25 (b) An amendment to a certificate of formation which
26 deletes a statement that the limited partnership is a limited

1 liability limited partnership is ineffective without each
2 general partner's written consent to such amendment.

3 (c) A partner does not give the consent required by
4 subsection (a) or (b) merely by consenting to a provision of
5 the partnership agreement that permits the partnership
6 agreement to be amended with the consent of fewer than all the
7 partners.

8 § 10A-9A-10.11. Liability of general partner after
9 conversion or merger.

10 (a) A conversion or merger under this article does
11 not discharge any liability under Sections 10A-9A-4.04 and
12 10A-9A-6.07 of a person that was a general partner in or
13 dissociated as a general partner from a converting or
14 constituent limited partnership, but:

15 (1) the provisions of this chapter pertaining to the
16 collection or discharge of the liability continue to apply to
17 the liability;

18 (2) for the purposes of applying those provisions,
19 the converted or surviving organization is deemed to be the
20 converting or constituent limited partnership; and

21 (3) if a person is required to pay any amount under
22 this subsection:

23 (A) the person has a right of contribution from each
24 other person that was liable as a general partner under
25 Section 10A-9A-4.04 when the obligation was incurred and has
26 not been released from the obligation under Section
27 10A-9A-6.07; and

1 (B) the contribution due from each of those persons
2 is in proportion to the right to receive distributions in the
3 capacity of general partner in effect for each of those
4 persons when the obligation was incurred.

5 (b) In addition to any other liability provided by
6 law:

7 (1) a person that immediately before a conversion or
8 merger became effective was a general partner in a converting
9 or constituent limited partnership that was not a limited
10 liability limited partnership is personally liable for each
11 obligation of the converted or surviving organization arising
12 from a transaction with a third party after the conversion or
13 merger becomes effective, if, at the time the third party
14 enters into the transaction, the third party:

15 (A) does not have notice of the conversion or
16 merger; and

17 (B) reasonably believes that:

18 (i) the converted or surviving business is the
19 converting or constituent limited partnership;

20 (ii) the converting or constituent limited
21 partnership is not a limited liability limited partnership;
22 and

23 (iii) the person is a general partner in the
24 converting or constituent limited partnership; and

25 (2) a person that was dissociated as a general
26 partner from a converting or constituent limited partnership
27 before the conversion or merger became effective is personally

1 liable for each obligation of the converted or surviving
2 organization arising from a transaction with a third party
3 after the conversion or merger becomes effective, if:

4 (A) immediately before the conversion or merger
5 became effective the converting or surviving limited
6 partnership was not a limited liability limited partnership;
7 and

8 (B) at the time the third party enters into the
9 transaction the third party:

10 (i) does not have notice of the dissociation;

11 (ii) does not have notice of the conversion or
12 merger; and

13 (iii) reasonably believes that the converted or
14 surviving organization is the converting or constituent
15 limited partnership, the converting or constituent limited
16 partnership is not a limited liability limited partnership,
17 and the person is a general partner in the converting or
18 constituent limited partnership.

19 § 10A-9A-10.12. Power of general partners and
20 persons dissociated as general partners to bind organization
21 after conversion or merger.

22 (a) An act of a person that immediately before a
23 conversion or merger became effective was a general partner in
24 a converting or constituent limited partnership binds the
25 converted or surviving organization after the conversion or
26 merger becomes effective, if:

1 (1) before the conversion or merger became
2 effective, the act would have bound the converting or
3 constituent limited partnership under Section 10A-9A-4.02; and

4 (2) at the time the third party enters into the
5 transaction, the third party:

6 (A) does not have notice of the conversion or
7 merger; and

8 (B) reasonably believes that the converted or
9 surviving business is the converting or constituent limited
10 partnership and that the person is a general partner in the
11 converting or constituent limited partnership.

12 (b) An act of a person that before a conversion or
13 merger became effective was dissociated as a general partner
14 from a converting or constituent limited partnership binds the
15 converted or surviving organization after the conversion or
16 merger becomes effective, if:

17 (1) before the conversion or merger became
18 effective, the act would have bound the converting or
19 constituent limited partnership under Section 10A-9A-4.02 if
20 the person had been a general partner; and

21 (2) at the time the third party enters into the
22 transaction, the third party:

23 (A) does not have notice of the dissociation;

24 (B) does not have notice of the conversion or
25 merger; and

26 (C) reasonably believes that the converted or
27 surviving organization is the converting or constituent

1 limited partnership and that the person is a general partner
2 in the converting or constituent limited partnership.

3 (c) If a person having knowledge of the conversion
4 or merger causes a converted or surviving organization to
5 incur an obligation under subsection (a) or (b), the person is
6 liable:

7 (1) to the converted or surviving organization for
8 any damage caused to the organization arising from the
9 obligation; and

10 (2) if another person is liable for the obligation,
11 to that other person for any damage caused to that other
12 person arising from the liability.

13 § 10A-9A-10.13. Article not exclusive. This article
14 is not exclusive. This article does not preclude an entity
15 from being converted or merged under law other than this
16 chapter.

17 Article 11. Miscellaneous Provisions.

18 § 10A-9A-11.01. Application to Existing
19 Relationships.

20 (a) Beginning January 1, 2017, this chapter governs
21 all limited partnerships and all foreign limited partnerships.

22 (b) With respect to a limited partnership formed
23 before January 1, 2010, the following rules apply except as
24 the partners otherwise elect in the manner provided in the
25 partnership agreement or by law for amending the partnership
26 agreement:

1 (1) Section 10A-1-3.03 does not apply and the
2 limited partnership has whatever duration it had under the law
3 applicable immediately before January 1, 2010.

4 (2) The limited partnership is not required to amend
5 its certificate of formation to comply with Section
6 10A-9A-2.01(a) (5); but once amended or restated, the
7 certificate of formation must comply with Section
8 10A-9A-2.01(a) (5).

9 (3) Sections 10A-9A-6.01 and 10A-9A-6.02 do not
10 apply and a limited partner has the same right and power to
11 dissociate from the limited partnership, with the same
12 consequences, as existed immediately before January 1, 2010.

13 (4) Section 10A-9A-6.03(4) does not apply.

14 (5) Section 10A-9A-6.03(5) does not apply and a
15 court has the same power to expel a general partner as the
16 court had immediately before January 1, 2010.

17 (6) Section 10A-9A-8.01(c) does not apply and the
18 connection between a person's dissociation as a general
19 partner and the dissolution of the limited partnership is the
20 same as existed immediately before January 1, 2010.

21 (c) With respect to limited partnerships formed
22 before January 1, 2017:

23 (1) the limited partnership's formation document,
24 whether a certificate of limited partnership or a certificate
25 of formation is deemed to be the limited partnership's
26 certificate of formation; and

1 (2) the limited partnership's partnership agreement
2 is deemed the limited partnership's partnership agreement.

3 (d) With respect to a limited partnership formed
4 before October 1, 1998, the term "partnership agreement" as
5 defined in Section 10A-9A-1.02(10), includes the certificate
6 of partnership.

7 § 10A-9A-11.02. Severability Clause. If any
8 provision of this chapter or its application to any person or
9 circumstance is held invalid, the invalidity does not affect
10 other provisions or applications of this chapter which can be
11 given effect without the invalid provision or application, and
12 to this end the provisions of this chapter are severable.

13 § 10A-9A-11.03. Relation to Electronic Signatures In
14 Global And National Commerce Act. This chapter modifies,
15 limits, or supersedes the federal Electronic Signatures in
16 Global and National Commerce Act, 15 U.S.C. Section 7001 et
17 seq., but this chapter does not modify, limit, or supersede
18 Section 101(c) of that act or authorize electronic delivery of
19 any of the notices described in Section 103(b) of that act.

20 § 10A-9A-11.04. Effective Date. This chapter takes
21 effect January 1, 2017.

22 § 10A-9A-11.05. Repeals. Effective January 1, 2017,
23 the following parts of the Code of Alabama 1975 are repealed:
24 Sections 10A-9-1.01 to 10A-9-12.08, inclusive, as amended and
25 in effect immediately before the effective date of this act.

1 § 10A-9A-11.06. Savings Clause. This chapter does
2 not affect an action commenced, proceeding brought, or right
3 accrued before this chapter takes effect.

4 § 10A-9A-11.07. Classification. For purposes of
5 income taxation, other than under Chapter 14A of Title 40, a
6 domestic or foreign limited partnership or limited liability
7 limited partnership shall be treated as a partnership unless
8 it is classified otherwise for federal income tax purposes, in
9 which case it shall be classified in the same manner as it is
10 for federal income tax purposes.

11 Section 2. Sections 10A-1-1.03, 10A-1-1.06,
12 10A-1-1.08, and 10A-1-4.26, Code of Alabama 1975, are amended
13 to read as follows:

14 "§10A-1-1.03.

15 "(1) AFFILIATE. A person who controls, is controlled
16 by, or is under common control with another person. An
17 affiliate of an individual includes the spouse, or a parent or
18 sibling thereof, of the individual, or a child, grandchild,
19 sibling, parent, or spouse of any thereof, of the individual,
20 or an individual having the same home as the individual, or a
21 trust or estate of which an individual specified in this
22 sentence is a substantial beneficiary; a trust, estate,
23 incompetent, conservatee, protected person, or minor of which
24 the individual is a fiduciary; or an entity of which the
25 individual is director, general partner, agent, employee or
26 the governing authority or member of the governing authority.

1 "(2) ASSOCIATE. When used to indicate a relationship
2 with:

3 "(A) a domestic or foreign entity or organization
4 for which the person is:

5 "(i) an officer or governing person; or

6 "(ii) a beneficial owner of 10 percent or more of a
7 class of voting ownership interests or similar securities of
8 the entity or organization;

9 "(B) a trust or estate in which the person has a
10 substantial beneficial interest or for which the person serves
11 as trustee or in a similar fiduciary capacity;

12 "(C) the person's spouse or a relative of the person
13 related by consanguinity or affinity within the fifth degree
14 who resides with the person; or

15 "(D) a governing person or an affiliate or officer
16 of the person.

17 "(3) ASSOCIATION. Includes, but is not limited to,
18 an unincorporated nonprofit association as defined in Section
19 10A-17-1.02(2) and an unincorporated professional association
20 as defined in Section 10A-30-1.01(2).

21 "(4) BUSINESS CORPORATION. A corporation within the
22 meaning of Section 10A-2-1.40(3) or Section 10A-2-1.40(9).

23 "(5) BUSINESS TRUST. A business trust within the
24 meaning of Section 10A-16-1.01.

25 "(6) CERTIFICATE OF FORMATION.

26 "(A) the document required to be filed publicly
27 under Article 3 to form a filing entity; and

1 "(B) if appropriate, a restated certificate of
2 formation and all amendments of an original or restated
3 certificate of formation.

4 "(7) CERTIFICATE OF OWNERSHIP. An instrument
5 evidencing an ownership interest or membership interest in an
6 entity.

7 "(8) CERTIFICATE OF TERMINATION. Any document, such
8 as articles of dissolution in the case of a corporation, or
9 certificate of cancellation, in the case of a limited
10 partnership, required by law to be filed publicly with respect
11 to an entity's dissolution and the winding up of its affairs
12 or the end of its existence. In the case of an entity whose
13 separate existence ceases as a result of a merger, the
14 articles of merger shall constitute the certificate of
15 termination.

16 "(9) CERTIFICATED OWNERSHIP INTEREST. An ownership
17 interest of a domestic entity represented by a certificate
18 issued in bearer or registered form.

19 "(10) CERTIFICATION. Duly authenticated by the
20 proper officer of the state or county under the laws of which
21 a domestic or foreign entity is formed.

22 "(11) CONTRIBUTION. A tangible or intangible benefit
23 that a person transfers to an entity in consideration for an
24 ownership interest in the entity or otherwise in the person's
25 capacity as an owner or a member. In the case of an entity to
26 which Section 234 of the Constitution of Alabama of 1901, now
27 appearing as Section 234 of the Official Recompilation of the

1 Constitution of Alabama of 1901, as amended, applies, the
2 benefit that may constitute a contribution transferred in
3 exchange for an ownership interest or transferred in the
4 transferor's capacity as an owner or member shall be limited
5 to money, work or labor done, or property actually received.
6 For entities to which Section 234 does not apply, the benefit
7 that may constitute a contribution transferred in exchange for
8 an ownership interest or transferred in the transferor's
9 capacity as an owner or member may include cash, property,
10 services rendered, a contract for services to be performed, a
11 promissory note or other obligation of a person to pay cash or
12 transfer property to the entity, or securities or other
13 interests in or obligations of an entity. In either case, the
14 benefit does not include cash or property received by the
15 entity:

16 "(A) with respect to a promissory note or other
17 obligation to the extent that the agreed value of the note or
18 obligation has previously been included as a contribution; or

19 "(B) that the person intends to be a loan to the
20 entity.

21 "(12) CONVERSION.

22 "(A) the continuance of a domestic entity as a
23 foreign entity of any type;

24 "(B) the continuance of a foreign entity as a
25 domestic entity of any type; or

26 "(C) the continuance of a domestic entity of one
27 type as a domestic entity of another type.

1 "(13) CONVERTED ENTITY. An entity resulting from a
2 conversion. The term converted entity is synonymous with the
3 term resulting entity.

4 "(14) CONVERTING ENTITY. An entity as the entity
5 existed before the entity's conversion.

6 "(15) COOPERATIVE. Includes an employee cooperative
7 within the meaning of Section 10A-11-1.02(2).

8 "(16) CORPORATION. Includes a business corporation
9 within the meaning of Section 10A-2-1.40(3) or Section
10 10A-2-1.40(9), a nonprofit corporation within the meaning of
11 Section 10A-3-1.02(7) or Section 10A-3-1.02(4), a professional
12 corporation within the meaning of Section 10A-4-1.03(3) or
13 Section 10A-4-1.03(4), and those entities specified in Chapter
14 20 as corporate.

15 "(17) COURT. Every court and judge having
16 jurisdiction in a case.

17 "(18) DAY. When used in the computation of time
18 excludes the first day and includes the last day of the period
19 so computed, unless the last day is a Saturday, Sunday, or
20 legal holiday, in which event the period runs until the end of
21 the next day that is not a Saturday, a Sunday, or a legal
22 holiday. When the period of time to be computed is less than 7
23 days, intermediate Saturdays, Sundays, and legal holidays
24 shall be excluded.

25 "(19) DEBTOR IN BANKRUPTCY. A person who is the
26 subject of:

1 "(A) an order for relief under the United States
2 bankruptcy laws, Title 11, United States Code, or comparable
3 order under a successor statute of general application; or

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

6 "(20) DIRECTOR. An individual who serves on the
7 board of directors, by whatever name known, of a foreign or
8 domestic corporation.

9 "(21) DISTRIBUTION. A transfer of property,
10 including cash, from an entity to an owner or member of the
11 entity in the owner's or member's capacity as an owner or
12 member. The term includes a dividend, a redemption or purchase
13 of an ownership interest, or a liquidating distribution.

14 "(22) DOMESTIC. With respect to an entity, that the
15 entity is formed and exists under this title.

16 "(23) DOMESTIC ENTITY. An organization formed and
17 existing under this title.

18 "(24) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

19 "(25) ELECTRONIC SIGNATURE. An electronic signature
20 as that term is defined in the Alabama Electronic Transactions
21 Act, Chapter 1A of Title 8, or any successor statute.

22 "(26) ENTITY. A domestic entity or foreign entity.

23 "(27) FILING ENTITY. A domestic entity that is a
24 corporation, limited partnership, limited liability company,
25 professional association, employee cooperative corporation, or
26 real estate investment trust.

1 "(28) FILING INSTRUMENT. An instrument, document, or
2 statement that is required or authorized by this title to be
3 filed by or for an entity with the filing officer in
4 accordance with Article 4.

5 "(29) FILING OFFICER. The officer with whom a filing
6 instrument is required or permitted to be filed under Article
7 4 or under any other provision of this title.

8 "(30) FOREIGN. With respect to an entity, that the
9 entity is formed and existing under the laws of a jurisdiction
10 other than this state.

11 "(31) FOREIGN ENTITY. An organization formed and
12 existing under the laws of a jurisdiction other than this
13 state.

14 "(32) FOREIGN FILING ENTITY. A foreign entity that
15 registers or is required to register as a foreign entity under
16 Section 10A-1-7.01(a)(1).

17 "(33) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
18 official, agency, or instrumentality of a jurisdiction other
19 than this state.

20 "(34) FOREIGN LIMITED PARTNERSHIP. A limited
21 partnership within the meaning of Section ~~10A-9-1.02(7)~~
22 10A-9A-1.02(4).

23 "(35) FOREIGN NONFILING ENTITY. A foreign entity
24 that is not a foreign filing entity.

25 "(36) FUNDAMENTAL BUSINESS TRANSACTION. A merger,
26 interest exchange, conversion, or sale of all or substantially
27 all of an entity's assets.

1 "(37) GENERAL PARTNER.

2 "(A) each partner in a general partnership; or

3 "(B) a person who is admitted to a limited
4 partnership as a general partner in accordance with the
5 governing documents of the limited partnership.

6 "(38) GENERAL PARTNERSHIP. A partnership within the
7 meaning of Section 10A-8-1.02(3). The term includes a
8 registered limited liability partnership within the meaning of
9 Section 10A-8-1.02(7).

10 "(39) GOVERNING AUTHORITY. A person or group of
11 persons who are entitled to manage and direct the affairs of
12 an entity under this title and the governing documents of the
13 entity, except that if the governing documents of the entity
14 or this title divide the authority to manage and direct the
15 affairs of the entity among different persons or groups of
16 persons according to different matters, governing authority
17 means the person or group of persons entitled to manage and
18 direct the affairs of the entity with respect to a matter
19 under the governing documents of the entity or this title. The
20 term includes the board of directors of a corporation, by
21 whatever name known, or other persons authorized to perform
22 the functions of the board of directors of a corporation, the
23 general partners of a general partnership or limited
24 partnership, the managers of a limited liability company that
25 is managed by managers, the members of a limited liability
26 company that is managed by members who are entitled to manage
27 the company, and the trust managers of a real estate

1 investment trust. The term does not include an officer who is
2 acting in the capacity of an officer.

3 "(40) GOVERNING DOCUMENTS.

4 "(A) in the case of a domestic entity:

5 "(i) the certificate of formation for a domestic
6 filing entity or the document or agreement under which a
7 domestic nonfiling entity is formed; and

8 "(ii) the other documents or agreements, including
9 bylaws, partnership agreements of limited partnerships,
10 operating agreements of limited liability companies, or
11 similar documents, adopted by the entity under this title to
12 govern the formation or the internal affairs of the entity; or

13 "(B) in the case of a foreign entity, the
14 instruments, documents, or agreements adopted under the law of
15 its jurisdiction of formation to govern the formation or the
16 internal affairs of the entity.

17 "(41) GOVERNING PERSON. A person serving as part of
18 the governing authority of an entity.

19 "(42) INDIVIDUAL. A natural person and the estate of
20 an incompetent or deceased natural person.

21 "(43) INSOLVENCY. The inability of a person to pay
22 the person's debts as they become due in the usual course of
23 business or affairs.

24 "(44) INSOLVENT. A person who is unable to pay the
25 person's debts as they become due in the usual course of
26 business or affairs.

1 "(45) JUDGE OF PROBATE. The judge of probate of the
2 county in which a domestic entity's certificate of formation
3 is filed, or, with respect to partnership statements provided
4 for in Section 10A-8-1.06, the judge of probate of the county
5 in which a statement is filed.

6 "(46) JURISDICTION OF FORMATION.

7 "(A) in the case of a domestic filing entity, this
8 state;

9 "(B) in the case of a foreign filing entity, the
10 jurisdiction in which the entity's certificate of formation or
11 similar organizational instrument is filed; or

12 "(C) in the case of a foreign or domestic nonfiling
13 entity:

14 "(i) the jurisdiction the laws of which are chosen
15 in the entity's governing documents to govern its internal
16 affairs if that jurisdiction bears a reasonable relation to
17 the owners or members or to the domestic or foreign nonfiling
18 entity's business and affairs under the principles of this
19 state that otherwise would apply to a contract among the
20 owners or members; or

21 "(ii) if subparagraph (i) does not apply, the
22 jurisdiction in which the entity has its principal place of
23 business.

24 "(47) LAW. Unless the context requires otherwise,
25 both statutory and common law.

26 "(48) LICENSE. A license, certificate of
27 registration, or other legal authorization.

1 "(49) LICENSING AUTHORITY. The state court, state
2 regulatory licensing board, or other like agency which has the
3 power to issue a license or other legal authorization to
4 render professional services.

5 "(50) LIMITED LIABILITY COMPANY. A limited liability
6 company within the meaning of ~~Chapter 5 or Chapter 5A, as~~
7 ~~applicable.~~

8 "(51) LIMITED PARTNER. A person who has been
9 admitted to a limited partnership as a limited partner as
10 provided by:

11 "(A) in the case of a domestic limited partnership,
12 Section 10A-9-3.01; or Section 10A-9A-3.01, as applicable; or

13 "(B) in the case of a foreign limited partnership,
14 the laws of its jurisdiction of formation.

15 "(52) LIMITED PARTNERSHIP. A limited partnership
16 within the meaning of Section 10A-9-1.02(11) ~~or Section~~
17 ~~10A-9-1.02(7)~~ or 10A-9A-1.02(8), as applicable.

18 "(53) MANAGERIAL OFFICIAL. An officer or a governing
19 person.

20 "(54) MEMBER.

21 "(A) a person defined as a member under ~~Chapter 5 or~~
22 ~~Chapter 5A, as applicable;~~

23 "(B) in the case of a nonprofit corporation governed
24 by Article 3, a person having membership rights in a
25 corporation in accordance with its governing documents as
26 provided in Section 10A-3-1.02(5);

1 "(C) in the case of an employee cooperative
2 corporation governed by Chapter 11, a natural person who, as
3 provided in Section 10A-11-1.02(5), has been accepted for
4 membership in and owns a membership share in an employee
5 cooperative-;

6 "(D) in the case of a nonprofit association, a
7 person who, as provided in Section 10A-17-1.02(1), may
8 participate in the selection of persons authorized to manage
9 the affairs of the nonprofit association or in the development
10 of its policy.

11 "(55) MERGER.

12 "(A) the division of a domestic entity into two or
13 more new domestic entities or other organizations or into a
14 surviving domestic entity and one or more new domestic or
15 foreign entities or non-code organizations; or

16 "(B) the combination of one or more domestic
17 entities with one or more domestic entities or non-code
18 organizations resulting in:

19 "(i) one or more surviving domestic entities or
20 non-code organizations;

21 "(ii) the creation of one or more new domestic
22 entities or non-code organizations, or one or more surviving
23 domestic entities or non-code organizations; or

24 "(iii) one or more surviving domestic entities or
25 non-code organizations and the creation of one or more new
26 domestic entities or non-code organizations.

1 "(56) NON-CODE ORGANIZATION. An organization other
2 than a domestic entity.

3 "(57) NONFILING ENTITY. A domestic entity that is
4 not a filing entity. The term includes a domestic general
5 partnership, a registered limited liability partnership, and a
6 nonprofit association.

7 "(58) NONPROFIT ASSOCIATION. An unincorporated
8 nonprofit association within the meaning of Section
9 10A-17-1.02(2).

10 "(59) NONPROFIT CORPORATION. A nonprofit corporation
11 within the meaning of Section 10A-3-1.02(7) or Section
12 10A-3-1.02(4).

13 "(60) NONPROFIT ENTITY. An entity that is a
14 nonprofit corporation, nonprofit association, or other entity
15 that is organized solely for one or more ~~of the~~ nonprofit
16 ~~purposes specified by the chapter or article of this title~~
17 ~~applicable to that form of nonprofit entity and no part of the~~
18 ~~income or profit of which is distributable to its members,~~
19 ~~owners, directors, officers, or other governing persons.~~

20 "(61) OFFICER. An individual elected, appointed, or
21 designated as an officer of an entity by the entity's
22 governing authority or under the entity's governing documents.

23 "(62) ORGANIZATION. A corporation, limited or
24 general partnership, limited liability company, business
25 trust, real estate investment trust, joint venture, joint
26 stock company, cooperative, association, bank, insurance
27 company, credit union, savings and loan association, or other

1 organization, regardless of whether the organization is for
2 profit, nonprofit, domestic, or foreign.

3 "(63) ORGANIZER. A person, who need not be an owner
4 or member of the entity, who, having the capacity to contract,
5 is authorized to execute documents in connection with the
6 formation of the entity.

7 "(64) OWNER.

8 "(A) with respect to a foreign or domestic business
9 corporation or real estate investment trust, a shareholder;

10 "(B) with respect to a foreign or domestic
11 partnership, a partner;

12 "(C) with respect to a foreign or domestic limited
13 liability company or association, a member; and

14 "(D) with respect to another foreign or domestic
15 entity, an owner of an equity interest in that entity.

16 "(65) OWNERSHIP INTEREST. An owner's interest in an
17 entity. The term includes the owner's share of profits and
18 losses or similar items and the right to receive
19 distributions. The term does not include an owner's right to
20 participate in management or participate in the direction or
21 oversight of the entity. An ownership interest is personal
22 property.

23 "(66) PARENT ENTITY or PARENT ORGANIZATION. An
24 entity or organization that:

25 "(A) owns at least 50 percent of the ownership or
26 membership interest of a subsidiary; or

1 "(B) possesses at least 50 percent of the voting
2 power of the owners or members of a subsidiary.

3 "(67) PARTNER. A limited partner or general partner.

4 "(68) PARTNERSHIP. Includes a general partnership
5 ~~within the meaning of Section 10A-8-1.02(3), including,~~ a
6 registered limited liability partnership ~~within the meaning of~~
7 ~~Section 10A-8-1.02(7) and,~~ a foreign registered limited
8 liability partnership ~~within the meaning of Section~~
9 ~~10A-8-1.02(2) and also includes,~~ a limited partnership ~~within~~
10 ~~the meaning of Section 10A-9-1.02(7) or Section~~
11 ~~10A-9-1.02(11),~~ a foreign limited partnership, a limited
12 liability limited partnership within the meaning of Section
13 10A-9-1.02(9) and Section 10A-9A-1.02(6), and a foreign
14 limited liability limited partnership within the meaning of
15 Section 10A-9-1.02(6) and Section 10A-9A-1.02(3).

16 "(69) PARTNERSHIP AGREEMENT. ~~The agreement, written~~
17 ~~or oral, among the partners concerning the affairs of the~~
18 ~~general or limited partnership, as the case may be, and the~~
19 ~~conduct of its business.~~ Any agreement (whether referred to as
20 a partnership agreement or otherwise), written, oral or
21 implied, of the partners as to the activities and affairs of a
22 general partnership or a limited partnership. The partnership
23 agreement includes any amendments to the partnership
24 agreement. In the case of limited partnerships formed prior to
25 October 1, ~~1988~~ 1998, partnership agreement includes the
26 certificate of partnership.

1 "(70) PARTNERSHIP INTEREST. In the case of a general
2 partnership, ~~and in the case of a limited partnership,~~ the
3 meaning set forth in Section 10A-8-1.02(5).

4 "(71) PARTY TO THE MERGER. A domestic entity or
5 non-code organization that under a plan of merger is divided
6 or combined by a merger. The term does not include a domestic
7 entity or non-code organization that is not to be divided or
8 combined into or with one or more domestic entities or
9 non-code organizations, regardless of whether ownership
10 interests of the entity are to be issued under the plan of
11 merger.

12 "(72) PERSON. An individual or an organization,
13 whether created by the laws of this state or another state or
14 foreign country, including, without limitation, a general
15 partnership, registered limited liability partnership, limited
16 partnership, limited liability company, corporation,
17 professional corporation, professional association, trustee,
18 personal representative, fiduciary, as defined in Section
19 19-3-150 or person performing in any similar capacity,
20 business trust, estate, trust, association, joint venture,
21 government, governmental subdivision, agency, or
22 instrumentality, or any other legal or commercial entity.

23 "(73) PRESIDENT.

24 "(A) the individual designated as president of an
25 entity under the entity's governing documents; or

26 "(B) the officer or committee of persons authorized
27 to perform the functions of the principal executive officer of

1 an entity without regard to the designated name of the officer
2 or committee.

3 "(74) PROFESSIONAL ASSOCIATION. A professional
4 association within the meaning of Section 10A-30-1.01.

5 "(75) PROFESSIONAL CORPORATION. A professional
6 corporation within the meaning of Section 10A-4-1.03(2) or
7 Section 10A-4-1.03(3).

8 "(76) PROFESSIONAL ENTITY. A professional
9 association or a professional corporation.

10 "(77) PROFESSIONAL SERVICE. Any type of service that
11 may lawfully be performed only pursuant to a license issued by
12 a state court, state regulatory licensing board, or other like
13 agency pursuant to state laws.

14 "(78) PROPERTY. Includes tangible and intangible
15 property and an interest in that property.

16 "(79) REAL ESTATE INVESTMENT TRUST. An
17 unincorporated trust, association, or other entity within the
18 meaning of Section 10A-10-1.02(1).

19 "(80) REGISTERED LIMITED LIABILITY PARTNERSHIP. A
20 registered limited liability partnership within the meaning of
21 Section ~~10A-8-1.01(7)~~ 10A-8-1.02(7).

22 "(81) SECRETARY.

23 "(A) the individual designated as secretary of an
24 entity under the entity's governing documents; or

25 "(B) the officer or committee of persons authorized
26 to perform the functions of secretary of an entity without
27 regard to the designated name of the officer or committee.

1 "(82) SECRETARY OF STATE. The Secretary of State of
2 the State of Alabama.

3 "(83) SIGNATURE. Any symbol executed or adopted by a
4 person with present intention to authenticate a writing.
5 Unless the context requires otherwise, the term includes an
6 electronic signature and a facsimile of a signature.

7 "(84) STATE. Includes, when referring to a part of
8 the United States, a state or commonwealth, and its agencies
9 and governmental subdivisions, and a territory or possession,
10 and its agencies and governmental subdivisions, of the United
11 States.

12 "(85) SUBSCRIBER. A person who agrees with or makes
13 an offer to an entity to purchase by subscription an ownership
14 interest in the entity.

15 "(86) SUBSCRIPTION. An agreement between a
16 subscriber and an entity, or a written offer made by a
17 subscriber to an entity before or after the entity's
18 formation, in which the subscriber agrees or offers to
19 purchase a specified ownership interest in the entity.

20 "(87) SUBSIDIARY. An entity or organization at least
21 50 percent of:

22 "(A) the ownership or membership interest of which
23 is owned by a parent entity or parent organization; or

24 "(B) the voting power of which is possessed by a
25 parent entity or parent organization.

26 "(88) TREASURER.

1 "(A) the individual designated as treasurer of an
2 entity under the entity's governing documents; or

3 "(B) the officer or committee of persons authorized
4 to perform the functions of treasurer of an entity without
5 regard to the designated name of the officer or committee.

6 "(89) TRUSTEE. A person who serves as a trustee of a
7 trust, including a real estate investment trust.

8 "(90) UNCERTIFICATED OWNERSHIP INTEREST. An
9 ownership interest in a domestic entity that is not
10 represented by a certificate in bearer or registered form.

11 "(91) VICE PRESIDENT.

12 "(A) the individual designated as vice president of
13 an entity under the governing documents of the entity; or

14 "(B) the officer or committee of persons authorized
15 to perform the functions of the president of the entity on the
16 death, absence, or resignation of the president or on the
17 inability of the president to perform the functions of office
18 without regard to the designated name of the officer or
19 committee.

20 "(92) WRITING or WRITTEN. Information that is
21 inscribed on a tangible medium or that is stored in an
22 electronic or other medium and is retrievable in perceivable
23 form.

24 "§10A-1-1.06.

25 "To the extent not inconsistent with the
26 Constitution of Alabama of 1901, and other statutes of this

1 state wherein the terms may be found, and as the context
2 requires, in this title or any other statute of this state:

3 "(1) a reference to certificate of formation
4 includes, in the case of a corporation, articles of
5 incorporation, certificate of incorporation, and charter; in
6 the case of limited partnership, a certificate of limited
7 partnership and a certificate of formation; in the case of a
8 limited liability company, certificate of formation and
9 articles of organization; and in the case of a business trust
10 or a real estate investment trust, declaration of trust and,
11 similarly, a reference to articles of incorporation,
12 certificate of incorporation, charter, certificate of limited
13 partnership, or articles of organization includes a
14 certificate of formation;

15 "(2) a reference to certificate of termination
16 includes, in the case of a corporation or a limited liability
17 company, articles of dissolution and statement of dissolution,
18 and in the case of a limited partnership, a certificate of
19 cancellation and a statement of dissolution; similarly, a
20 reference to articles of dissolution, statement of
21 dissolution, or certificate of cancellation includes
22 certificate of termination and certificate of dissolution and,
23 similarly, a reference to certificate of termination includes
24 articles of dissolution, statement of dissolution, and
25 certificate of dissolution, and similarly, a reference to a
26 statement of dissolution includes articles of dissolution,
27 certificate of termination, and certificate of dissolution;

1 "(3) a reference to certificate of merger includes
2 articles of merger and statement of merger and similarly, a
3 reference to articles of merger includes certificate of merger
4 and statement of merger, and similarly, a reference to
5 statement of merger includes certificate of merger and
6 articles of merger;

7 "(4) a reference to authorized capital stock
8 includes authorized shares;

9 "(5) a reference to capital stock includes
10 authorized and issued shares, issued shares, and stated
11 capital;

12 "(6) a reference to a certificate of registration,
13 certificate of authority, and permit to do business includes
14 registration;

15 "(7) a reference to stock and shares of stock
16 includes shares;

17 "(8) a reference to stockholder includes
18 shareholder; and

19 "(9) a reference to no par stock includes shares
20 without par value.

21 "§10A-1-1.08.

22 "(a) The provisions of this title as described by
23 this section may be cited as provided by this section.

24 "(b) Chapter 2 and the provisions of Chapter 1 to
25 the extent applicable to business corporations may be cited as
26 the Alabama Business Corporation Law.

1 "(c) Chapter 3 and the provisions of Chapter 1 to
2 the extent applicable to nonprofit corporations may be cited
3 as the Alabama Nonprofit Corporation Law.

4 "(d) Chapter 4 and the provisions of Chapter 1 to
5 the extent applicable to professional corporations may be
6 cited as the Alabama Professional Corporation Law.

7 "~~(e) Chapter 5 and the provisions of Chapter 1 to~~
8 ~~the extent applicable to limited liability companies may be~~
9 ~~cited as the Alabama Limited Liability Company Law.~~ Chapter 5A
10 and the provisions of Chapter 1 to the extent applicable to
11 limited liability companies may be cited as the Alabama
12 Limited Liability Company Law of 2014.

13 "(f) Chapter 8 and the provisions of Chapter 1 to
14 the extent applicable to general partnerships may be cited as
15 the Alabama Uniform Partnership Law.

16 "(g) Chapter 9 and the provisions of Chapter 1 to
17 the extent applicable to limited partnerships may be cited as
18 the Alabama Uniform Limited Partnership Law ~~of 2010~~. Chapter
19 9A and the provisions of Chapter 1 to the extent applicable to
20 limited partnerships may be cited as the Alabama Limited
21 Partnership Law.

22 "(h) Chapter 10 and the provisions of Chapter 1 to
23 the extent applicable to real estate investment trusts may be
24 cited as the Alabama Real Estate Investment Trust Law.

25 "(i) Chapter 11 and the provisions of Chapter 1 and
26 Chapter 2 to the extent applicable to employee cooperative

1 corporations may be cited as the Alabama Employee Cooperative
2 Corporations Law.

3 "(j) Chapter 17 may be cited as the Alabama
4 Unincorporated Nonprofit Association Law.

5 "§10A-1-4.26.

6 "A filing instrument that an entity files with the
7 Secretary of State or the judge of probate, as the case may
8 be, may be amended or supplemented ~~to the extent permitted by~~
9 in accordance with the provisions of this title the chapter
10 that apply to that entity or in accordance with that entity's
11 governing documents. If neither the chapter that applies to
12 that entity nor the governing documents of that entity
13 provides or prohibits a process for the approval and filing of
14 an amendment or supplement to that filing instrument for that
15 entity, then that filing instrument may be amended or
16 supplemented and filed utilizing the same process for approval
17 and filing as was used to approve and file that filing
18 instrument."

19 Section 3. Section 10A-1-5.05 is added to the Code
20 of Alabama 1975, as follows:

21 § 10A-1-5.05. Name of Limited Partnership.

22 (a) The name of a limited partnership may contain
23 the name of any partner.

24 (b) The name of a limited partnership that is not a
25 limited liability limited partnership must contain the phrase
26 "limited partnership" or "Limited," or the abbreviation
27 "L.P.," "LP," or "Ltd." and must not contain the phrase

1 "limited liability limited partnership" or the abbreviation
2 "LLLP" or "L.L.L.P."

3 (c) The name of a limited liability limited
4 partnership must contain the phrase "limited liability limited
5 partnership" or the abbreviation "LLLP" or "L.L.L.P." and must
6 not contain the abbreviation "L.P.," "LP," or "Ltd."

7 (d) Subject to Section 10A-1-7.07, this section
8 applies to any foreign limited partnership transacting
9 business in this state, having a certificate of authority to
10 transact business in this state, or applying for a certificate
11 of authority.

12 (e) The name of a limited partnership may not
13 contain the following words: "bank," "banking," "banker,"
14 "trust," "insurance," "insurer," "corporation,"
15 "incorporated," or any abbreviation of such words.

16 Section 4. Sections 10A-1-6.02, 10A-1-6.13,
17 10A-1-6.25, 10A-1-7.07, 10A-5A-1.10, 10A-5A-4.01, 10A-5A-5.04,
18 10A-5A-7.01, 10A-5A-7.02, 10A-5A-10.03, 10A-5A-10.04,
19 10A-5A-10.07, and 10A-5A-10.08, Code of Alabama 1975, are
20 amended to read as follows:

21 "§10A-1-6.02.

22 "(a) Except as provided by subsection (b), this
23 article does not apply to a:

24 "(1) general partnership;

25 "(2) limited liability company; ~~or~~

26 "(3) limited partnership; and

27 "~~(3)~~ (4) nonprofit corporation.

1 "(b) The governing documents of a general
2 partnership or limited liability company, limited partnership,
3 or nonprofit corporation may adopt provisions of this article
4 or may contain enforceable provisions relating to:

5 "(1) indemnification;

6 "(2) advancement or reimbursement of expenses; ~~or~~

7 "(3) insurance; or

8 "(4) another arrangement to indemnify or hold
9 ~~harmless a governing person~~ other arrangements.

10 "§10A-1-6.13.

11 "~~(a)~~ The certificate of formation of an enterprise
12 may restrict the circumstances under which the enterprise must
13 or may indemnify a person under this division.

14 "~~(b) The written partnership agreement of a limited~~
15 ~~partnership may restrict the circumstances in the same manner~~
16 ~~as the certificate of formation under subsection (a).~~

17 "§10A-1-6.25.

18 "(a) Notwithstanding any other provision of this
19 chapter but subject to subsection (d) and to the extent
20 consistent with other law, an enterprise may indemnify and
21 advance expenses to a person who is not a governing person,
22 including an officer, employee, agent, or delegate, as
23 provided by:

24 "(1) the enterprise's governing documents;

25 "(2) general or specific action of the enterprise's
26 governing authority;

1 "(3) resolution of the enterprise's owners or
2 members;

3 "(4) contract; or

4 "(5) common law.

5 "(b) An enterprise shall indemnify and advance
6 expenses to an officer to the same extent that indemnification
7 or advancement of expenses is required under this chapter for
8 a governing person.

9 "(c) A person described by subsection (a) may seek
10 indemnification or advancement of expenses from an enterprise
11 to the same extent that a governing person may seek
12 indemnification or advancement of expenses under this chapter.

13 "(d) The certificate of formation of an enterprise
14 may restrict the circumstances under which the enterprise must
15 or may indemnify a person under this section. ~~The written
16 partnership agreement of a limited partnership may restrict
17 the circumstances in the same manner as the certificate of
18 formation of the limited partnership.~~

19 "§10A-1-7.07.

20 "If the name of a foreign entity does not satisfy
21 the requirements of Article 5, the entity, for use in this
22 state, may:

23 "(1) if a corporation, add to its corporate name the
24 word "corporation" or "incorporated" or an abbreviation of one
25 of the words;

26 "(2) if a banking corporation, add to its corporate
27 name the words "bank," "banking," or "bankers";

1 "(3) if a limited partnership that is not a limited
2 liability limited partnership, add to its partnership name the
3 word "limited" or the abbreviation "Ltd." or the phrase
4 "limited partnership" or the abbreviation "L.P." or "LP" but
5 its name must not contain the phrase "limited liability
6 limited partnership" or the abbreviation "LLLP" or "L.L.L.P.";

7 "(4) if a limited partnership that is a limited
8 liability limited partnership, add to its partnership name the
9 phrase "limited liability limited partnership" or the
10 abbreviation "LLLP" or "L.L.L.P." and must not contain the
11 abbreviation "Ltd., "L.P., " or "LP."

12 "~~(4)~~ (5) if a limited liability company, add to its
13 company name the phrase "limited liability company" or the
14 abbreviation "L.L.C." or "LLC";

15 "~~(5)~~ (6) if a professional corporation, add to its
16 corporate name the phrase "professional corporation" or the
17 abbreviation "P.C." or "PC";

18 "~~(6)~~ (7) if a registered limited liability
19 partnership, add to its partnership name the phrase
20 "registered limited liability partnership" or the abbreviation
21 "L.L.P." or "LLP"; and

22 "~~(7)~~ (8) use a fictitious name available for use in
23 this state that satisfies the requirements of Article 5, if it
24 delivers to the Secretary of State for filing a copy of the
25 resolution of its governing authority, certified by its
26 secretary, adopting the fictitious name.

27 "§10A-5A-1.10.

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

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

14 "(c) The obligations of a limited liability company
15 and its members to a person in the person's capacity as a
16 transferee or dissociated member are governed by the limited
17 liability company agreement. A transferee and a dissociated
18 member are bound by the limited liability company agreement.

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

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

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

1 "§10A-5A-4.01.

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

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

8 "(1) as provided in the limited liability company
9 agreement;

10 "(2) as the result of a transaction effective under
11 Article 10;

12 "(3) with the consent of all the members; or

13 "~~(4) if, within 90 consecutive days after the~~
14 ~~occurrence of the dissociation of the last remaining member:~~
15 as provided in Section 10A-5A-7.01(c) (1) or (c) (2)

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

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

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

1 obligated to make a contribution to the limited liability
2 company.

3 "§10A-5A-5.04.

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

8 "(a) for the period of time that the deceased
9 member's personal representative or other legal representative
10 holds the deceased member's transferable interest:

11 "(1) exercise the rights of a holder of transferable
12 interests under this chapter;

13 "(2) exercise the rights of a transferee under
14 Section 10A-9A-5.02; and

15 "(3) for purposes of settling the estate, exercise
16 the rights of a current member under Section 10A-5A-4.09; and

17 "(b) for the period of time that the deceased
18 member's personal representative or other legal representative
19 does not hold the deceased member's transferable interest, for
20 purposes of settling the estate, exercise the rights of a
21 dissociated member under Section 10A-9A-4.09.

22 "§10A-5A-7.01.

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

26 "(a) An event or circumstance that the limited
27 liability company agreement states causes dissolution.

1 "(b) Consent of all members to dissolve.

2 "(c) When there is no remaining member, unless
3 either of the following applies:

4 "(1) The holders of all the transferable interests
5 in the limited liability company agree in writing, within 90
6 days after the dissociation of the last member, to continue
7 the ~~legal existence~~ and activities and affairs of the limited
8 liability company and to appoint one or more new members.

9 "(2) The ~~legal existence~~ and activities and affairs
10 of the limited liability company are continued and one or more
11 new members are appointed in the manner stated in the limited
12 liability company agreement.

13 "(d) On application by a member, the entry of an
14 order dissolving the limited liability company on the grounds
15 that it is not reasonably practicable to carry on the limited
16 liability company's activities and affairs in conformity with
17 the limited liability company agreement, which order is
18 entered by the circuit court for the county in which the
19 limited liability company's principal place of business within
20 this state is located, and if the limited liability company
21 does not have a principal place of business within this state
22 then by the circuit court for the county in which the limited
23 liability company's most recent registered office is located.

24 "§10A-5A-7.02.

25 "Notwithstanding Section 10A-1-9.12:

26 "(a) A dissolved limited liability company continues
27 its existence as a limited liability company but may not carry

1 on any activities and affairs except as is appropriate to wind
2 up and liquidate its activities and affairs, including:

3 "(1) collecting its assets;

4 "(2) disposing of its properties that will not be
5 distributed in kind to persons owning transferable interests;

6 "(3) discharging or making provisions for
7 discharging its liabilities;

8 "(4) distributing its remaining property in
9 accordance with Section 10A-5A-7.06; and

10 "(5) doing every other act necessary to wind up and
11 liquidate its activities and affairs.

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

14 "(1) deliver for filing a statement of dissolution
15 to the filing officer provided for in subsection (e) setting
16 forth:

17 "(A) The name of the limited liability company.

18 "(B) The date of filing its certificate of
19 formation, and all amendments and restatements thereof, and
20 the office or offices where filed.

21 "(C) That the limited liability company has
22 dissolved.

23 ~~"(D) The effective date of the statement of~~
24 ~~dissolution, which shall be a date certain, if it is not to be~~
25 ~~effective immediately.~~

26 ~~"(E) (D)~~ Any other information the limited liability
27 company deems appropriate.

1 "(2) preserve the limited liability company's
2 activities and affairs and property as a going concern for a
3 reasonable time;

4 "(3) prosecute, defend, or settle actions or
5 proceedings whether civil, criminal, or administrative;

6 "(4) transfer the limited liability company's
7 assets;

8 "(5) resolve disputes by mediation or arbitration;
9 and

10 "(6) merge or convert in accordance with Article 10.

11 "(c) The dissolution of a limited liability company
12 does not:

13 "(1) transfer title to the limited liability
14 company's property;

15 "(2) prevent the commencement of a proceeding by or
16 against the limited liability company in its limited liability
17 company name;

18 "(3) terminate, abate, or suspend a proceeding
19 pending by or against the limited liability company on the
20 effective date of dissolution;

21 "(4) terminate the authority of its registered
22 agent; or

23 "(5) abate, suspend, or otherwise alter the
24 application of Section 10A-5A-3.01.

25 "(d) A statement of dissolution shall be deemed to
26 be a filing instrument under Chapter 1.

1 "(e) If a limited liability company is not an
2 organization described in Section 10A-1-4.02(c) (4), then that
3 limited liability company shall deliver the statement of
4 dissolution for filing to the judge of probate in whose office
5 the original certificate of formation is filed. If a limited
6 liability company is an organization described in
7 Section 10A-1-4.02(c) (4), then that limited liability company
8 shall deliver the statement of dissolution for filing to the
9 Secretary of State.

10 "§10A-5A-10.03.

11 "(a) After a plan of conversion is approved:

12 "(1) if the converting organization is an
13 organization formed under the laws of this state, the
14 converting organization shall file a statement of conversion
15 in accordance with subsection (c), which statement of
16 conversion must be signed in accordance with Section
17 10A-5A-2.04(a) and which must include:

18 "(A) the name of the converting organization;

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

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

25 "(D) the name and type of organization of the
26 converted organization and the jurisdiction of its governing
27 statute;

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

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

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

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

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

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

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

21 "(B) the name and type of organization of the
22 converting organization and the jurisdiction of the converting
23 organization's governing statute; and

24 "(C) a statement that the conversion was approved in
25 a manner that complied with the converting organization's
26 governing statute.

27 "(b) A conversion becomes effective:

1 "(1) if the converted organization is a limited
2 liability company, when the certificate of formation takes
3 effect; and

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

7 "(c) If the converting organization is an
8 organization formed under the laws of this state ~~and the~~
9 ~~converting organization is not an organization described in~~
10 ~~Section 10A-1-4.02(c) (4), then the converting organization~~
11 ~~shall file the statement of conversion required under~~
12 ~~subsection (a) (1) in the office of the judge of probate in the~~
13 ~~county required by this title for the filing of its~~
14 ~~organizational documents, if any, and if the organizational~~
15 ~~documents were not required by this title to be filed in the~~
16 ~~office of the judge of probate, then the converting~~
17 organization shall file the statement of conversion required
18 under subsection (a) (1) with the Secretary of State. ~~If the~~
19 ~~converting organization is an organization formed under the~~
20 ~~laws of this state and the converting organization is an~~
21 organization described in accordance with
22 ~~Section 10A-1-4.02(c) (4) 10A-1-4.02(c) (1),~~ then the converting
23 organization shall file the statement of conversion required
24 under subsection (a) (1) with the Secretary of State.

25 "(d) If the converted organization is a limited
26 liability company, ~~the converting organization is an~~
27 organization formed under the laws of this state, ~~and the~~

1 ~~converting organization is not an organization described in~~
2 ~~then notwithstanding Section 10A-1-4.02(c)(4) 10A-1-4.02(b),~~
3 ~~then~~ the converting organization shall file the certificate of
4 formation required under subsection (a)(2) with the ~~judge of~~
5 ~~probate of the county in which a certificate of formation of a~~
6 ~~limited liability company is filed under this chapter. If the~~
7 ~~converted organization is a limited liability company, the~~
8 ~~converting organization is an organization formed under the~~
9 ~~laws of this state, and the converting organization is an~~
10 ~~organization described in Section 10A-1-4.02(c)(4), then the~~
11 ~~converting organization shall file the certificate of~~
12 ~~formation required under subsection (a)(2) with the Secretary~~
13 ~~of State in accordance with Section 10A-1-4.02(c)(5), along~~
14 ~~with the fees specified in Section 10A-1-4.31 subject to~~
15 ~~subsection (f)(3). If the converted organization is a limited~~
16 ~~liability company and the converting organization is not an~~
17 ~~organization formed under the laws of this state, then the~~
18 ~~converting organization shall file the certificate of~~
19 ~~formation required under subsection (a)(2) with the judge of~~
20 ~~probate of the county in which a certificate of formation of a~~
21 ~~limited liability company is filed under this chapter.~~

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

1 converting organization is required to file a statement of
2 conversion and a certificate of formation with the Secretary
3 of State, then the converting organization shall file the
4 statement of conversion and the certificate of formation with
5 the Secretary of State simultaneously.

6 "(f) In the case of a statement of conversion that
7 is to be filed with the Secretary of State pursuant to
8 subsection (c):

9 "(1) if the converting organization ~~is, immediately~~
10 ~~prior to the conversion becoming effective, an organization~~
11 ~~described in Section 10A-1-4.02(c)(4), but which~~ has a
12 certificate of formation filed with the judge of probate, the
13 Secretary of State shall within 10 days transmit a certified
14 copy of the statement of conversion to the office of the judge
15 of probate in the county in which the certificate of formation
16 for such converting organization was filed along with the
17 proper fee for the ~~probate judge~~ judge of probate.

18 "(2) if the converting organization ~~is, immediately~~
19 ~~prior to the conversion becoming effective, an organization~~
20 ~~described in Section 10A-1-4.02(c)(4), and did not file its~~
21 certificate of formation with the ~~probate judge~~ judge of
22 probate, but rather in accordance with
23 ~~Section 10A-1-4.02(c)(4)~~ this title filed its certificate of
24 formation with the Secretary of State, the Secretary of State
25 shall not transmit a certified copy of the statement of
26 conversion to the office of the judge of probate and shall not
27 collect any fee for the judge of probate.

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

9 "(g) In the case of a certificate of formation that
10 is to be filed with the Secretary of State pursuant to
11 subsection (d), the Secretary of State shall not transmit a
12 certified copy of the ~~statement of conversion~~ certificate of
13 formation to the office of the judge of probate and shall not
14 collect any fee for the judge of probate, but shall collect
15 the fee provided for the Secretary of State in Section
16 10A-1-4.31(a) (1).

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

22 "(i) If:

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

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

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

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

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

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

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

4 "§10A-5A-10.04.

5 "(a) When a conversion takes effect:

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

12 "(2) all debts, obligations, or other liabilities of
13 the converting organization, or series thereof, continue as
14 debts, obligations, or other liabilities of the converted
15 organization and neither the rights of creditors, nor the
16 liens upon the property of the converting organization shall
17 be impaired by the conversion;

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

21 "(4) except as prohibited by law other than this
22 chapter, all of the rights, privileges, immunities, powers,
23 and purposes of the converting organization, or series
24 thereof, remain vested in the converted organization;

25 "(5) except as otherwise provided in the plan of
26 conversion, the terms and conditions of the plan of conversion
27 take effect;

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

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

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

22 "(9) if the converted organization is a limited
23 liability company, the existence of the limited liability
24 company shall be deemed to have commenced on the date the
25 converting organization commenced its existence in the
26 jurisdiction in which the converting organization was first

1 created, formed, organized, incorporated, or otherwise came
2 into being; ~~and~~

3 "(10) the conversion shall not affect the choice of
4 law applicable to matters arising prior to conversion; and

5 "(11) If the Secretary of State has assigned a
6 unique identifying number or other designation to the
7 converting organization and (i) the converted organization is
8 formed pursuant to the laws of this state or (ii) the
9 converted organization is, within 30 days after the effective
10 date of the conversion, registered to transact business in
11 this state, then that unique identifying number or other
12 designation shall continue to be assigned to the converted
13 organization.

14 "(b) A converted organization that is a foreign
15 entity consents to the jurisdiction of the courts of this
16 state to enforce any debt, obligation, or other liability for
17 which the converting limited liability company, or series
18 thereof, is liable if, before the conversion, the converting
19 limited liability company was subject to suit in this state on
20 the debt, obligation, or other liability. If a converted
21 organization that is a foreign entity fails to designate or
22 maintain a registered agent, or the designated registered
23 agent cannot with reasonable diligence be served, then service
24 of process on that converted organization for the purposes of
25 enforcing a debt, obligation, or other liability under this
26 subsection may be made in the same manner and has the same
27 consequences as provided in Section 10A-1-5.35.

1 "§10A-5A-10.07.

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

5 "(1) each constituent limited liability company, as
6 provided in Section 10A-5A-2.04(a); and

7 "(2) each other constituent organization, as
8 provided by its governing statute.

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

11 "(1) the name, type of organization, and mailing
12 address of the principal office of each constituent
13 organization and the jurisdiction of its governing statute;

14 "(2) the name, type of organization, and mailing
15 address of the principal office of the surviving organization,
16 the jurisdiction of its governing statute, and, if the
17 surviving organization is created pursuant to the merger, a
18 statement to that effect;

19 "(3) the date of the filing of the certificate of
20 formation, if any, and all prior amendments and the filing
21 office or offices, if any, and where such is filed of each
22 constituent organization which was formed under the laws of
23 this state;

24 "(4) the date the merger is effective under the
25 governing statute of the surviving organization;

26 "(5) if the surviving organization is to be created
27 pursuant to the merger:

1 "(A) if it will be a limited liability company, the
2 limited liability company's certificate of formation; or

3 "(B) if it will be an organization other than a
4 limited liability company, any organizational document that
5 creates the organization that is required to be in a public
6 writing;

7 "(6) if the surviving organization exists before the
8 merger, any amendments provided for in the plan of merger for
9 the organizational document that created the organization that
10 are in a public writing;

11 "(7) a statement as to each constituent organization
12 that the merger was approved as required by the organization's
13 governing statute;

14 "(8) if the surviving organization is a foreign
15 organization not authorized to conduct activities and affairs
16 in this state, the street and mailing address of an office for
17 the purposes of Section 10A-5A-10.08(b); and

18 "(9) any additional information required by the
19 governing statute of any constituent organization.

20 "~~(c) Each constituent organization which is formed~~
21 ~~under the laws of this state shall file the~~ The statement of
22 merger ~~with~~ shall be delivered for filing to the Secretary of
23 State in accordance with Section 10A-1-4.02(c)(1), along with
24 the fees specified in Section 10A-1-4.31, subject to the last
25 sentence of this subsection (c). For each constituent
26 organization which is formed under the laws of this state and
27 which is not, immediately prior to the merger becoming

1 effective, an organization described in
2 Section 10A-1-4.02(c)(4), the Secretary of State shall within
3 10 days transmit a certified copy of the statement of merger
4 to the office of the judge of probate in the county in which
5 the certificate of formation for each such constituent
6 organization was filed along with the proper fee for the
7 ~~probate judge~~ judge of probate. For each constituent
8 organization which is formed under the laws of this state and
9 which is, immediately prior to the merger becoming effective,
10 an organization described in Section 10A-1-4.02(c)(4), but
11 which has a certificate of formation filed with the judge of
12 probate, the Secretary of State shall transmit a certified
13 copy of the statement of merger to the office of the judge of
14 probate in the county in which the certificate of formation
15 for each such constituent organization was filed along with
16 the proper fee for the judge of probate. For each constituent
17 organization which (1) is formed under the laws of this state,
18 (2) is, immediately prior to the merger becoming effective, an
19 organization described in Section 10A-1-4.02(c)(4), and (3)
20 did not file its certificate of formation with the ~~probate~~
21 ~~judge~~ judge of probate, but rather in accordance with
22 ~~Section 10A-1-4.02(c)(4)~~ this title filed its certificate of
23 formation with the Secretary of State, the Secretary of State
24 shall not transmit a certified copy of the statement of merger
25 to the office of the judge of probate and shall not collect
26 any fee for the judge of probate.

27 "(d) A merger becomes effective under this article:

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

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

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

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

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

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

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

26 "(h) Except as provided in the last sentence of
27 subsection (c), the filing fees for a statement of merger

1 shall be the same fees as provided in
2 Section 10A-1-4.31(a) (5).

3 "§10A-5A-10.08.

4 "(a) When a merger becomes effective:

5 "(1) the surviving organization continues or, in the
6 case of a surviving organization created pursuant to the
7 merger, comes into existence;

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

11 "(3) all property owned by each constituent
12 organization, or series thereof, that ceases to exist vests in
13 the surviving organization without reservation or impairment
14 and the title to any property vested by deed or otherwise in
15 the surviving organization shall not revert or be in any way
16 impaired by reason of the merger;

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

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

26 "(6) except as prohibited by law other than this
27 chapter, all of the rights, privileges, immunities, powers,

1 and purposes of each constituent organization, or series
2 thereof, vest in the surviving organization;

3 "(7) except as otherwise provided in the plan of
4 merger, the terms and conditions of the plan of merger take
5 effect;

6 "(8) except as otherwise agreed, if a constituent
7 limited liability company ceases to exist, the merger does not
8 dissolve the limited liability company ~~for the purposes of~~
9 ~~Article 7~~ and does not dissolve a series ~~for purposes of~~
10 ~~Article 11~~thereof;

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

13 "(A) if it is a limited liability company, the
14 certificate of formation becomes effective; or

15 "(B) if it is an organization other than a limited
16 liability company, the organizational document that creates
17 the organization becomes effective; and

18 "(10) if the surviving organization existed before
19 the merger, any amendments provided for in the statement of
20 merger for the organizational document that created the
21 organization become effective.

22 "(b) A surviving organization that is a foreign
23 entity consents to the jurisdiction of this state to enforce
24 any debt, obligation, or other liability owed by a constituent
25 organization, if before the merger the constituent
26 organization was subject to suit in this state on the debt,
27 obligation, or other liability. If a surviving organization

1 that is a foreign entity fails to designate or maintain a
2 registered agent, or the designated registered agent cannot
3 with reasonable diligence be served, then the service of
4 process on that surviving organization for the purposes of
5 enforcing a debt, obligation, or other liability under this
6 subsection may be made in the same manner and has the same
7 consequences as provided in Section 10A-1-5.35."

8 Section 5. Sections 10A-9-1.01 to 10A-9-12.08,
9 inclusive, Code of Alabama 1975, are repealed.

10 Section 6. This act shall become effective on
11 January 1, 2017, following its passage and approval by the
12 Governor, or its otherwise becoming law.