

SB197 INTRODUCED



1 SB197
2 I4VH6W6-1
3 By Senators Givhan, Smitherman
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 25-Feb-25



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SYNOPSIS:

This bill would revise the Alabama Business and Nonprofit Entity Code.

This bill would make technical changes, such as corrected references to other parts of the Business and Nonprofit Entities Code, and would codify practices relating to electronic filing and name reservations.

This bill would codify the common law doctrine of independent legal significance.

This bill would clarify the current practice of approving and authorizing agreements, including conversion, merger, and exchange agreements, and would provide a ratification process for documents that were not properly approved.

This bill would clarify the current practice of providing termination fees and other consequences in merger agreements.

This bill would clarify the existing practice of naming merger agreements.

This bill would provide a simplified purchase process upon the death or disqualification of a stockholder or member of a professional corporation, limited liability company, or partnership.

This bill would also provide that the agreement for a limited liability company, a limited partnership,



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29 or partnership may allow for the transfer of a
30 transferable interest upon the death of a transferable
31 interest holder, with or without consideration, subject
32 to outstanding charging orders and subject to the
33 rights of creditors.

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A BILL

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TO BE ENTITLED

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AN ACT

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Relating to the Alabama Business Corporation Law, the

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Alabama Nonprofit Corporation Law, the Alabama Professional

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Corporation Law, the Alabama Limited Liability Company Law,

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the Alabama Partnership Law, and the Alabama Limited

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Partnership Law; to amend Sections 10A-1-1.02, 10A-1-1.08, as

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amended by Act 2024-413, 2024 Regular Session, 10A-1-2.11,

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10A-1-3.08, 10A-1-5.08, 10A-1-5.09, 10A-1-5.10, 10A-1-5.32,

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10A-1-5.33, 10A-1-5.34, 10A-1-7.01, 10A-1-7.04, 10A-1-8.01,

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10A-1-8.02, 10A-2A-7.40, 10A-2A-9.11, 10A-2A-11.01,

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10A-2A-11.02, 10A-2A-11.03, 10A-3A-12.01, 10A-3A-12.02,

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10A-3A-13.02, 10A-4-3.02, as amended by Act 2024-413, 2024

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Regular Session, 10A-5A-1.02, 10A-5A-1.06, 10A-5A-2.02, as

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amended by Act 2024-413, 2024 Regular Session, 10A-5A-5.02,

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10A-5A-5.04, 10A-5A-8.02, 10A-5A-10.01, 10A-5A-10.05,

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10A-8A-1.07, 10A-8A-2.02, 10A-8A-3.03, 10A-8A-3.04,

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10A-8A-5.02, 10A-8A-5.04, 10A-8A-8.02, 10A-8A-8.03,

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10A-8A-8.11, 10A-8A-9.01, 10A-8A-9.02, 10A-8A-9.06,



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57 10A-8A-10.01, and 10A-8A-10.03, 10A-9A-1.07, 10A-9A-2.06,
58 10A-9A-7.02, 10A-9A-7.04, 10A-9A-9.02, 10A-9A-10.01,
59 10A-9A-10.02, 10A-9A-10.06, Code of Alabama 1975, and to add
60 Sections 10A-2A-3.05, 10A-2A-8.27, 10A-3A-3.05, and
61 10A-3A-8.26 to the Code of Alabama 1975; to make technical
62 corrections and to codify issues regarding electronic filing
63 issues and name reservation issues; to clarify the current
64 practice of providing certain termination fees and other
65 consequences in merger agreements; to clarify the current
66 practice of approving merger agreements; to clarify the
67 current practice of naming of merger agreements; to codify the
68 common law doctrine of independent legal significance; to
69 codify the current practice of approving and authorizing
70 agreements, including conversion, merger, and exchange
71 agreements, and providing a ratification process for documents
72 that were not properly approved; to provide a simplified
73 purchase process upon the death or disqualification of a
74 stockholder or member of an Alabama professional corporation;
75 to provide that a limited liability company agreement may
76 allow for the transfer of a transferable interest upon the
77 death of a transferable interest holder, with or without
78 consideration, subject to outstanding charging orders and
79 subject to the rights of creditors; to provide a simplified
80 purchase process upon the death or disqualification of a
81 member of an Alabama limited liability company; to provide
82 that a partnership agreement may allow for the transfer of a
83 transferable interest upon the death of a transferable
84 interest holder, with or without consideration, subject to



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85 outstanding charging orders and subject to the rights of
86 creditors; to provide a simplified purchase process upon the
87 death or disqualification of a member of an Alabama
88 partnership; to provide that a limited partnership agreement
89 may allow for the transfer of a transferable interest upon the
90 death of a transferable interest holder, with or without
91 consideration, subject to outstanding charging orders and
92 subject to the rights of creditors; and to provide an
93 effective date.

94 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

95 Section 1. Sections 10A-1-1.02, 10A-1-1.08, as amended
96 by Act 2024-413, 2024 Regular Session, 10A-1-2.11, 10A-1-3.08,
97 10A-1-5.08, 10A-1-5.09, 10A-1-5.10, 10A-1-5.32, 10A-1-5.33,
98 10A-1-5.34, 10A-1-7.01, 10A-1-7.04, 10A-1-8.01, and
99 10A-1-8.02, Code of Alabama 1975, are amended to read as
100 follows:

101 "§10A-1-1.02

102 (a) All provisions of this chapter shall apply to all
103 entities formed pursuant to or governed by Chapters 2A to 11,
104 inclusive, and ~~Chapter~~ Chapters 17 and 18, except as set forth
105 in this chapter and except as set forth in subsections (c),
106 (d), and (e).

107 (b) The provisions of this chapter shall apply to
108 entities formed pursuant to or governed by Chapter 16, Chapter
109 20, and Chapter 30 only as provided therein or expressly
110 provided in this chapter.

111 (c) If a provision of this chapter conflicts with a
112 provision in another chapter of this title, the provision of



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113 the other chapter, to the extent of the conflict, supersedes
114 the provision of this chapter.

115 (d) Provisions in another chapter may provide that the
116 provisions of this chapter do not apply by specifically
117 providing which provisions in this chapter do not apply.

118 (e) Provisions in another chapter may provide that the
119 governing documents of an entity governed by that other
120 chapter may supersede the provisions of this chapter by
121 specifically providing which provisions in this chapter may be
122 superseded by those governing documents."

123 "§10A-1-1.08

124 (a) The provisions of this title as described by this
125 section may be cited as provided by this section.

126 (b) Chapter 2A and the provisions of Chapter 1 to the
127 extent applicable to business corporations may be cited as the
128 Alabama Business Corporation Law.

129 (c) Chapter 3A and the provisions of Chapter 1 to the
130 extent applicable to nonprofit corporations may be cited as
131 the Alabama Nonprofit Corporation Law.

132 (d) Chapter 4 and the provisions of Chapter 1 to the
133 extent applicable to professional corporations may be cited as
134 the Alabama Professional Corporation Law.

135 (e) Chapter 5A and the provisions of Chapter 1 to the
136 extent applicable to limited liability companies may be cited
137 as the Alabama Limited Liability Company Law.

138 (f) Chapter 8A and the provisions of Chapter 1 to the
139 extent applicable to general partnerships may be cited as the
140 Alabama Partnership Law.



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141 (g) Chapter 9A and the provisions of Chapter 1 to the
142 extent applicable to limited partnerships may be cited as the
143 Alabama Limited Partnership Law.

144 (h) Chapter 10 and the provisions of Chapter 1 to the
145 extent applicable to real estate investment trusts may be
146 cited as the Alabama Real Estate Investment Trust Law.

147 (i) Chapter 11 and the provisions of Chapter 1 and
148 Chapter 2A to the extent applicable to employee cooperative
149 corporations may be cited as the Alabama Employee Cooperative
150 Corporations Law.

151 (j) Chapter 17 and the provisions of Chapter 1 to the
152 extent applicable to unincorporated nonprofit associations may
153 be cited as the Alabama Unincorporated Nonprofit Association
154 Law.

155 (k) Chapter 18 and the provisions of Chapter 1 to the
156 extent applicable to Alabama statewide trade associations may
157 be cited as the Alabama Statewide Trade Association Law."

158 "§10A-1-2.11

159 Except as otherwise provided by this title, and whether
160 or not expressly stated in its governing documents, a domestic
161 entity has the same powers as an individual to take action
162 necessary or convenient to carry out its business and affairs.
163 Except as otherwise provided by this title or the governing
164 documents of the entity, the powers of a domestic entity
165 include the power to:

166 (1) sue, be sued, complain and defend suit in its
167 entity name;

168 (2) have and alter a seal and use the seal or a



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169 facsimile of it by impressing, affixing, or reproducing it;

170 (3) purchase, lease, or otherwise acquire, receive,
171 own, hold, improve, use, and deal in and with property or an
172 interest in property;

173 (4) sell, convey, mortgage, pledge, lease, exchange,
174 and otherwise dispose of property;

175 (5) make contracts and guaranties;

176 (6) incur liabilities, borrow money, issue notes,
177 bonds, and other obligations which may be convertible into or
178 include the option to purchase other securities or ownership
179 interests in the entity, and secure any obligations, or the
180 obligations of others for whom it can make guarantees, whether
181 or not a guarantee is made, by mortgaging or pledging its
182 property, franchises, or income;

183 (7) lend money, invest its funds, and receive and hold
184 property as security for repayment;

185 (8) acquire its own bonds, debentures, or other
186 evidences of indebtedness or obligations;

187 (9) acquire its own ownership interests, regardless of
188 whether redeemable, and hold the ownership interests as
189 treasury ownership interests or cancel or dispose of the
190 ownership interests;

191 (10) be a promoter, organizer, owner, partner, member,
192 associate, or manager of an organization;

193 (11) acquire, receive, own, hold, vote, use, pledge,
194 and dispose of ownership interests in or securities issued by
195 another person;

196 (12) conduct its business, locate its offices, and



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197 exercise the powers granted by this title to further its
198 purposes, in or out of this state;

199 (13) lend money to, and otherwise assist, its
200 managerial officials, owners, members, or employees as
201 necessary or appropriate, provided, however, a nonprofit
202 entity shall not have the power to lend money to its officers
203 or directors;

204 (14) elect or appoint governing persons, officers, and
205 agents of the entity, establish the length of their terms,
206 define their duties, and fix their compensation;

207 (15) pay pensions and establish pension plans, pension
208 trusts, profit sharing plans, share bonus plans, and incentive
209 plans for managerial officials, owners, members, or employees
210 or former managerial officials, owners, members, or employees;

211 (16) indemnify and maintain liability insurance for
212 managerial officials, owners, members, employees, and agents
213 of the entity or the entity's affiliate;

214 (17) adopt and amend governing documents for managing
215 the affairs of the entity subject to applicable law;

216 (18) make donations for the public welfare or for
217 charitable, scientific, or educational purposes;

218 (19) voluntarily wind up its business and activities
219 and terminate its existence;

220 (20) transact business or take action that will aid
221 governmental policy; ~~and~~

222 (21) make payments or donations, or do any other act,
223 not inconsistent with law, that furthers the business and
224 affairs of the entity; and



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225 ~~(21)~~ (22) take other action necessary or appropriate to
226 further the purposes of the entity."

227 "§10A-1-3.08

228 (a) Filing instruments that (i) were required or
229 permitted to be delivered for filing to a filing officer other
230 than the Secretary of State prior to January 1, 2021, (ii)
231 were delivered for filing to a filing officer other than the
232 Secretary of State prior to January 1, 2021, (iii) were
233 accepted by that filing officer and filed by that filing
234 officer prior to January 1, 2021, and (iv) would, if they were
235 delivered for filing on or after January 1, 2021, be required
236 or permitted to be delivered to the Secretary of State for
237 filing shall:

238 (1) remain in full force and effect until amended,
239 restated, revoked, or otherwise altered by a filing instrument
240 filed with the Secretary of State for that purpose; and

241 (2) not be affected as to their validity on or after
242 January 1, 2021, solely by reason of the change of location of
243 filings for similar filing instruments on or after January 1,
244 2021, to the office of the Secretary of State.

245 (b) A filing entity that has one or more filing
246 instruments that are described in clauses (i) through (iv) of
247 subsection (a) and that are not in the records of the
248 Secretary of State, may, but is not required to, deliver to
249 the Secretary of State for filing on or after January 1, 2021,
250 a certificate of information ~~listing and attaching certified~~
251 ~~copies of all of the above-described filing instruments of~~
252 ~~that entity.~~ The certificate of information shall include the



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253 following information:

254 (1) the name of the entity;

255 (2) the type of entity;

256 (3) the date of formation of the entity;

257 (4) the unique identifying number or other designation
258 assigned by the Secretary of State, if any;

259 (5) a list of all of the filing instruments known to
260 the entity that are described in clauses (i) through (iv) of
261 subsection (a) that are not in the records of the Secretary of
262 State, which list must include the title of each filing
263 instrument, the date of the filing of each filing instrument,
264 and the filing officer with whom each filing instrument was
265 delivered for filing;

266 (6) an attached certified copy of the certificate of
267 formation then in effect if not in the records of the
268 Secretary of State; and

269 (7) an attached certified copy of any other filing
270 instruments of that entity then in effect that are not in the
271 records of the Secretary of State that the entity determines
272 to have in the records of the Secretary of State."

273 "§10A-1-5.08

274 (a) The name of a domestic professional corporation or
275 of a foreign professional corporation registered to transact
276 business in this state must contain the words "professional
277 corporation" or the abbreviation "P.C." or "PC" and shall
278 otherwise conform to any rule promulgated by a licensing
279 authority having jurisdiction of a professional service
280 described in the certificate of formation of the professional



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281 corporation.

282 (b) The name of a professional entity must be
283 consistent with a statute or regulation that governs a person
284 that provides a professional service through the professional
285 entity, including a rule of professional ethics."

286 "§10A-1-5.09

287 ~~The name of a professional entity must be consistent~~
288 ~~with a statute or regulation that governs a person that~~
289 ~~provides a professional service through the professional~~
290 ~~entity, including a rule of professional ethics.~~ (a) The name
291 of a general partnership that has filed a statement of
292 partnership in accordance with Section 10A-8A-2.02 must
293 include the words "general partnership" or the abbreviation
294 "G.P." or "GP."

295 (b) The name of a general partnership that has filed a
296 statement of not for profit partnership in accordance with
297 Section 10A-8A-2.02 must include the words "not for profit
298 general partnership" or the abbreviation "N.G.P." or "NGP."

299 "§10A-1-5.10

300 ~~(a) The name of a general partnership that has filed a~~
301 ~~statement of partnership in accordance with Section~~
302 ~~10A-8A-2.02 must include the words "general partnership" or~~
303 ~~the abbreviation "G.P." or "GP."~~

304 ~~(b) The name of a general partnership that has filed a~~
305 ~~statement of not for profit partnership in accordance with~~
306 ~~Section 10A-8A-2.02 must include the words "not for profit~~
307 ~~general partnership" or the abbreviation "N.G.P." or "NGP."~~

308 (a) (i) All filing entities and (ii) all general



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309 partnerships that are filing a statement of partnership, a
310 statement of not for profit general partnership, or a
311 statement of limited liability partnership, must reserve a
312 name with the Secretary of State in accordance with this
313 Article 5.

314 (b) When a filing entity delivers its certificate of
315 formation or certificate of incorporation, as applicable, to
316 the Secretary of State for filing, that filing entity must
317 attach its name reservation certificate to its certificate of
318 formation or the certificate of incorporation, as applicable;
319 provided, that the name reservation certificate shall not be
320 part of the certificate of formation or certificate of
321 incorporation, as applicable.

322 (c) When a general partnership delivers its statement
323 of partnership, statement of not for profit general
324 partnership, or statement of limited liability partnership, as
325 applicable, to the Secretary of State for filing, that general
326 partnership must attach its name reservation certificate to
327 its statement of partnership, statement of not for profit
328 general partnership, or statement of limited liability
329 partnership, as applicable; provided, that the name
330 reservation certificate shall not be part of the statement of
331 partnership, the statement of not for profit general
332 partnership, or the statement of limited liability
333 partnership, as applicable."

334 "§10A-1-5.32

335 (a) An entity required to maintain a registered office
336 and registered agent under Section 10A-1-5.31 may change its



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337 registered office, its registered agent, or both, by
338 delivering to the Secretary of State for filing a statement of
339 the change in accordance with the procedures in Article 4.

340 (b) The statement of change must contain:

341 (1) the name of the entity;

342 (2) the unique identifying number or other designation
343 assigned by the Secretary of State;

344 ~~(2)~~ (3) the name of the entity's registered agent;

345 ~~(3)~~ (4) the street address of the entity's registered
346 agent;

347 ~~(4)~~ (5) if the change relates to the registered agent,
348 the name of the entity's new registered agent and the new
349 registered agent's written consent to the appointment, either
350 on the statement or attached to it;

351 ~~(5)~~ (6) if the change relates to the registered office,
352 the street address of the entity's new registered office;

353 ~~(6)~~ (7) a recitation that the change specified in the
354 statement is authorized by the entity; and

355 ~~(7)~~ (8) a recitation that the street address of the
356 registered office and the street address of the registered
357 agent's business are the same.

358 (c) On acceptance of the statement by the Secretary of
359 State, the statement is:

360 (1) in the case of a domestic filing entity, effective
361 to change the designation of the entity's registered agent or
362 registered office, or both, without the necessity of amending
363 the entity's certificate of formation;

364 (2) in the case of a general partnership with an



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365 effective statement of partnership, statement of not for
366 profit partnership, or statement of limited liability
367 partnership on file with the Secretary of State under Chapter
368 8A, effective to change its registered agent or registered
369 office, or both, without the necessity of amending its
370 statement of partnership, statement of not for profit
371 partnership, or statement of limited liability partnership
372 under Chapter 8A;

373 (3) in the case of a foreign filing entity other than a
374 foreign limited liability partnership, effective to change the
375 designation of the entity's registered agent or registered
376 office, or both, and effective as an amendment of its
377 application for registration as a foreign entity under Article
378 7; or

379 (4) in the case of a foreign limited liability
380 partnership, effective to change the designation of its
381 registered agent or registered office, or both, without the
382 necessity of amending its statement of foreign limited
383 liability partnership under Article 7."

384 "§10A-1-5.33

385 (a) The registered agent of any entity required by
386 Section 10A-1-5.31 to designate and maintain a registered
387 agent or registered office may give notice of a change of its
388 name, or a change of its street address as the street address
389 of the entity's registered office, or both, by delivering a
390 statement of change containing the information required by
391 this section to the Secretary of State for filing ~~a statement~~
392 ~~of the change~~ in accordance with the procedures in Article 4.



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393 (b) The statement of change must be signed by the
394 registered agent, or a person authorized to sign the statement
395 on behalf of the registered agent, and must ~~contain~~ include:

396 (1) the name of the entity represented by the
397 registered agent;

398 (2) the unique identifying number of the entity
399 assigned by the Secretary of State;

400 ~~(2)~~ (3) the name of the entity's registered agent and
401 the street address at which the registered agent maintained
402 the entity's registered office;

403 ~~(3)~~ (4) if the change relates to the name of the
404 registered agent, the new name of that agent;

405 ~~(4)~~ (5) if the change relates to the street address of
406 the registered office, the new street address of ~~that the~~ the
407 registered office; and

408 ~~(5)~~ (6) a recitation that written notice of the change
409 was given to the entity by the registered agent at least 10
410 days before the date the statement of change is ~~filed~~
411 delivered to the Secretary of State for filing.

412 (c) On acceptance of the statement of change by the
413 Secretary of State, the statement of change is:

414 (1) in the case of a domestic filing entity, effective
415 to make the change or changes set forth in the statement of
416 change without the necessity of amending the entity's
417 certificate of formation;

418 (2) in the case of a general partnership with an
419 effective statement of partnership, statement of not for
420 profit partnership, or statement of limited liability



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421 partnership on file with the Secretary of State, effective to
422 make the change ~~its registered agent or registered office, or~~
423 ~~both,~~ or changes set forth in the statement of change without
424 the necessity of amending its statement of partnership,
425 statement of not for profit partnership, or statement of
426 limited liability partnership under Chapter 8A;

427 (3) in the case of a foreign filing entity with an
428 effective application for registration, effective to make the
429 change or changes set forth in the statement, ~~and effective as~~
430 ~~an amendment of~~ of change, without the necessity of amending
431 its application for registration as a foreign entity under
432 Article 7; or

433 (4) in the case of a foreign limited liability
434 partnership with an effective statement of limited liability
435 partnership, effective to make the change or changes set forth
436 in the statement, ~~and effective as an amendment to~~ of change,
437 without the necessity of amending or restating its statement
438 of foreign limited liability partnership under Article 7.

439 (d) A registered agent may ~~file~~ deliver a statement of
440 change to the Secretary of State for filing under this section
441 that applies to more than one entity, and if the registered
442 agent does so, the registered agent must include the unique
443 identifying number assigned by the Secretary of State to each
444 entity in the statement of change."

445 "§10A-1-5.34

446 (a) A registered agent of any entity required by
447 Section 10A-1-5.31 to designate and maintain a registered
448 agent or registered office may resign as the registered agent



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449 by giving written notice to that entity and delivering a
450 statement of resignation to the Secretary of State for filing.

451 (b) ~~Notice~~ Written notice to the entity must be given
452 to the entity at the address of the entity most recently known
453 by the agent prior to the delivery of the statement of
454 resignation to the Secretary of State for filing.

455 (c) ~~Notice~~ The statement of resignation shall be
456 delivered to the Secretary of State ~~must be given before the~~
457 ~~11th day after the date notice under subsection (b) is mailed~~
458 ~~or delivered for filing~~ and must include:

459 ~~(1) the address of the entity most recently known by~~
460 ~~the agent;~~

461 ~~(2) a statement that written notice of the resignation~~
462 ~~has been given to the entity; and~~

463 ~~(3) the date on which that written notice of~~
464 ~~resignation was given.~~

465 ~~(d) On compliance with subsections (b) and (c), the~~
466 ~~appointment of the registered agent terminates. The~~
467 ~~termination is effective on the 31st day after the date the~~
468 ~~Secretary of State receives the notice.~~

469 (1) the name of the entity;

470 (2) the unique identifying number of the entity
471 assigned by the Secretary of State;

472 (3) the name of the agent;

473 (4) that the agent resigns from serving as registered
474 agent for the entity; and

475 (5) the address of the entity to which the agent
476 delivered the written notice required by subsection (b).



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477 (d) A statement of resignation takes effect on the
478 earlier of:

479 (1) 12:01 a.m. on the 31st day after the day on which
480 it is delivered to the Secretary of State for filing; or

481 (2) the designation of a new registered agent by the
482 entity.

483 (e) When a statement of resignation takes effect, the
484 person that resigned ceases to have responsibility under this
485 title for any matter thereafter tendered to it as registered
486 agent for the entity. The resignation does not affect any
487 contractual rights the entity has against the registered agent
488 or that the registered agent has against the entity.

489 (f) A registered agent may resign with respect to an
490 entity regardless of whether the entity is in good standing.

491 ~~(e) If~~ (g) Upon the receipt of the statement of
492 resignation by the Secretary of State ~~finds that a notice of~~
493 ~~resignation received by the filing officer conforms to~~
494 ~~subsections (b) and (c),~~ the Secretary of State shall:

495 (1) notify the entity of the registered agent's
496 resignation; and

497 (2) file the statement of resignation in accordance
498 with Article 4, except that a fee is not required to file the
499 statement of resignation."

500 "§10A-1-7.01

501 (a) (1) For purposes of this Article 7, the terms
502 register, registering, and registered include (i) a foreign
503 entity other than a foreign limited liability partnership
504 delivering to the Secretary of State for filing an application



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505 for registration and the Secretary of State filing the
506 application for registration, and (ii) a foreign limited
507 liability partnership delivering to the Secretary of State for
508 filing a statement of foreign limited liability partnership
509 and the Secretary of State filing the statement of foreign
510 limited liability partnership.

511 (2) For purposes of this Article 7, the term
512 registration includes (i) a filed application for registration
513 and (ii) a filed statement of foreign limited liability
514 partnership.

515 (b) For purposes of this Article 7, the terms transact
516 business and transacting business shall include conducting a
517 business, activity, not for profit activity, and any other
518 activity, whether or not for profit.

519 (c) To transact business in this state, a foreign
520 entity must register under this chapter if the foreign entity:

521 (1) is a foreign entity, the formation of which, if
522 formed in this state, would require the filing under Article 3
523 of a certificate of formation;

524 (2) is a foreign limited liability partnership; or

525 (3) affords limited liability under the law of its
526 jurisdiction of formation for any owner or member.

527 (d) A foreign entity described by subsection (b) must
528 maintain the foreign entity's registration while transacting
529 business in this state.

530 (e) For purposes of this Article 7, a foreign entity
531 must reserve a name with the Secretary of State in accordance
532 with Article 5 and when a foreign entity delivers its



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533 application for registration to the Secretary of State for
534 filing, that foreign entity must attach its name reservation
535 certificate to its application for registration."

536 "§10A-1-7.04

537 (a) (1) A foreign entity described in Section
538 10A-1-7.01(c), other than a foreign limited liability
539 partnership, registers by delivering to the Secretary of State
540 for filing an application for registration in accordance with
541 the procedures in Article 4.

542 (2) A foreign limited liability partnership registers
543 by delivering to the Secretary of State for filing a statement
544 of foreign limited liability partnership in accordance with
545 the procedures in Article 4.

546 (b) The application for registration of a foreign
547 entity described in Section 10A-1-7.01(c) other than a foreign
548 limited liability partnership must state:

549 (1) the foreign entity's name or, if that name is not
550 available for use in this state or otherwise would not comply
551 with Article 5, a name that satisfies the requirements of
552 Section 10A-1-7.07 under which the foreign entity will
553 transact business in this state;

554 (2) the foreign entity's type;

555 (3) the foreign entity's jurisdiction of formation;

556 (4) the date of the foreign entity's formation;

557 (5) that the foreign entity exists as a valid foreign
558 entity of the stated type under the laws of the foreign
559 entity's jurisdiction of formation;

560 (6) the date the foreign entity began or will begin to



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561 transact business in this state;

562 (7) the street address and mailing address, if
563 different, of the principal office of the foreign entity; and~~+~~

564 (8) the street address and mailing address, if
565 different, of the initial registered office and the name of
566 the initial registered agent for service of process which
567 Article 5 requires to be maintained at that office.

568 (c) The statement of foreign limited liability
569 partnership must state:

570 (1) the foreign limited liability partnership's name
571 or, if that name is not available for use in this state or
572 otherwise would not comply with Article 5, a name that
573 satisfies the requirements of Section 10A-1-7.07 under which
574 the foreign entity will transact business in this state;

575 (2) the jurisdiction which governs the foreign limited
576 liability partnership's partnership agreement and under which
577 it is a limited liability partnership;

578 (3) the date of the foreign limited liability
579 partnership's formation;

580 (4) that the foreign limited liability partnership
581 exists as a valid foreign limited liability partnership under
582 the laws of the jurisdiction which governs the foreign limited
583 liability partnership's partnership agreement and under which
584 it is a limited liability partnership;

585 (5) the date the foreign limited liability partnership
586 will begin to transact business in this state;

587 (6) the street address and mailing address, if
588 different, of the principal office of the foreign limited



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589 liability partnership;

590 (7) the street address and mailing address, if
591 different, of the initial registered office and the name of
592 the initial registered agent for service of process which
593 Article 5 requires to be maintained at that office~~+~~.

594 (d) The application for registration of a foreign
595 entity described in Section 10A-1-7.01(c) other than a foreign
596 limited liability partnership shall be executed by one or more
597 persons authorized to execute an application for registration.
598 The statement of foreign limited liability partnership shall
599 be executed by one or more partners authorized to execute a
600 statement of foreign limited liability partnership.

601 (e) The status of the foreign entity after registration
602 and the liability of its owners, managers, members, or
603 managerial officials shall not be adversely affected by error
604 or subsequent changes in the information stated in the
605 application for registration or statement of foreign limited
606 liability partnership, as applicable.

607 (f) The fact that an application for registration or a
608 statement of foreign limited liability partnership, as
609 applicable, is on file with the Secretary of State is notice
610 that the foreign entity is authorized to transact business in
611 this state and as notice of all facts required to be set forth
612 in the application for registration or the statement of
613 foreign limited liability partnership, as applicable.

614 (g) A foreign entity may register regardless of any
615 differences between the law of the foreign entity's
616 jurisdiction and of this state applicable to the governing of



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617 the internal affairs or to the liability of an owner, member,
618 or managerial official. Notwithstanding the foregoing, no
619 foreign entity may carry on in this state any business of a
620 character that may not lawfully be carried on by a domestic
621 entity of the same type.

622 (h) A statement of foreign limited liability
623 partnership is a filing instrument."

624 "§10A-1-8.01

625 A conversion of an entity may be accomplished as
626 provided in this section:

627 (a) The plan of conversion must be in writing, and:

628 (1) must include the following:

629 (A) the name, type of entity, and mailing address of
630 the principal office of the converting entity, and its unique
631 identifying number or other designation as assigned by the
632 Secretary of State, if any, before conversion;

633 (B) the name, type of entity, and mailing address of
634 the principal office of the converted entity after conversion;

635 (C) the terms and conditions of the conversion,
636 including the manner and basis for converting interests in the
637 converting entity into any combination of money, interests in
638 the converted entity, and other consideration allowed in
639 subsection (b); and

640 (D) the organizational documents of the converted
641 entity; ~~and~~

642 (2) may include other provisions relating to the
643 conversion not prohibited by law; ~~and~~ and

644 (3) at the time of the approval of the plan of



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645 conversion in accordance with subsection (c), the plan of
646 conversion is not required to contain or have attached thereto
647 any disclosure letter, disclosure schedules, or similar
648 documents or instruments contemplated by the plan of
649 conversion that modify, supplement, qualify, or make
650 exceptions to representations, warranties, covenants, or
651 conditions contained in the plan of conversion.

652 (b) In connection with a conversion, rights or
653 securities of or interests in a converting entity may be
654 exchanged for or converted into cash, property, or rights or
655 securities of or interests in the converted entity, or, in
656 addition to or in lieu thereof, may be exchanged for or
657 converted into cash, property, or rights or securities of or
658 interests in another entity, or may be cancelled.

659 (c) The plan of conversion of an entity must be
660 approved as follows:

661 (1) CORPORATIONS.

662 (A) If a corporation is governed by Chapter 2A and that
663 corporation is a converting entity, the plan of conversion
664 under subsection (a) must be approved in accordance with
665 ~~Article 9 of~~ Chapter 2A. If the conversion is a corporate
666 action as described in Section 10A-2A-13.02, then the rights,
667 obligations, and procedures under Article 13 of Chapter 2A
668 shall be applicable to that conversion.

669 (B) If a corporation is governed by Chapter 3A and that
670 corporation is a converting entity, the plan of conversion
671 under subsection (a) must be approved in accordance with
672 ~~Article 13 of~~ Chapter 3A.



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673 (C) If a corporation is not governed by Chapter 2A or
674 Chapter 3A and that corporation is a converting entity, the
675 plan of conversion under subsection (a) must be approved in
676 accordance with the law of the jurisdiction of formation of
677 that corporation.

678 (2) LIMITED PARTNERSHIPS, INCLUDING LIMITED LIABILITY
679 LIMITED PARTNERSHIPS. If a limited partnership is a converting
680 entity, the plan of conversion under subsection (a) must be
681 approved in accordance with ~~Article 10 of~~ Chapter 9A.

682 (3) LIMITED LIABILITY COMPANIES. If a limited liability
683 company is a converting entity, the plan of conversion under
684 subsection (a) must be approved in accordance with ~~Article 10~~
685 ~~of~~ Chapter 5A.

686 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
687 PARTNERSHIPS. If a general partnership is a converting entity,
688 the plan of conversion under subsection (a) must be approved
689 in accordance with ~~Article 9 of~~ Chapter 8A. If a general
690 partnership is the converting entity and that general
691 partnership does not have an effective statement of
692 partnership, statement of not for profit partnership, or
693 statement of limited liability partnership on file with the
694 Secretary of State, then that general partnership must, before
695 proceeding with a conversion deliver to the Secretary of State
696 for filing, a statement of partnership, statement of not for
697 profit partnership, or statement of limited liability
698 partnership simultaneously with the delivery to the Secretary
699 of State for filing, of a statement of conversion.

700 (5) REAL ESTATE INVESTMENT TRUST. The terms and



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701 conditions of the plan of conversion under subsection (a) of a
702 real estate investment trust must be approved by all of the
703 trust's shareholders or as otherwise provided in the trust's
704 declaration of trust; but in no case may the vote required for
705 shareholder approval be set at less than a majority of all the
706 votes entitled to be cast. No conversion of a real estate
707 investment trust to a general or limited partnership may be
708 effected without the consent in writing of each shareholder
709 who will have personal liability with respect to the converted
710 entity, notwithstanding any provision in the declaration of
711 trust of the converting real estate investment trust providing
712 for less than unanimous shareholder approval for the
713 conversion.

714 (6) OTHER ENTITY. In the case of an entity not
715 specified in subdivisions (1) through (5), a plan of
716 conversion under subsection (a) must be approved in writing by
717 all owners of that entity or, if the entity has no owners,
718 then by all members of the governing authority of that entity.

719 (d) After the plan of conversion is approved pursuant
720 to subsection (c):

721 (1) if the converting entity is a filing entity, the
722 converting entity shall deliver to the Secretary of State for
723 filing, a statement of conversion, which must include:

724 (A) the name, type of entity, and mailing address of
725 the principal office of the converting entity, and its unique
726 identifying number or other designation as assigned by the
727 Secretary of State, if any, before conversion;

728 (B) a statement that the converting entity has been



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729 converted into the converted entity;

730 (C) the name and type of entity of the converted entity
731 and the jurisdiction of its governing statute;

732 (D) the street and mailing address of the principal
733 office of the converted entity;

734 (E) the date the conversion is effective under the
735 governing statute of the converted entity;

736 (F) a statement that the conversion was approved as
737 required by this chapter;

738 (G) a statement that the conversion was approved as
739 required by the governing statute of the converted entity;

740 (H) a statement that a copy of the plan of conversion
741 will be furnished by the converted entity, on request and
742 without cost, to any owner of the converted or converting
743 entity; and

744 (I) if the converted entity is a foreign entity not
745 authorized to conduct activities and affairs in this state,
746 the street and mailing address of an office for the purposes
747 of Section 10A-1-8.04(b); and

748 (2) if the converted entity is (I) a filing entity, the
749 converting entity shall deliver to the Secretary of State for
750 filing a certificate of formation or (II) a general
751 partnership, the converting entity shall deliver to the
752 Secretary of State for filing a statement of partnership, a
753 statement of not for profit partnership, or a statement of
754 limited liability partnership, as applicable, which
755 certificate of formation or statement of partnership,
756 statement of not for profit partnership, or statement of



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757 limited liability partnership, as applicable, must include, in
758 addition to the information required in the chapter governing
759 the certificate of formation of the converted entity, the
760 following:

761 (A) The name, mailing address of the principal office
762 of, type of entity, and the jurisdiction of the governing
763 statute of the converting entity and its unique identifying
764 number or other designation as assigned by the Secretary of
765 State, if any, before conversion;

766 (B) A statement that the converting entity has been
767 converted into the converted entity;

768 (C) The filing office where the certificate of
769 formation, if any, of the converting entity is filed and the
770 date of the filing thereof;

771 (D) If the converted entity is one in which one or more
772 owners lack limited liability protection, a statement that
773 each owner of the converting entity who is to become an owner
774 without limited liability protection of the converted entity
775 has consented in writing to the conversion as required by this
776 section; and

777 (E) A statement that the conversion was approved
778 pursuant to this section and, if the converting entity is a
779 foreign entity, that the conversion was approved as required
780 by the governing statute of such foreign entity;

781 (3) if the converting entity is required pursuant to
782 subdivisions (1) and (2) to deliver to the Secretary of State
783 for filing both (I) a statement of conversion and (II) (A) a
784 certificate of formation^r or (B) a statement of partnership,



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785 statement of not for profit partnership, or statement of
786 limited liability partnership, as applicable, then the
787 converting entity shall deliver the statement of conversion
788 and the certificate of formation or the statement of
789 partnership, statement of not for profit partnership, or
790 statement of limited liability partnership, as applicable, to
791 the Secretary of State simultaneously; and

792 (4) if the converting entity is a general partnership
793 and that partnership does not have an effective statement of
794 partnership, statement of not for profit partnership, or
795 statement of limited liability partnership on file with the
796 Secretary of State, then the converting entity must deliver to
797 the Secretary of State for filing, a statement of partnership,
798 statement of not for profit partnership, or statement of
799 limited liability partnership simultaneously with the delivery
800 to the Secretary of State for filing, of a statement of
801 conversion.

802 (e) After a plan of conversion is approved and before
803 the conversion takes effect, the plan may be amended or
804 abandoned as provided in the plan, or if the plan does not
805 provide for amendment or abandonment, in the same manner as
806 required for the approval of the plan of conversion
807 originally.

808 (f) A conversion becomes effective:

809 (1) if the converted entity is a filing entity, the
810 effective date determined in accordance with Article 4 of this
811 chapter; and

812 (2) if the converted entity is not a domestic filing



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813 entity, as provided by the governing statute of the converted
814 entity.

815 (g) When a conversion becomes effective:

816 (1) all property and contract rights owned by the
817 converting entity remain vested in the converted entity
818 without transfer, reversion, or impairment, and the title to
819 any property vested by deed or otherwise in the converting
820 entity shall not revert or be in any way impaired by reason of
821 the conversion;

822 (2) all debts, obligations, or other liabilities of the
823 converting entity continue as debts, obligations, or other
824 liabilities of the converted entity and neither the rights of
825 creditors nor the liens upon the property of the converting
826 entity shall be impaired by the conversion;

827 (3) an action or proceeding pending by or against the
828 converting entity continues as if the conversion had not
829 occurred and the name of the converted entity may, but need
830 not, be substituted for the name of the converting entity in
831 any pending action or proceeding;

832 (4) except as prohibited by law other than this
833 chapter, all of the rights, privileges, immunities, powers,
834 and purposes of the converting entity remain vested in the
835 converted entity;

836 (5) except as otherwise provided in the statement of
837 conversion, the terms and conditions of the statement of
838 conversion take effect;

839 (6) except as otherwise agreed, for all purposes of the
840 laws of this state, the converting entity shall not be



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841 required to wind up its affairs or pay its liabilities and
842 distribute its assets, and the conversion shall not be deemed
843 to constitute a dissolution of the converting entity;

844 (7) for all purposes of the laws of this state, the
845 rights, privileges, powers, interests in property, debts,
846 liabilities, and duties of the converting entity, shall be the
847 rights, privileges, powers, interests in property, debts,
848 liabilities, and duties of the converted entity, and shall not
849 be deemed as a consequence of the conversion, to have been
850 transferred to the converted entity;

851 (8) if the converted entity is a domestic entity, for
852 all purposes of the laws of this state, the converted entity
853 shall be deemed to be the same entity as the converting
854 entity, and the conversion shall constitute a continuation of
855 the existence of the converting entity in the form of the
856 converted entity;

857 (9) if the converting entity is a domestic entity, the
858 existence of the converted entity shall be deemed to have
859 commenced on the date the converting entity commenced its
860 existence in the jurisdiction in which the converting entity
861 was first created, formed, organized, incorporated, or
862 otherwise came into being;

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

865 (11) if the Secretary of State has assigned a unique
866 identifying number or other designation to the converting
867 entity and (i) the converted entity is formed pursuant to the
868 laws of this state, or (ii) the converted entity is, within 30



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869 days after the effective date of the conversion, registered to
870 transact business in this state, then that unique identifying
871 number or other designation shall continue to be assigned to
872 the converted entity; and

873 (12) (A) An owner with limited liability protection
874 remains liable, if at all, for an obligation incurred by the
875 converting entity before the conversion takes effect only to
876 the extent, if any, the owner would have been liable if the
877 conversion had not occurred.

878 (B) An owner with limited liability protection who
879 becomes an owner without limited liability protection is
880 liable for an obligation of the converted entity incurred
881 after conversion to the extent provided for by the laws
882 applicable to the converted entity.

883 (13) An owner without limited liability protection who
884 as a result of a conversion becomes an owner of a converted
885 entity with limited liability protection remains liable for an
886 obligation incurred by the converting entity before the
887 conversion takes effect only to the extent, if any, the owner
888 would have been liable if the conversion had not occurred.

889 (h) If:

890 (1) the converting entity is a filing entity, a general
891 partnership with an effective statement of partnership,
892 statement of not for profit partnership, or statement of
893 limited liability partnership on file with the Secretary of
894 State, a foreign filing entity registered to transact business
895 or not for profit activity in this state, or a qualified
896 foreign limited liability partnership;



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897 (2) the converted entity will be a filing entity, a
898 general partnership with an effective statement of
899 partnership, statement of not for profit partnership, or
900 statement of limited liability partnership on file with the
901 Secretary of State, a foreign filing entity registered to
902 transact business or not for profit activity in this state, or
903 a qualified foreign limited liability partnership;

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

907 (4) the name of the converted entity complies with
908 Division A of Article 5 or Section 10A-1-7.07, as the case may
909 be;

910 then, notwithstanding Division B of Article 5, no name
911 reservation shall be required and the converted entity shall
912 for all purposes of this title be entitled to utilize the name
913 of the converting entity without any further action by the
914 converting entity or the converted entity.

915 (i) A certified copy of the statement of conversion may
916 be delivered to the office of the judge of probate in any
917 county in which the converting entity owned real property, to
918 be recorded without payment and without collection by the
919 judge of probate of any deed or other transfer tax or fee. The
920 judge of probate shall, however, be entitled to collect a
921 filing fee of five dollars (\$5). Any filing shall evidence
922 chain of title, but lack of filing shall not affect the
923 converted entity's title to the real property."

924 "§10A-1-8.02



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925 A merger of two or more entities, whether the other
926 entity or entities are the same or another form of entity, may
927 be accomplished as provided in this section.

928 (a) The plan of merger must be in writing, and:

929 (1) must include the following:

930 (A) the name, type of entity, and mailing address of
931 the principal office of each entity that is a party to the
932 merger, the jurisdiction of the governing statute of each
933 entity that is a party to the merger, and the respective
934 unique identifying number or other designation as assigned by
935 the Secretary of State, if any, of each entity that is a party
936 to the merger;

937 (B) the name, type of entity, and mailing address of
938 the principal office of the surviving entity and, if the
939 surviving entity is to be created pursuant to the merger, the
940 surviving entity's organizational documents;

941 (C) the terms and conditions of the merger, including
942 the manner and basis for converting the interests in each
943 entity that is a party to the merger into any combination of
944 money, interests in the surviving entity, and other
945 consideration as allowed by subsection (b); and

946 (D) if the surviving entity is not to be created
947 pursuant to the merger, any amendments to be made by the
948 merger to the surviving entity's organizational documents; ~~and~~

949 (2) with respect to all entities other than nonprofit
950 entities, a plan of merger may provide:

951 (A) that (i) any party to the plan of merger that fails
952 to perform its obligations under the plan of merger in



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953 accordance with the terms and conditions of the plan of
954 merger, or that otherwise fails to comply with the terms and
955 conditions of the plan of merger, in each case, required to be
956 performed or complied with prior to the time the merger
957 becomes effective, or that otherwise fails to consummate, or
958 fails to cause the consummation of, the merger (whether prior
959 to a specified date, upon satisfaction or, to the extent
960 permitted by law, waiver of all conditions to consummation set
961 forth in the plan of merger, or otherwise) shall be subject,
962 in addition to any other remedies available at law or in
963 equity, to the penalties or consequences as are set forth in
964 the plan of merger (which penalties or consequences may
965 include an obligation to pay to the other party or parties to
966 the plan of merger an amount representing, or based on the
967 loss of, any premium or other economic entitlement the owners
968 of the other party would be entitled to receive pursuant to
969 the terms of the plan of merger if the merger were consummated
970 in accordance with the terms of the plan of merger) and (ii)
971 if, pursuant to the terms of the plan of merger, an entity is
972 entitled to receive payment from another party to the plan of
973 merger of any amount representing a penalty or consequence (as
974 specified in clause (i) of this Section 10A-1-8.02(a)(2)(A)),
975 the entity shall be entitled to enforce the other party's
976 payment obligation and, upon receipt of any payment, shall be
977 entitled to retain the amount of the payment so received;
978 (B) (i) for the appointment, at or after the time at
979 which the plan of merger is adopted by the owners of a
980 domestic entity that is a party to the merger in accordance



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981 with the requirements of the statute governing that party, of
982 one or more persons (which may include the surviving or
983 resulting domestic entity or any officer, manager,
984 representative or agent thereof) as representative of the
985 owners of that domestic entity that is a party to the merger,
986 including those whose ownership interests shall be cancelled,
987 converted, or exchanged in the merger, and for the delegation
988 to that person or persons of the sole and exclusive authority
989 to take action on behalf of the owners pursuant to the plan of
990 merger, including taking such actions as the representative
991 determines to enforce (including by entering into settlements
992 with respect to) the rights of the owners under the plan of
993 merger, on the terms and subject to the conditions set forth
994 in the plan of merger, and (ii) that any appointment pursuant
995 to clause (i) of this Section 10A-1-8.02(a) (2) (B) shall be
996 irrevocable and binding on all owners from and after the
997 adoption of the plan of merger by the requisite vote of the
998 owners pursuant to the statute governing that entity; and
999 (C) that any provision adopted pursuant to Section
1000 10A-1-8.02(a) (2) (B) may not be amended after the merger has
1001 become effective or may be amended only with the consent or
1002 approval of persons specified in the plan of merger;
1003 (3) a plan of merger may include other provisions
1004 relating to the merger not prohibited by law; and
1005 (4) at the time of the approval of the plan of merger
1006 in accordance with subsection (c), the plan of merger is not
1007 required to contain or have attached thereto any disclosure
1008 letter, disclosure schedules, or similar documents or



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1009 instruments contemplated by the plan of merger that modify,
1010 supplement, qualify, or make exceptions to representations,
1011 warranties, covenants, or conditions contained in the plan of
1012 merger.

1013 (b) In connection with a merger, rights or securities
1014 of or interests in a merged entity may be exchanged for or
1015 converted into cash, property, or rights or securities of or
1016 interests in the surviving entity, or, in addition to or in
1017 lieu thereof, may be exchanged for or converted into cash,
1018 property, or rights or securities of or interests in another
1019 entity, or may be cancelled.

1020 (c) The plan of merger of an entity must be approved as
1021 follows:

1022 (1) CORPORATIONS.

1023 (A) If a corporation is governed by Chapter 2A and that
1024 corporation is a party to a merger, a plan of merger under
1025 subsection (a) must be approved in accordance with ~~Article 11~~
1026 ~~of~~ Chapter 2A. If the merger is a corporate action as
1027 described in Section 10A-2A-13.02, then the rights,
1028 obligations, and procedures under Article 13 of Chapter 2A
1029 shall be applicable to that merger.

1030 (B) If a nonprofit corporation is governed by Chapter
1031 3A and that corporation is a party to a merger, a plan of
1032 merger under subsection (a) must be approved in accordance
1033 with ~~Article 12 of~~ Chapter 3A.

1034 (C) If a corporation is not governed by Chapter 2A or
1035 Chapter 3A and that corporation is a party to a merger, the
1036 plan of merger under subsection (a) must be approved in



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1037 accordance with the law of the jurisdiction of formation of
1038 that corporation.

1039 (2) LIMITED PARTNERSHIPS. In the case of a limited
1040 partnership that is a party to the merger, a plan of merger
1041 under subsection (a) must be approved in accordance with
1042 ~~Article 10 of~~ Chapter 9A.

1043 (3) LIMITED LIABILITY COMPANIES. In the case of a
1044 limited liability company that is a party to the merger, a
1045 plan of merger under subsection (a) must be approved in
1046 accordance with ~~Article 10 of~~ Chapter 5A.

1047 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
1048 PARTNERSHIPS. In the case of a general partnership that is a
1049 party to the merger, a plan of merger under subsection (a)
1050 must be approved in accordance with ~~Article 9 of~~ Chapter 8A.
1051 All general partnerships, other than a general partnership
1052 that is created pursuant to the merger, that are parties to a
1053 merger must have on file with the Secretary of State a
1054 statement of partnership, statement of not for profit
1055 partnership, or statement of limited liability partnership
1056 prior to delivering the statement of merger to the Secretary
1057 of State for filing.

1058 (5) REAL ESTATE INVESTMENT TRUST. In the case of a real
1059 estate investment trust that is a party to the merger, a plan
1060 of merger under subsection (a) must be approved in writing by
1061 all of the trust's shareholders or as otherwise provided in
1062 the trust's declaration of trust, but in no case may the vote
1063 required for shareholder approval be set at less than a
1064 majority of all the votes entitled to be cast. No merger of a



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1065 real estate investment trust with a general or limited
1066 partnership that is to be the surviving entity may be effected
1067 without the consent in writing of each shareholder who will
1068 have personal liability with respect to the surviving entity,
1069 notwithstanding any provision in the declaration of trust of
1070 the converting real estate investment trust providing for less
1071 than unanimous shareholder approval for the merger.

1072 (6) OTHER ENTITY. In the case of an entity not
1073 specified in paragraphs (1) through (5) above, a plan of
1074 merger under subsection (a) must be approved in writing by all
1075 owners of that entity or, if the entity has no owners, then by
1076 all members of the governing authority of that entity.

1077 (d) After each entity has approved the plan of merger
1078 pursuant to subsection (c), the entities must deliver to the
1079 Secretary of State for filing a statement of merger signed on
1080 behalf of each entity as provided by its governing statute
1081 which must include:

1082 (1) the name, type of entity, and mailing address of
1083 the principal office of each entity that is a party to the
1084 merger, the jurisdiction of the governing statute of each
1085 entity that is a party to the merger, and the respective
1086 unique identifying number or other designation as assigned by
1087 the Secretary of State, if any, of each entity that is a party
1088 to the merger;

1089 (2) the name, type of entity, and mailing address of
1090 the principal office of the surviving entity, the unique
1091 identifying number or other designation as assigned by the
1092 Secretary of State, if any, of the surviving entity, the



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1093 jurisdiction of the governing statute of the surviving entity,
1094 and, if the surviving entity is created pursuant to the
1095 merger, a statement to that effect;

1096 (3) for each general partnership, the date of the
1097 filing of the statement of partnership, statement of not for
1098 profit partnership, or statement of limited liability
1099 partnership, if any, and all prior amendments and the filing
1100 office or offices, if any, where such is filed;

1101 (4) the date the merger is effective under the
1102 governing statute of the surviving entity;

1103 (5) if the surviving entity is to be created pursuant
1104 to the merger, (i) if it will be a filing entity, its
1105 certificate of formation; or (ii) if it will be a non-filing
1106 entity, any document that creates the entity that is required
1107 to be in a public writing or in the case of a general
1108 partnership, its statement of partnership, statement of not
1109 for profit partnership, or statement of limited liability
1110 partnership, as applicable;

1111 (6) if the surviving entity is a domestic entity that
1112 exists before the merger, any amendments provided for in the
1113 plan of merger for the organizational documents that created
1114 the domestic entity that are required to be in a public
1115 writing, or in the case of a general partnership, its
1116 statement of partnership, statement of not for profit
1117 partnership, or statement of limited liability partnership, as
1118 applicable;

1119 (7) a statement as to each entity that the merger was
1120 approved as required by the entity's governing statute;



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1121 (8) a statement that a copy of the plan of merger will
1122 be furnished by the surviving entity, on request and without
1123 cost, to any owner of any entity which is a party to the
1124 merger;

1125 (9) if the surviving entity is a foreign entity not
1126 authorized to conduct activities and affairs in this state,
1127 the street and mailing address of an office for the purposes
1128 of Section 10A-1-8.04; and

1129 (10) any additional information required by the
1130 governing statute of any entity that is a party to the merger.

1131 (e) Prior to the statement of merger being delivered
1132 for filing to the Secretary of State in accordance with
1133 subsection (d), all parties to the merger that are general
1134 partnerships, other than a general partnership that is created
1135 pursuant to the merger, must have on file with the Secretary
1136 of State a statement of partnership, statement of not for
1137 profit partnership, or statement of limited liability
1138 partnership.

1139 (f) After a plan of merger is approved and before the
1140 merger takes effect, the plan may be amended or abandoned as
1141 provided in the plan, or if the plan does not provide for
1142 amendment or abandonment, in the same manner as required for
1143 the approval of the plan of merger originally.

1144 (g) If all of the entities that are parties to the
1145 merger are domestic entities, the merger becomes effective on
1146 the effective date determined in accordance with Article 4. If
1147 one or more parties to the merger is a foreign entity, or a
1148 foreign entity created by the merger is the surviving entity,



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1149 the merger shall become effective at the later of:

1150 (1) when all documents required to be filed in foreign
1151 jurisdictions to effect the merger have become effective, or

1152 (2) the effective date determined in accordance with
1153 Article 4.

1154 (h) When a merger becomes effective:

1155 (1) the surviving entity continues or, in the case of a
1156 surviving entity created pursuant to the merger, comes into
1157 existence;

1158 (2) each entity that merges into the surviving entity
1159 ceases to exist as a separate entity;

1160 (3) except as provided in the plan of merger, all
1161 property owned by, and every contract right possessed by, each
1162 merging entity that ceases to exist vests in the surviving
1163 entity without transfer, reversion, or impairment and the
1164 title to any property and contract rights vested by deed or
1165 otherwise in the surviving entity shall not revert, be in any
1166 way impaired, or be deemed to be a transfer by reason of the
1167 merger;

1168 (4) all debts, obligations, and other liabilities of
1169 each merging entity, other than the surviving entity, are
1170 debts, obligations, and liabilities of the surviving entity,
1171 and neither the rights of creditors, nor any liens upon the
1172 property of any entity that is a party to the merger, shall be
1173 impaired by the merger;

1174 (5) an action or proceeding, pending by or against any
1175 merging entity that ceases to exist continues as if the merger
1176 had not occurred and the name of the surviving entity may, but



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1177 need not be substituted in any pending proceeding for the name
1178 of any merging entity whose separate existence ceased in the
1179 merger;

1180 (6) except as prohibited by law other than this chapter
1181 or as provided in the plan of merger, all the rights,
1182 privileges, franchises, immunities, powers, and purposes of
1183 each merging entity, other than the surviving entity, vest in
1184 the surviving entity;

1185 (7) except as otherwise provided in the plan of merger,
1186 the terms and conditions of the plan of merger take effect;

1187 (8) except as otherwise agreed, if a merged entity
1188 ceases to exist, the merger does not dissolve the merged
1189 entity;

1190 (9) if the surviving entity is created pursuant to the
1191 merger:

1192 (A) if it is a general partnership, the statement of
1193 partnership, statement of not for profit partnership, or
1194 statement of limited liability partnership becomes effective;
1195 or

1196 (B) if it is an entity other than a partnership, the
1197 organizational documents that create the entity become
1198 effective;

1199 (10) the interests in a merging entity that are to be
1200 converted in accordance with the terms of the merger into
1201 interests, obligations, rights to acquire interests, cash,
1202 other property, or any combination of the foregoing, are
1203 converted as provided in the plan of merger, and the former
1204 holders of interests are entitled only to the rights provided



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1205 to them by those terms or to any appraisal or dissenters'
1206 rights they may have under the governing statute governing the
1207 merging entity;

1208 (11) if the surviving entity exists before the merger:

1209 (A) except as provided in the plan of merger, all the
1210 property and contract rights of the surviving entity remain
1211 its property and contract rights without transfer, reversion,
1212 or impairment;

1213 (B) the surviving entity remains subject to all its
1214 debts, obligations, and other liabilities; and

1215 (C) except as provided by law other than this chapter
1216 or the plan of merger, the surviving entity continues to hold
1217 all of its rights, privileges, franchises, immunities, powers,
1218 and purposes.

1219 (12) Service of process in an action or proceeding
1220 against a surviving foreign entity to enforce an obligation of
1221 a domestic entity that is a party to a merger may be made by
1222 registered mail addressed to the surviving entity at the
1223 address set forth in the statement of merger or by any method
1224 provided by the Alabama Rules of Civil Procedure. Any notice
1225 or demand required or permitted by law to be served on a
1226 domestic entity may be served on the surviving foreign entity
1227 by registered mail addressed to the surviving entity at the
1228 address set forth in the statement of merger or in any other
1229 manner similar to the procedure provided by the Alabama Rules
1230 of Civil Procedure for the service of process.

1231 (13) (A) An owner of an entity with limited liability
1232 protection remains liable, if at all, for an obligation



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1233 incurred prior to the merger by an entity that ceases to exist
1234 as a result of the merger only to the extent, if any, that the
1235 owner would have been liable under the laws applicable to
1236 owners of the form of entity that ceased to exist if the
1237 merger had not occurred.

1238 (B) An owner with limited liability protection who, as
1239 a result of the merger, becomes an owner without limited
1240 liability protection of the surviving entity is liable for an
1241 obligation of the surviving entity incurred after merger to
1242 the extent provided for by the laws applicable to the
1243 surviving entity.

1244 (14) An owner without limited liability protection of
1245 an entity that ceases to exist as a result of a merger and who
1246 as a result of the merger becomes an owner of a surviving
1247 entity with limited liability protection remains liable for an
1248 obligation of the entity that ceases to exist incurred before
1249 the merger takes effect only to the extent, if any, that the
1250 owner would have been liable if the merger had not occurred.

1251 (i) A certified copy of the statement of merger
1252 required to be filed under this section may be filed in the
1253 real estate records in the office of the judge of probate in
1254 any county in which any merged entity owned real property,
1255 without payment and without collection by the judge of probate
1256 of any deed or other transfer tax or fee. The judge of
1257 probate, however, shall be entitled to collect a filing fee of
1258 five dollars (\$5). Any such filing shall evidence chain of
1259 title, but lack of filing shall not affect the surviving
1260 entity's title to such real property.



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1261 (j) Except as set forth in Section 10A-1-8.02(a)(4),
1262 for purposes of this Section 10A-1-8.02, a plan of merger,
1263 whether referred to as a plan of merger, an agreement of
1264 merger, a merger agreement, a plan and agreement of merger, an
1265 agreement and plan of merger, or otherwise, means a writing
1266 that includes the items required or allowed to be set forth
1267 therein and includes any agreement, instrument, or other
1268 document referenced therein or associated therewith that sets
1269 forth the terms and conditions of the merger."

1270 Section 2. Sections 10A-2A-7.40, 10A-2A-9.11,
1271 10A-2A-11.01, 10A-2A-11.02, and 10A-2A-11.03, Code of Alabama
1272 1975, are amended to read as follows:

1273 "§10A-2A-7.40

1274 In this division:

1275 (1) COURT means the designated court, and if none, the
1276 circuit court for the county in which the corporation's
1277 principal office is located in this state, and if none in this
1278 state, the circuit court for the county in which the
1279 corporation's most recent registered office is located.

1280 (2) DERIVATIVE ACTION means a civil suit in the right
1281 of a corporation or, to the extent provided in Section
1282 10A-2A-7.48, in the right of a foreign corporation, to recover
1283 for an injury to the corporation or foreign corporation.

1284 (3) STOCKHOLDER means a record stockholder, a
1285 beneficial stockholder, and an unrestricted voting trust
1286 beneficial owner."

1287 "§10A-2A-9.11

1288 (a) An organization other than a corporation may



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1289 convert to a corporation, and a corporation may convert to an
1290 organization other than a corporation pursuant to this
1291 article, and a plan of conversion, if:

1292 (1) the governing statute of the organization that is
1293 not a corporation authorizes the conversion;

1294 (2) the law of the jurisdiction governing the
1295 converting organization and the converted organization does
1296 not prohibit the conversion; and

1297 (3) the converting organization and the converted
1298 organization each comply with the governing statute and
1299 organizational documents applicable to that organization in
1300 effecting the conversion.

1301 (b) A plan of conversion must be in writing and must
1302 include:

1303 (1) the name, type of organization, and mailing address
1304 of the principal office of the converting organization and its
1305 unique identifying number or other designation as assigned by
1306 the Secretary of State, if any, before conversion;

1307 (2) the name, type of organization, and mailing address
1308 of the principal office of the converted organization after
1309 conversion;

1310 (3) the terms and conditions of the conversion,
1311 including the manner and basis for converting interests in the
1312 converting organization into any combination of money,
1313 interests in the converted organization, and other
1314 consideration allowed in Section 10A-9A-10.02(c); and

1315 (4) the organizational documents of the converted
1316 organization.



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1317 (c) In connection with a conversion, rights or
1318 securities of or interests in the converting organization may
1319 be exchanged for or converted into cash, property, or rights
1320 or securities of or interests in the converted organization,
1321 or, in addition to or in lieu thereof, may be exchanged for or
1322 converted into cash, property, or rights or securities of or
1323 interests in another organization or may be cancelled.

1324 (d) In addition to the requirements of subsection (a),
1325 a plan of conversion may contain any other provision not
1326 prohibited by law.

1327 (e) The terms of a plan of conversion may be made
1328 dependent upon facts objectively ascertainable outside the
1329 plan in accordance with Section 10A-2A-1.20(c).

1330 (f) At the time of the approval of the plan of
1331 conversion in accordance with this chapter, the plan of
1332 conversion is not required to contain or have attached thereto
1333 any disclosure letter, disclosure schedules, or similar
1334 documents or instruments contemplated by the plan of
1335 conversion that modify, supplement, qualify, or make
1336 exceptions to representations, warranties, covenants, or
1337 conditions contained in the plan of conversion."

1338 "§10A-2A-11.01

1339 As used in this article, unless the context otherwise
1340 requires, the following terms mean:

1341 (1) ACQUIRED ENTITY means the corporation or foreign
1342 corporation that will have all of one or more classes or
1343 series of its stock acquired in a stock exchange.

1344 (2) ACQUIRING ENTITY means the corporation or foreign



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1345 corporation that will acquire all of one or more classes or
1346 series of stock of the acquired entity in a stock exchange.

1347 (3) CONSTITUENT CORPORATION means a constituent
1348 organization that is a corporation.

1349 (4) CONSTITUENT ORGANIZATION means an organization that
1350 is party to a merger under this article.

1351 (5) GOVERNING STATUTE of an organization means the
1352 statute that governs the organization's internal affairs.

1353 (6) ORGANIZATION means a general partnership, including
1354 a limited liability partnership; limited partnership,
1355 including a limited liability limited partnership; limited
1356 liability company; business trust; corporation; nonprofit
1357 corporation; professional corporation; or any other person
1358 having a governing statute. The term includes domestic and
1359 foreign organizations whether or not organized for profit.

1360 (7) ORGANIZATIONAL DOCUMENTS means:

1361 (A) for a general partnership or foreign general
1362 partnership, its partnership agreement and if applicable, its
1363 registration as a limited liability partnership or a foreign
1364 limited liability partnership;

1365 (B) for a limited partnership or foreign limited
1366 partnership, its certificate of formation and partnership
1367 agreement, or comparable writings as provided in its governing
1368 statute;

1369 (C) for a limited liability company or foreign limited
1370 liability company, its certificate of formation and limited
1371 liability company agreement, or comparable writings as
1372 provided in its governing statute;



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1373 (D) for a business or statutory trust or foreign
1374 business or statutory trust its agreement of trust and
1375 declaration of trust, or comparable writings as provided in
1376 its governing statute;

1377 (E) for a corporation or foreign corporation, its
1378 certificate of incorporation, bylaws, and other agreements
1379 among its stockholders that are authorized by its governing
1380 statute, or comparable writings as provided in its governing
1381 statute;

1382 (F) for a nonprofit corporation or foreign nonprofit
1383 corporation, its certificate of incorporation, bylaws, and
1384 other agreements that are authorized by its governing statute,
1385 or comparable writings as provided in its governing statute;

1386 (G) for a professional corporation or foreign
1387 professional corporation, its certificate of incorporation,
1388 bylaws, and other agreements among its stockholders that are
1389 authorized by its governing statute, or comparable writings as
1390 provided in its governing statute; and

1391 (H) for any other organization, the basic writings that
1392 create the organization and determine its internal governance
1393 and the relations among the persons that own it, have an
1394 interest in it, or are members of it.

1395 (8) NEW PERSONAL LIABILITY means personal liability of
1396 a person, resulting from a merger or stock exchange, that is
1397 (i)-(A) in respect of an entity which is different from the
1398 entity in which the person held stock or eligible interests
1399 immediately before the merger became effective, or (B) in
1400 respect of an entity which is different from the entity in



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1401 which the person held stock immediately before the stock
1402 exchange became effective; or (ii) in respect of the same
1403 entity as the one in which the person held stock or eligible
1404 interests immediately before the merger became effective if
1405 (A) the person did not have personal liability immediately
1406 before the merger became effective, or (B) the person had
1407 personal liability immediately before the merger became
1408 effective, the terms and conditions of which were changed when
1409 the merger became effective; or (iii) in respect of the same
1410 entity as the one in which the person held stock immediately
1411 before the stock exchange became effective if (A) the person
1412 did not have personal liability immediately before the stock
1413 exchange became effective, or (B) the person had personal
1414 liability immediately before the stock exchange became
1415 effective, the terms and conditions of which were changed when
1416 the stock exchange became effective.

1417 (9) PLAN OF MERGER. Except as set forth in Section
1418 10A-2A-11.02(g), a plan of merger, whether referred to as a
1419 plan of merger, an agreement of merger, a merger agreement, a
1420 plan and agreement of merger, an agreement and plan of merger,
1421 or otherwise, means a writing described in Section
1422 10A-2A-11.02 and includes any agreement, instrument, or other
1423 document referenced therein or associated therewith that sets
1424 forth the terms and conditions of the merger.

1425 ~~(9)~~ (10) SURVIVING ORGANIZATION means an organization
1426 into which one or more other organizations are merged under
1427 this article, whether the organization pre-existed the merger
1428 or was created pursuant to the merger."



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1429 "§10A-2A-11.02

1430 (a) A corporation may merge with one or more other
1431 constituent organizations pursuant to this article, and a plan
1432 of merger, if:

1433 (1) the governing statute of each of the other
1434 organizations authorizes the merger;

1435 (2) the merger is not prohibited by the law of a
1436 jurisdiction that enacted any of those governing statutes; and

1437 (3) each of the other organizations complies with its
1438 governing statute in effecting the merger.

1439 (b) A plan of merger must be in writing and must
1440 include:

1441 (1) the name, type of organization, and mailing address
1442 of the principal office of each constituent organization, the
1443 jurisdiction of the governing statute of each constituent
1444 organization, and the respective unique identifying number or
1445 other designation as assigned by the Secretary of State, if
1446 any, of each constituent organization;

1447 (2) the name, type of organization, and mailing address
1448 of the principal office of the surviving organization, the
1449 unique identifying number or other designation as assigned by
1450 the Secretary of State, if any, of the surviving organization,
1451 the jurisdiction of the governing statute of the surviving
1452 organization, and, if the surviving organization is created
1453 pursuant to the merger, a statement to that effect;

1454 (3) the terms and conditions of the merger, including
1455 the manner and basis for converting the stock or eligible
1456 interests in each constituent organization into any



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1457 combination of money, stock, eligible interests in the
1458 surviving organization, and other consideration as allowed by
1459 subsection (c);

1460 (4) if the surviving organization is to be created
1461 pursuant to the merger, the surviving organization's
1462 organizational documents; and

1463 (5) if the surviving organization is not to be created
1464 pursuant to the merger, any amendments to be made by the
1465 merger to the surviving organization's organizational
1466 documents.

1467 (c) In connection with a merger, rights, securities,
1468 stock, or eligible interests, if any, in a constituent
1469 organization may be exchanged for or converted into cash,
1470 property, rights, securities, stock, or eligible interests, if
1471 any, in the surviving organization, or, in addition to or in
1472 lieu thereof, may be exchanged for or converted into cash,
1473 property, rights, securities, stock, or eligible interests, if
1474 any, in another organization, or may be cancelled.

1475 (d) In addition to the requirements of subsection (b),
1476 a plan of merger may:

1477 (1) provide that (i) a constituent organization or any
1478 other party to the plan of merger that fails to perform its
1479 obligations under the plan of merger in accordance with the
1480 terms and conditions of the plan of merger, or that otherwise
1481 fails to comply with the terms and conditions of the plan of
1482 merger, in each case, required to be performed or complied
1483 with prior to the time the merger becomes effective, or that
1484 otherwise fails to consummate, or fails to cause the



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1485 consummation of, the merger (whether prior to a specified
1486 date, upon satisfaction or, to the extent permitted by law,
1487 waiver of all conditions to consummation set forth in the plan
1488 of merger, or otherwise) shall be subject, in addition to any
1489 other remedies available at law or in equity, to the penalties
1490 or consequences as are set forth in the plan of merger (which
1491 penalties or consequences may include an obligation to pay to
1492 the other party or parties to the plan of merger an amount
1493 representing, or based on the loss of, any premium or other
1494 economic entitlement the stockholders or owners, as the case
1495 may be, of the other party would be entitled to receive
1496 pursuant to the terms of the plan of merger if the merger were
1497 consummated in accordance with the terms of the plan of
1498 merger) and (ii) if, pursuant to the terms of the plan of
1499 merger, a corporation is entitled to receive payment from
1500 another party to the plan of merger of any amount representing
1501 a penalty or consequence (as specified in clause (i) of this
1502 Section 10A-2A-11.02(d)(1)), the corporation shall be entitled
1503 to enforce the other party's payment obligation and, upon
1504 receipt of any payment, shall be entitled to retain the amount
1505 of the payment so received;

1506 (2) provide (i) for the appointment, at or after the
1507 time at which the plan of merger is adopted by the
1508 stockholders of a constituent corporation in accordance with
1509 the requirements of Section 10A-2A-11.04, of one or more
1510 persons (which may include the surviving or resulting entity
1511 or any officer, manager, representative or agent thereof) as
1512 representative of the stockholders of a constituent



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1513 corporation of this state, including those whose shares of
1514 capital stock shall be cancelled, converted, or exchanged in
1515 the merger, and for the delegation to that person or persons
1516 of the sole and exclusive authority to take action on behalf
1517 of the stockholders pursuant to the plan of merger, including
1518 taking such actions as the representative determines to
1519 enforce (including by entering into settlements with respect
1520 to) the rights of the stockholders under the plan of merger,
1521 on the terms and subject to the conditions set forth in the
1522 plan of merger, (ii) that any appointment pursuant to clause
1523 (i) of this Section 10A-2A-11.02(d) (2) shall be irrevocable
1524 and binding on all stockholders from and after the adoption of
1525 the plan of merger by the requisite vote of the stockholders
1526 pursuant to Section 10A-2A-11.04, and (iii) that any provision
1527 adopted pursuant to this Section 10A-2A-11.02(d) (2) may not be
1528 amended after the merger has become effective or may be
1529 amended only with the consent or approval of persons specified
1530 in the plan of merger; and

1531 (3) contain any other provision not prohibited by law.

1532 (e) Terms of a plan of merger may be made dependent on
1533 facts objectively ascertainable outside the plan in accordance
1534 with Section 10A-2A-1.20(c).

1535 (f) A plan of merger may be amended only with the
1536 consent of each constituent organization, except as provided
1537 in the plan. A domestic constituent organization may approve
1538 an amendment to a plan:

1539 (1) in the same manner as the plan was approved, if the
1540 plan does not provide for the manner in which it may be



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1541 amended; or

1542 (2) in the manner provided in the plan, except that if
1543 the plan has been approved by the stockholders, members, or
1544 interest holders that were entitled to vote on, consent to, or
1545 approve of, the plan, then those stockholders, members, or
1546 interest holders are entitled to vote on, consent to, or
1547 approve of any amendment of the plan that will change:

1548 (i) the amount or kind of stock or other securities,
1549 eligible interests, obligations, rights to acquire stock,
1550 other securities or eligible interests, cash, or other
1551 property to be received under the plan by the stockholders,
1552 members, or interest holders of a constituent organization;

1553 (ii) the certificate of incorporation of any
1554 corporation, foreign corporation, nonprofit corporation,
1555 foreign nonprofit corporation or the organizational documents
1556 of any unincorporated entity or foreign unincorporated entity,
1557 that will be the surviving organization, except for changes
1558 permitted by Section 10A-2A-10.05 or by comparable provisions
1559 of the governing statute of the foreign corporation, nonprofit
1560 corporation, foreign nonprofit corporation, unincorporated
1561 entity, or foreign unincorporated entity; or

1562 (iii) any of the other terms or conditions of the plan
1563 if the change would adversely affect the stockholders,
1564 members, or interest holders in any material respect.

1565 (g) At the time of the approval of the plan of merger
1566 in accordance with this chapter, the plan of merger is not
1567 required to contain or have attached thereto any disclosure
1568 letter, disclosure schedules, or similar documents or



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1569 instruments contemplated by the plan of merger that modify,
1570 supplement, qualify, or make exceptions to representations,
1571 warranties, covenants, or conditions contained in the plan of
1572 merger."

1573 "§10A-2A-11.03

1574 (a) By complying with this Article 11:

1575 (1) a corporation may acquire all of the stock of one
1576 or more classes or series of stock, of another corporation or
1577 foreign corporation, in exchange for stock or other
1578 securities, obligations, rights to acquire stock or other
1579 securities, cash, other property, or any combination of the
1580 foregoing, pursuant to a plan of stock exchange; or

1581 (2) all of the stock of one or more classes or series
1582 of stock of a corporation may be acquired by another
1583 corporation or foreign corporation, in exchange for stock or
1584 other securities, obligations, rights to acquire stock or
1585 other securities, cash, other property, or any combination of
1586 the foregoing, pursuant to a plan of stock exchange.

1587 (b) A foreign corporation may be the acquired entity in
1588 a stock exchange only if the stock exchange is permitted by
1589 the governing statute of that foreign corporation.

1590 (c) The plan of stock exchange must include:

1591 (1) the name of each corporation or foreign corporation
1592 the stock of which will be acquired, the name of the
1593 corporation or foreign corporation that will acquire that
1594 stock, and the respective unique identifying numbers or other
1595 designations as assigned by the Secretary of State, if any, of
1596 the corporation or foreign corporation;



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1597 (2) the terms and conditions of the stock exchange;

1598 (3) the manner and basis of exchanging stock of a
1599 corporation or foreign corporation, the stock of which will be
1600 acquired under the stock exchange for stock or other
1601 securities, obligations, rights to acquire stock, other
1602 securities, cash, other property, or any combination of the
1603 foregoing; and

1604 (4) any other provisions required by the governing
1605 statute governing the acquired entity or its certificate of
1606 incorporation or organizational documents.

1607 (d) Terms of a plan of stock exchange may be made
1608 dependent on facts objectively ascertainable outside the plan
1609 in accordance with Section 10A-2A-1.20(c).

1610 (e) A plan of stock exchange may be amended only with
1611 the consent of each party to the stock exchange, except as
1612 provided in the plan. A corporation may approve an amendment
1613 to a plan:

1614 (1) in the same manner as the plan was approved, if the
1615 plan does not provide for the manner in which it may be
1616 amended; or

1617 (2) in the manner provided in the plan, except that if
1618 the plan has been approved by the stockholders that were
1619 entitled to vote on, consent to, or approve of the plan then
1620 those stockholders are entitled to vote on, consent to, or
1621 approve of any amendment of the plan that will change:

1622 (i) the amount or kind of stock or other securities,
1623 obligations, rights to acquire stock, other securities, cash,
1624 or other property to be received under the plan by the



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1625 stockholders of the acquired entity; or

1626 (ii) any of the other terms or conditions of the plan
1627 if the change would adversely affect the stockholders in any
1628 material respect.

1629 (f) At the time of the approval of the plan of stock
1630 exchange in accordance with this chapter, the plan of stock
1631 exchange is not required to contain or have attached thereto
1632 any disclosure letter, disclosure schedules, or similar
1633 documents or instruments contemplated by the plan of stock
1634 exchange that modify, supplement, qualify, or make exceptions
1635 to representations, warranties, covenants, or conditions
1636 contained in the plan of stock exchange."

1637 Section 3. Sections 10A-3A-12.01, 10A-3A-12.02, and
1638 10A-3A-13.02, Code of Alabama 1975, are amended to read as
1639 follows:

1640 "§10A-3A-12.01

1641 As used in this article, unless the context otherwise
1642 requires, the following terms mean:

1643 (1) CONSTITUENT CORPORATION means a constituent
1644 organization that is a nonprofit corporation.

1645 (2) CONSTITUENT ORGANIZATION means an organization that
1646 is party to a merger under this article.

1647 (3) GOVERNING STATUTE of an organization means the
1648 statute that governs the organization's internal affairs.

1649 (4) ORGANIZATION means a general partnership, including
1650 a limited liability partnership; limited partnership,
1651 including a limited liability limited partnership; limited
1652 liability company; business trust; business corporation;



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1653 nonprofit corporation; professional corporation; or any other
1654 person having a governing statute. The term includes domestic
1655 and foreign organizations whether or not organized for profit.

1656 (5) ORGANIZATIONAL DOCUMENTS means:

1657 (A) for a general partnership or foreign general
1658 partnership, its partnership agreement and if applicable, its
1659 registration as a limited liability partnership or a foreign
1660 limited liability partnership;

1661 (B) for a limited partnership or foreign limited
1662 partnership, its certificate of formation and partnership
1663 agreement, or comparable writings as provided in its governing
1664 statute;

1665 (C) for a limited liability company or foreign limited
1666 liability company, its certificate of formation and limited
1667 liability company agreement, or comparable writings as
1668 provided in its governing statute;

1669 (D) for a business or statutory trust or foreign
1670 business or statutory trust its agreement of trust and
1671 declaration of trust, or comparable writings as provided in
1672 its governing statute;

1673 (E) for a business corporation or foreign business
1674 corporation, its certificate of incorporation, bylaws, and
1675 other agreements among its stockholders that are authorized by
1676 its governing statute, or comparable writings as provided in
1677 its governing statute;

1678 (F) for a nonprofit corporation or foreign nonprofit
1679 corporation, its certificate of incorporation, bylaws, and
1680 other agreements that are authorized by its governing statute,



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1681 or comparable writings as provided in its governing statute;

1682 (G) for a professional corporation or foreign
1683 professional corporation, its certificate of incorporation,
1684 bylaws, and other agreements among its stockholders that are
1685 authorized by its governing statute, or comparable writings as
1686 provided in its governing statute; and

1687 (H) for any other organization, the basic writings that
1688 create the organization and determine its internal governance
1689 and the relations among the persons that own it, have an
1690 interest in it, or are members of it.

1691 (6) PLAN OF MERGER. Except as set forth in Section
1692 10A-3A-12.02(g), a plan of merger, whether referred to as a
1693 plan of merger, an agreement of merger, a merger agreement, a
1694 plan and agreement of merger, an agreement and plan of merger,
1695 or otherwise, means a writing described in Section
1696 10A-3A-12.02 and includes any agreement, instrument, or other
1697 document referenced therein or associated therewith that sets
1698 forth the terms and conditions of the merger.

1699 ~~(6)~~ (7) SURVIVING ORGANIZATION means an organization
1700 into which one or more other organizations are merged under
1701 this article, whether the organization pre-existed the merger
1702 or was created pursuant to the merger.

1703 "§10A-3A-12.02

1704 (a) A nonprofit corporation may merge with one or more
1705 other constituent organizations pursuant to this article, and
1706 a plan of merger, if:

1707 (1) the governing statute of each of the other
1708 organizations authorizes the merger;



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1709 (2) the merger is not prohibited by the law of a
1710 jurisdiction that enacted any of those governing statutes; and

1711 (3) each of the other organizations complies with its
1712 governing statute in effecting the merger.

1713 (b) A plan of merger must be in writing and must
1714 include:

1715 (1) the name, type of organization, and mailing address
1716 of the principal office of each constituent organization, the
1717 jurisdiction of the governing statute of each constituent
1718 organization, and the respective unique identifying number or
1719 other designation as assigned by the Secretary of State, if
1720 any, of each constituent organization;

1721 (2) the name, type of organization, and mailing address
1722 of the principal office of the surviving organization, the
1723 unique identifying number or other designation as assigned by
1724 the Secretary of State, if any, of the surviving organization,
1725 the jurisdiction of the governing statute of the surviving
1726 organization, and, if the surviving organization is created
1727 pursuant to the merger, a statement to that effect;

1728 (3) the terms and conditions of the merger, including
1729 the manner and basis for converting the interests in each
1730 constituent organization into any combination of money,
1731 securities, interests in the surviving organization, and other
1732 consideration as allowed by subsection (c);

1733 (4) if the surviving organization is to be created
1734 pursuant to the merger, the surviving organization's
1735 organizational documents; and

1736 (5) if the surviving organization is not to be created



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1737 pursuant to the merger, any amendments to be made by the
1738 merger to the surviving organization's organizational
1739 documents.

1740 (c) In connection with a merger, rights, securities, or
1741 interests, if any, in a constituent organization may be
1742 exchanged for or converted into cash, property, rights,
1743 securities, or interests, if any, in the surviving
1744 organization, or, in addition to or in lieu thereof, may be
1745 exchanged for or converted into cash, property, rights,
1746 securities, or interests, if any, in another organization, or
1747 may be cancelled.

1748 (d) In addition to the requirements of subsection (b),
1749 a plan of merger may contain any other provision not
1750 prohibited by law.

1751 (e) Terms of a plan of merger may be made dependent on
1752 facts objectively ascertainable outside the plan in accordance
1753 with Section 10A-3A-1.04(c)(5).

1754 (f) A plan of merger may be amended only with the
1755 consent of each constituent organization, except as provided
1756 in the plan. A domestic constituent organization may approve
1757 an amendment to a plan:

1758 (1) in the same manner as the plan was approved, if the
1759 plan does not provide for the manner in which it may be
1760 amended; or

1761 (2) in the manner provided in the plan, except that if
1762 the plan has been approved by the interest holders that were
1763 entitled to vote on, consent to, or approve of, the plan, then
1764 those interest holders are entitled to vote on, consent to, or



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1765 approve of any amendment of the plan that will change:

1766 (i) the amount or kind of securities, interests,
1767 obligations, rights to acquire other interests or securities,
1768 cash, or other property to be received under the plan by the
1769 interest holders of a constituent organization;

1770 (ii) the certificate of incorporation of any nonprofit
1771 corporation, foreign nonprofit corporation, business
1772 corporation, or foreign business corporation, or the
1773 organizational documents of any other organization, that will
1774 be the surviving organization, except for changes permitted by
1775 Section 10A-3A-9.03(g) or by comparable provisions of the
1776 governing statute of the foreign nonprofit corporation,
1777 business corporation, foreign business corporation, or other
1778 organization; or

1779 (iii) any of the other terms or conditions of the plan
1780 if the change would adversely affect the interest holders in
1781 any material respect.

1782 (g) At the time of the approval of the plan of merger
1783 in accordance with this chapter, the plan of merger is not
1784 required to contain or have attached thereto any disclosure
1785 letter, disclosure schedules, or similar documents or
1786 instruments contemplated by the plan of merger that modify,
1787 supplement, qualify, or make exceptions to representations,
1788 warranties, covenants, or conditions contained in the plan of
1789 merger."

1790 "§10A-3A-13.02

1791 (a) An organization other than a nonprofit corporation
1792 may convert to a nonprofit corporation, and a nonprofit



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1793 corporation may convert to an organization other than a
1794 nonprofit corporation pursuant to this article, and a plan of
1795 conversion, if:

1796 (1) the governing statute of the organization that is
1797 not a nonprofit corporation authorizes the conversion;

1798 (2) the law of the jurisdiction governing the
1799 converting organization and the converted organization does
1800 not prohibit the conversion; and

1801 (3) the converting organization and the converted
1802 organization each comply with the governing statute and
1803 organizational documents applicable to that organization in
1804 effecting the conversion.

1805 (b) A plan of conversion must be in writing and must
1806 include:

1807 (1) the name, type of organization, and mailing address
1808 of the principal office of the converting organization and its
1809 unique identifying number or other designation as assigned by
1810 the Secretary of State, if any, before conversion;

1811 (2) the name, type of organization, and mailing address
1812 of the principal office of the converted organization after
1813 conversion;

1814 (3) the terms and conditions of the conversion,
1815 including the manner and basis for converting interests, if
1816 any, in the converting organization into any combination of
1817 money, interests in the converted organization, and other
1818 consideration allowed in subsection (c); and

1819 (4) the organizational documents of the converted
1820 organization.



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1821 (c) In connection with a conversion, rights or
1822 securities of or interests, if any, in the converting
1823 organization may be exchanged for or converted into cash,
1824 property, or rights or securities of or interests, if any, in
1825 the converted organization, or, in addition to or in lieu
1826 thereof, may be exchanged for or converted into cash,
1827 property, rights, securities, or interests, if any, in another
1828 organization, or may be cancelled.

1829 (d) In addition to the requirements of subsection (b),
1830 a plan of conversion may contain any other provision not
1831 prohibited by law.

1832 (e) Terms of a plan of conversion may be made dependent
1833 on facts objectively ascertainable outside the plan in
1834 accordance with Section 10A-3A-1.04(c).

1835 (f) At the time of the approval of the plan of
1836 conversion in accordance with this chapter, the plan of
1837 conversion is not required to contain or have attached thereto
1838 any disclosure letter, disclosure schedules, or similar
1839 documents or instruments contemplated by the plan of
1840 conversion that modify, supplement, qualify, or make
1841 exceptions to representations, warranties, covenants, or
1842 conditions contained in the plan of conversion."

1843 Section 4. Section 10A-4-3.02, as amended by Act
1844 2024-413, 2024 Regular Session, Code of Alabama 1975, is
1845 amended to read as follows:

1846 "§10A-4-3.02

1847 (a) Upon the death of a stockholder of a domestic
1848 professional corporation, ~~or if~~ upon a stockholder of a



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1849 domestic professional corporation ~~becomes~~ becoming a
1850 disqualified person, or ~~if~~ upon stock of a domestic
1851 professional corporation ~~is~~ being transferred by operation of
1852 law or court decree to a disqualified person, the stock owned
1853 by the deceased stockholder or the disqualified person may be
1854 transferred to a qualified person and, if not so transferred,
1855 shall be purchased ~~or redeemed~~ by the domestic professional
1856 corporation ~~to the extent of funds which may be legally made~~
1857 ~~available for the purchase~~ as provided in this section.

1858 (b) If the purchase price ~~for~~ of the stock is not ~~fixed~~
1859 ~~by~~ determined in accordance with the governing documents of
1860 the domestic professional corporation or by private agreement,
1861 the domestic professional corporation, within six months after
1862 the death or 30 days after the disqualification or transfer,
1863 as the case may be, shall make a written offer to pay for the
1864 stock at a specified price deemed by the domestic professional
1865 corporation to be the fair value ~~thereof~~ of the stock as of
1866 the date of the death, disqualification, or transfer. The
1867 offer shall be ~~given~~ delivered to the ~~executor or~~
1868 ~~administrator~~ personal representative of the estate of ~~a~~ the
1869 deceased stockholder ~~or to~~, the disqualified person, or the
1870 transferee, as the case may be, and shall be accompanied by a
1871 balance sheet of the domestic professional corporation, as of
1872 the latest available date and not more than 12 months prior to
1873 the making of the offer, and a profit and loss statement of
1874 the domestic professional corporation for the 12 months'
1875 period ended on the date of the balance sheet.

1876 (c) If ~~within 30 days after the date of the written~~



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1877 ~~offer from the domestic professional corporation~~ the fair
1878 value of the stock is agreed upon between the personal
1879 representative of the estate of the deceased stockholder, the
1880 disqualified person, or the transferee, as the case may be,
1881 and the domestic professional corporation, payment therefor
1882 shall be made within 90 days after the date of the offer, or
1883 other period as the parties may ~~fix by agreement, after the~~
1884 ~~date of the offer, upon surrender of the certificate or~~
1885 ~~certificates representing the stock~~ agree. Upon payment of the
1886 agreed value the personal representative of the estate of the
1887 deceased member, the disqualified ~~persons~~ person, or the
1888 transferee, as the case may be, shall cease to have any
1889 interest in, or claim to, the stock.

1890 (d) If ~~within 30 days from the date of the written~~
1891 ~~offer from the domestic professional corporation,~~ the fair
1892 value of the stock is not agreed upon between the personal
1893 representative of the estate of the deceased stockholder, the
1894 disqualified person, or the transferee, as the case may be,
1895 and the domestic professional corporation ~~do not so agree~~
1896 within 30 days of the delivery of the written offer, then
1897 either party may commence a civil action in the designated
1898 court, and if none, in the circuit court for the county in
1899 which the domestic professional corporation's principal office
1900 is located in this state, and if none in this state, in the
1901 circuit court for the county in which the domestic
1902 professional corporation's most recent registered office is
1903 located requesting that the fair value of the stock be found
1904 and determined. If the domestic professional corporation does



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1905 not deliver a written offer in accordance with subsection (b),
1906 then the personal representative of the estate of the deceased
1907 stockholder, the disqualified person, or the transferee, as
1908 the case may be, may commence a civil action in the designated
1909 court, and if none, in the circuit court for the county in
1910 which the domestic professional corporation's principal office
1911 is located in this state, and if none in this state, in the
1912 circuit court for the county in which the domestic
1913 professional corporation's most recent registered office is
1914 located requesting that the fair value of the stock be found
1915 and determined. The personal representative of the estate of
1916 the deceased stockholder, the disqualified person, or the
1917 transferee, as the case may be, wherever residing, shall be
1918 made a party to the proceeding as an action against ~~the~~
1919 ~~disqualified that~~ person's stock quasi in rem. Service shall
1920 be made in accordance with the rules of civil procedure. The
1921 personal representative of the estate of the deceased
1922 stockholder, the disqualified person, or the transferee, as
1923 the case may be, shall be entitled to a judgment against the
1924 domestic professional corporation for the amount of the fair
1925 value of ~~the disqualified that~~ person's stock as of the date
1926 of death, disqualification, or transfer ~~upon surrender to the~~
1927 ~~domestic professional corporation of the certificate or~~
1928 ~~certificates representing the stock.~~ The court may, in its
1929 discretion, order that the judgment be paid in installments
1930 and with interest and on terms as the court may determine. The
1931 court may, if it so elects, appoint one or more persons as
1932 appraisers to receive evidence and recommend a decision on the



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1933 question of fair value. The appraisers shall have the power
1934 and authority as shall be specified in the order of their
1935 appointment or an amendment thereof.

1936 (e) The judgment shall include an allowance for
1937 interest at the rate the court finds to be fair and equitable
1938 in all the circumstances, from the date of death,
1939 disqualification, or transfer.

1940 (f) ~~The costs and expenses of any proceeding shall be~~
1941 ~~determined by the court and shall be assessed against the~~
1942 ~~domestic professional corporation, but all or any part of the~~
1943 ~~costs and expenses may be apportioned and assessed as the~~
1944 ~~court may deem equitable against the disqualified person if~~
1945 ~~the court shall find that the action of the disqualified~~
1946 ~~person in failing to accept the offer was arbitrary or~~
1947 ~~vexatious or not in good faith. The expenses shall include~~
1948 ~~reasonable compensation for and reasonable expenses of the~~
1949 ~~appraisers and a reasonable attorney's fee but shall exclude~~
1950 ~~the fees and expenses of counsel for and of experts employed~~
1951 ~~by any party; but if the fair value of the stock as determined~~
1952 ~~materially exceeds the amount which the domestic professional~~
1953 ~~corporation offered to pay therefor, or if no offer was made,~~
1954 ~~the court in its discretion may award to the disqualified~~
1955 ~~person the sum the court determines to be reasonable~~
1956 ~~compensation to any expert or experts employed by the~~
1957 ~~disqualified person in the proceeding.~~ (1) The court in a
1958 proceeding commenced under subsection (d) shall determine all
1959 court costs of the proceeding, including the reasonable
1960 compensation and expenses of appraisers appointed by the



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1961 court. The court shall assess the court costs against the
1962 domestic professional corporation, except that the court may
1963 assess court costs against the personal representative of the
1964 estate of the deceased stockholder, the disqualified person,
1965 or the transferee, as the case may be, in amounts which the
1966 court finds equitable, to the extent the court finds the
1967 personal representative of the estate of the deceased
1968 stockholder, the disqualified person, or the transferee, as
1969 the case may be, acted arbitrarily, vexatiously, or not in
1970 good faith with respect to the rights provided by this
1971 section.

1972 (2) The court in a proceeding commenced under
1973 subsection (d) may also assess the expenses of the respective
1974 parties in amounts the court finds equitable:

1975 (A) against the domestic professional corporation and
1976 in favor of the personal representative of the estate of the
1977 deceased stockholder, the disqualified person, or the
1978 transferee, as the case may be, if the court finds the
1979 domestic professional corporation did not substantially comply
1980 with the requirements of this section; or

1981 (B) against either the domestic professional
1982 corporation or the personal representative of the estate of
1983 the deceased stockholder, the disqualified person, or the
1984 transferee, as the case may be, in favor of the other party,
1985 if the court finds the party against whom expenses are
1986 assessed acted arbitrarily, vexatiously, or not in good faith
1987 with respect to the rights provided by this section.

1988 (3) For purposes of this subsection (f), expenses means



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1989 reasonable expenses of any kind that are incurred in
1990 connection with a proceeding brought under subsection (d).

1991 (g) If a purchase, redemption, or transfer of the stock
1992 of a deceased stockholder ~~or,~~ disqualified person, ~~or of a~~
1993 transferee who is a disqualified person is not completed
1994 within 12 months after the death of the deceased stockholder
1995 or 12 months after the disqualification or transfer, as the
1996 case may be, the domestic professional corporation shall
1997 forthwith cancel the stock on its books and the personal
1998 representative of the estate of the deceased stockholder, the
1999 disqualified person, or the transferee, as the case may be,
2000 shall have no further interest as a stockholder in the
2001 domestic professional corporation other than ~~the disqualified~~
2002 that person's right to payment for the stock under this
2003 section.

2004 (h) (1) A professional corporation may acquire its own
2005 stock, and, the stock so acquired shall constitute authorized
2006 but unissued stock, provided however:

2007 (A) the certificate of incorporation may provide that
2008 the acquired stock shall constitute authorized, issued, but
2009 not outstanding stock;

2010 (B) the certificate of incorporation may prohibit the
2011 reissue of the acquired stock, in which case, the number of
2012 authorized shares of stock is reduced by the number of shares
2013 of stock acquired; or

2014 (C) if the certificate of incorporation does not (i)
2015 provide that the acquired stock shall constitute authorized
2016 but unissued stock, (ii) prohibit the reissuance of the



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2017 acquired stock, or (iii) provide that the acquired stock shall
2018 constitute authorized, issued, but not outstanding stock, then
2019 the board of directors may determine, at or prior to the time
2020 of the acquisition, that the acquired stock will constitute
2021 authorized, issued, but not outstanding stock.

2022 (2) If the board of directors determines that any
2023 acquired stock was to be authorized, issued, but not
2024 outstanding in accordance with subsection (h)(1)(C), then the
2025 board of directors may thereafter determine that the acquired
2026 stock shall be converted to stock that is authorized but not
2027 issued.

2028 (i) This section shall not ~~be deemed to~~ require ~~the a~~
2029 domestic professional corporation to purchase ~~of the~~ stock of
2030 a disqualified person ~~where the period of~~ if the
2031 disqualification is for less than 12 months from the date of
2032 disqualification ~~or transfer~~. A domestic professional
2033 corporation may require the disqualified person to sell the
2034 disqualified person's stock to the domestic professional
2035 corporation upon any disqualification.

2036 (j) Any provision regarding purchase, redemption, or
2037 transfer of stock of a domestic professional corporation
2038 contained in the certificate of incorporation, bylaws, or any
2039 private agreement shall be specifically enforceable in the
2040 courts of this state.

2041 (k) Nothing ~~herein contained~~ in this section shall
2042 prevent or relieve a domestic professional corporation from
2043 paying pension benefits or other deferred compensation for
2044 services rendered to or on behalf of a former stockholder as



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2045 otherwise permitted by law.

2046 (l) A domestic professional corporation may purchase
2047 its own stock from a disqualified person without regard to the
2048 availability of capital or surplus for the purchase; however,
2049 no purchase of or payment for the stock shall be made at a
2050 time when the domestic professional corporation is insolvent
2051 or when the purchase or payment would make it insolvent.

2052 (m) The foregoing provisions of this section shall not
2053 apply to a domestic nonprofit professional corporation. Any
2054 member of a domestic nonprofit corporation who becomes a
2055 disqualified person must cease being a member not more than 12
2056 months after the date of disqualification if he or she is then
2057 a disqualified person."

2058 Section 5. Sections 10A-5A-1.02, 10A-5A-1.06,
2059 10A-5A-2.02, as amended by Act 2024-413, 2024 Regular Session,
2060 10A-5A-5.02, 10A-5A-5.04, 10A-5A-8.02, 10A-5A-10.01, and
2061 10A-5A-10.05, Code of Alabama 1975, are amended to read as
2062 follows:

2063 "§10A-5A-1.02

2064 As used in this chapter, unless the context otherwise
2065 requires, the following terms mean:

2066 (a) CERTIFICATE OF FORMATION, with respect to a limited
2067 liability company, means the certificate provided for by
2068 Section 10A-5A-2.01, and the certificate as amended or
2069 restated.

2070 (b) CONSTITUENT LIMITED LIABILITY COMPANY means a
2071 constituent organization that is a limited liability company.

2072 (c) CONSTITUENT ORGANIZATION means an organization that



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2073 is party to a merger under Article 10.

2074 (d) CONVERTED ORGANIZATION means the organization into
2075 which a converting organization converts pursuant to Article
2076 10.

2077 (e) CONVERTING LIMITED LIABILITY COMPANY means a
2078 converting organization that is a limited liability company.

2079 (f) CONVERTING ORGANIZATION means an organization that
2080 converts into another organization pursuant to Article 10.

2081 (g) DISQUALIFIED PERSON means any person who is not a
2082 qualified person.

2083 (h) DISTRIBUTION except as otherwise provided in
2084 Section 10A-5A-4.06(e), means a transfer of money or other
2085 property from a limited liability company, or series thereof,
2086 to another person on account of a transferable interest.

2087 (i) FOREIGN LIMITED LIABILITY COMPANY means a limited
2088 liability company governed by the laws of a jurisdiction other
2089 than this state which would be a limited liability company if
2090 governed by the laws of this state.

2091 (j) GOVERNING STATUTE means the statute that governs an
2092 organization's internal affairs.

2093 (k) LIMITED LIABILITY COMPANY, except in the phrase
2094 "foreign limited liability company," means an entity formed or
2095 existing under this chapter.

2096 (l) LIMITED LIABILITY COMPANY AGREEMENT means any
2097 agreement (whether referred to as a limited liability company
2098 agreement, operating agreement or otherwise), written, oral or
2099 implied, of the member or members as to the activities and
2100 affairs of a limited liability company or series thereof. The



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2101 limited liability company agreement of a limited liability
2102 company having only one member shall not be unenforceable by
2103 reason of there being only one person who is a party to the
2104 limited liability company agreement. The limited liability
2105 company agreement includes any amendments to the limited
2106 liability company agreement.

2107 (m) MEMBER means a person admitted under Section
2108 10A-5A-4.01 and not dissociated under Section 10A-5A-6.02.

2109 (n) ORGANIZATION means a general partnership, including
2110 a limited liability partnership; limited partnership,
2111 including a limited liability limited partnership; limited
2112 liability company; business trust; corporation; nonprofit
2113 corporation; professional corporation; or any other person
2114 having a governing statute. The term includes domestic and
2115 foreign organizations whether or not organized for profit.

2116 (o) ORGANIZATIONAL DOCUMENTS means:

2117 (1) for a general partnership or foreign general
2118 partnership, its partnership agreement and if applicable, its
2119 registration as a limited liability partnership or a foreign
2120 limited liability partnership;

2121 (2) for a limited partnership or foreign limited
2122 partnership, its certificate of formation and partnership
2123 agreement, or comparable writings as provided in its governing
2124 statute;

2125 (3) for a limited liability company or foreign limited
2126 liability company, its certificate of formation and limited
2127 liability company agreement, or comparable writings as
2128 provided in its governing statute;



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2129 (4) for a business or statutory trust or foreign
2130 business or statutory trust its agreement of trust and
2131 declaration of trust, or comparable writings as provided in
2132 its governing statute;

2133 (5) for a corporation for profit or foreign corporation
2134 for profit, its certificate of formation, bylaws, and other
2135 agreements among its shareholders that are authorized by its
2136 governing statute, or comparable writings as provided in its
2137 governing statute;

2138 (6) for a nonprofit corporation or foreign nonprofit
2139 corporation, its certificate of formation, bylaws, and other
2140 agreements that are authorized by its governing statute, or
2141 comparable writings as provided in its governing statute;

2142 (7) for a professional corporation or foreign
2143 professional corporation, its certificate of formation,
2144 bylaws, and other agreements among its shareholders that are
2145 authorized by its governing statute, or comparable writings as
2146 provided in its governing statute; and

2147 (8) for any other organization, the basic writings that
2148 create the organization and determine its internal governance
2149 and the relations among the persons that own it, have an
2150 interest in it, or are members of it.

2151 (p) PLAN OF MERGER. Except as set forth in Section
2152 10A-5A-10.05(e), a plan of merger, whether referred to as a
2153 plan of merger, an agreement of merger, a merger agreement, a
2154 plan and agreement of merger, an agreement and plan of merger,
2155 or otherwise, means a writing described in Section
2156 10A-5A-10.05 and includes any agreement, instrument, or other



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2157 document referenced therein or associated therewith that sets
2158 forth the terms and conditions of the merger.

2159 ~~(p)~~ (q) QUALIFIED PERSON, with respect to a limited
2160 liability company rendering professional services in this
2161 state, means a person authorized by this state or a regulatory
2162 authority of this state to own a transferable interest in that
2163 limited liability company.

2164 ~~(q)~~ (r) SURVIVING ORGANIZATION means an organization
2165 into which one or more other organizations are merged under
2166 Article 10, whether the organization pre-existed the merger or
2167 was created pursuant to the merger.

2168 ~~(r)~~ (s) TRANSFER means an assignment, conveyance, deed,
2169 bill of sale, lease, mortgage, security interest, encumbrance,
2170 gift, or transfer by operation of law.

2171 ~~(s)~~ (t) TRANSFEREE means a person to which all or part
2172 of a transferable interest has been transferred, whether or
2173 not the transferor is a member.

2174 ~~(t)~~ (u) TRANSFERABLE INTEREST means a member's right to
2175 receive distributions from a limited liability company or a
2176 series thereof."

2177 "§10A-5A-1.06

2178 (a) It is the policy of this chapter and this state to
2179 give maximum effect to the principles of freedom of contract
2180 and to the enforceability of limited liability company
2181 agreements.

2182 (b) Unless displaced by particular provisions of this
2183 chapter, the principles of law and equity supplement this
2184 chapter.



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2185 (c) The rule that statutes in derogation of the common
2186 law are to be strictly construed shall have no application to
2187 this chapter.

2188 (d) The use of any gender shall be applicable to all
2189 genders. The captions contained in this chapter are for
2190 purposes of convenience only and shall not control or affect
2191 the construction of this chapter.

2192 (e) Sections 7-9A-406 and 7-9A-408 of the Uniform
2193 Commercial Code, and all successor statutes thereto, do not
2194 apply to any interest in a limited liability company,
2195 including all rights, powers, and interests arising under a
2196 limited liability company agreement or this chapter. This
2197 provision prevails over Sections 7-9A-406 and 7-9A-408 of the
2198 Uniform Commercial Code, and all successor statutes thereto,
2199 and is expressly intended to permit the enforcement of the
2200 provisions of a limited liability company agreement that would
2201 otherwise be ineffective under Sections 7-9A-406 and 7-9A-408
2202 of the Uniform Commercial Code, and all successor statutes
2203 thereto.

2204 (f) Division E of Article 3 of Chapter 1 of this title
2205 shall have no application to this chapter.

2206 (g) The terms president, vice president, secretary, and
2207 treasurer, as defined in Chapter 1, shall have no application
2208 to this chapter.

2209 (h) Section 10A-1-2.13(c) shall have no application to
2210 this chapter.

2211 (i) Action validly taken pursuant to one provision of
2212 this chapter shall not be deemed invalid solely because it is



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2213 identical or similar in substance to an action that could have
2214 been taken pursuant to some other provision of this chapter
2215 but fails to satisfy one or more requirements prescribed by
2216 such other provision.

2217 (j) The provisions of this chapter shall apply whether
2218 a limited liability company has one member or more than one
2219 member."

2220 "§10A-5A-2.02

2221 Division B of Article 3 of Chapter 1 shall not apply to
2222 this chapter. Instead:

2223 (a) A certificate of formation may be amended at any
2224 time.

2225 (b) A certificate of formation may be restated with or
2226 without amendment at any time.

2227 (c) To amend its certificate of formation, a limited
2228 liability company must deliver a certificate of amendment for
2229 filing to the Secretary of State which certificate of
2230 amendment shall state:

2231 (1) the name of the limited liability company;

2232 (2) the unique identifying number or other designation
2233 as assigned by the Secretary of State; and

2234 (3) the changes the amendment makes to the certificate
2235 of formation as most recently amended or restated.

2236 (d) To restate its certificate of formation, a limited
2237 liability company must deliver a restated certificate of
2238 formation for filing to the Secretary of State. A restated
2239 certificate of formation must:

2240 (1) be designated as such in the heading;



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2241 (2) state the limited liability company's name;

2242 (3) state the unique identifying number or other
2243 designation as assigned by the Secretary of State; and

2244 (4) set forth any amendment or change effected in
2245 connection with the restatement of the certificate of
2246 formation.

2247 Any ~~such~~ restatement that effects an amendment shall be
2248 subject to any other provision of this chapter, not
2249 inconsistent with this section, which would apply if a
2250 separate certificate of amendment were filed to effect the
2251 amendment or change.

2252 (e) The original certificate of formation, as
2253 theretofore amended, shall be superseded by the restated
2254 certificate of formation and thenceforth, the restated
2255 certificate of formation, including any further amendment or
2256 changes made thereby, shall be the certificate of formation of
2257 the limited liability company, but the original effective date
2258 of formation shall remain unchanged.

2259 (f) An amended or restated certificate of formation may
2260 contain only provisions that would be permitted at the time of
2261 the amendment if the amended or restated certificate of
2262 formation were a newly filed original certificate of
2263 formation.

2264 (g) A restated certificate of formation may omit any
2265 information that is not required to be in the certificate of
2266 formation under this chapter, including the name and address
2267 of the initial registered agent or registered office, if a
2268 statement of change is on file with the Secretary of State.



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2269 Any omission other than the initial registered agent shall be
2270 an amendment to the certificate of formation, which amendment
2271 must be approved in accordance with the limited liability
2272 company agreement, and if the limited liability company
2273 agreement does not state the approval required for an
2274 amendment of the certificate of formation, then the amendment
2275 must be approved by all of the members."

2276 "§10A-5A-5.02

2277 (a) A transfer, in whole or in part, of a transferable
2278 interest:

2279 (1) is permissible;

2280 (2) (A) does not by itself cause a member to cease to be
2281 a member of the limited liability company; and

2282 (B) does not by itself cause a member to cease to be
2283 associated with a series of the limited liability company;

2284 (3) does not by itself cause a dissolution and winding
2285 up of the limited liability company, or a series thereof; and

2286 (4) subject to Section 10A-5A-5.04, does not entitle
2287 the transferee to:

2288 (A) participate in the direction or oversight of the
2289 activities and affairs of the limited liability company, or a
2290 series thereof; or

2291 (B) have access to records or other information
2292 concerning the activities and affairs of the limited liability
2293 company, or a series thereof.

2294 (b) A transferee has the right to receive, in
2295 accordance with the transfer, distributions to which the
2296 transferor would otherwise be entitled.



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2297 (c) A transferable interest may be evidenced by a
2298 certificate of transferable interest issued by the limited
2299 liability company, or a series thereof. A limited liability
2300 company agreement may provide for the transfer of the
2301 transferable interest represented by the certificate and make
2302 other provisions with respect to the certificate. No
2303 certificate of transferable interest shall be issued in bearer
2304 form.

2305 (d) A limited liability company, or a series thereof,
2306 need not give effect to a transferee's rights under this
2307 section until the limited liability company, or a series
2308 thereof, has notice of the transfer.

2309 (e) Except as otherwise provided in Sections
2310 10A-5A-6.02(d)(2), 10A-5A-6.02(k), and 10A-5A-6.02(l) when a
2311 member transfers a transferable interest, the transferor
2312 retains the rights of a member other than the right to
2313 distributions transferred and retains all duties and
2314 obligations of a member.

2315 (f) When a member transfers a transferable interest to
2316 a person that is admitted as a member with respect to the
2317 transferred interest, the transferee is liable for the
2318 member's obligations under Sections 10A-5A-4.04,
2319 10A-5A-4.06(a)(2), and 10A-5A-4.06(b)(2) to the extent that
2320 the obligations are known to the transferee when the
2321 transferee voluntarily accepts admission as a member.

2322 (g) Notwithstanding anything in Title 43 to the
2323 contrary, a limited liability company agreement may provide
2324 that a transferable interest may or shall be transferred in



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2325 whole or in part, with or without consideration, to one or
2326 more persons at the death of the holder of the transferable
2327 interest. Any transferable interest transferred pursuant to
2328 this subsection shall be subject to any outstanding charging
2329 order under Section 10A-5A-5.03. This subsection does not
2330 limit the rights of creditors of holders of transferable
2331 interests against transferees under this chapter or other laws
2332 of this state."

2333 "§10A-5A-5.04

2334 If a member dies, the deceased member's personal
2335 representative or other legal representative may:

2336 (a) for the period of time, if any, that the deceased
2337 member's personal representative or other legal representative
2338 holds the deceased member's transferable interest:

2339 (1) exercise the rights of a holder of transferable
2340 interests under this chapter;

2341 (2) exercise the rights of a transferee under Section
2342 10A-5A-5.02; and

2343 (3) for purposes of settling the estate, exercise the
2344 rights of a current member under Section 10A-5A-4.09; and

2345 (b) for the period of time that the deceased member's
2346 personal representative or other legal representative does not
2347 hold the deceased member's transferable interest, for purposes
2348 of settling the estate, exercise the rights of a dissociated
2349 member under Section 10A-5A-4.09."

2350 "§10A-5A-8.02

2351 (a) In the case of a limited liability company
2352 performing professional services, upon the death of a member,



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2353 upon a member becoming a disqualified person, or upon a
2354 transferable interest being transferred by operation of law or
2355 court decree to a disqualified person, the transferable
2356 interest of the deceased member or of the disqualified person
2357 may be transferred to a qualified person and, if not so
2358 transferred, subject to Section 10A-5A-4.06, shall be
2359 purchased by the limited liability company as provided in this
2360 section.

2361 (b) If the purchase price of the transferable interest
2362 is not ~~fixed by~~ determined in accordance with the limited
2363 liability company agreement, the limited liability company,
2364 within six months after the death or 30 days after the
2365 disqualification or transfer, as the case may be, shall make a
2366 written offer to pay ~~to the holder of~~ for the transferable
2367 interest a specified price deemed by the limited liability
2368 company to be the fair value of the transferable interest as
2369 of the date of the death, disqualification, or transfer. The
2370 offer shall be ~~given~~ delivered to the personal representative
2371 of the estate of the deceased member, the disqualified person,
2372 or the transferee, as the case may be, and shall be
2373 accompanied by a balance sheet of the limited liability
2374 company, as of the latest available date and not more than 12
2375 months prior to the making of the offer, and a profit and loss
2376 statement of the limited liability company for the 12 months'
2377 period ended on the date of the balance sheet.

2378 (c) If ~~within 30 days after the date of the written~~
2379 ~~offer from the limited liability company~~ the fair value of the
2380 transferable interest is agreed upon between the personal



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2381 representative of the estate of the deceased member, the
2382 disqualified person, or the transferee, as the case may be,
2383 and the limited liability company, payment therefor shall be
2384 made within 90 days, or such other period as the parties may
2385 agree, ~~after the date of the offer~~. Upon payment of the agreed
2386 value, the personal representative of the estate of the
2387 deceased member, the disqualified person, or the transferee,
2388 as the case may be, shall cease to have any interest in, or
2389 claim to, the transferable interest.

2390 (d) If ~~within 30 days from the date of the written~~
2391 ~~offer from the limited liability company,~~ the fair value of
2392 the transferable interest is not agreed upon between the
2393 personal representative of the estate of the deceased member,
2394 the disqualified person, or the transferee, as the case may
2395 be, and the limited liability company ~~do not so agree as to~~
2396 ~~the fair value of the transferable interest~~ within 30 days of
2397 the delivery of the written offer, then either party may
2398 commence a civil action in the designated court, and if none,
2399 in the circuit court for the county in which the limited
2400 liability company's principal office within this state is
2401 located, and if the limited liability company does not have a
2402 principal office within this state, then in the circuit court
2403 for the county in which the limited liability company's most
2404 recent registered office is located requesting that the fair
2405 value of the transferable interest be found and determined. If
2406 the limited liability company does not deliver a written offer
2407 in accordance with subsection (b), then the personal
2408 representative of the estate of the deceased member, the



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2409 disqualified person, or the transferee, as the case may be,
2410 may commence a civil action in the designated court, and if
2411 none, in the circuit court for the county in which the limited
2412 liability company's principal office is located in this state,
2413 and if none in this state, in the circuit court for the county
2414 in which the limited liability company's most recent
2415 registered office is located requesting that the fair value of
2416 the transferable interest be found and determined. The
2417 personal representative of the estate of the deceased member,
2418 the disqualified person, or the transferee, as the case may
2419 be, wherever residing, shall be made a party to the proceeding
2420 as an action against that person's transferable interest quasi
2421 in rem. Service shall be made in accordance with the rules of
2422 civil procedure. The personal representative of the estate of
2423 the deceased member, the disqualified person, or the
2424 transferee, as the case may be, shall be entitled to a
2425 judgment against the limited liability company for the amount
2426 of the fair value of that person's transferable interest as of
2427 the date of death, disqualification, or transfer. The court,
2428 in its discretion, may order that the judgment be paid in
2429 installments and with interest and on terms as the court may
2430 determine. The court, if it so elects, may appoint one or more
2431 persons as appraisers to receive evidence and recommend a
2432 decision on the question of fair value. The appraisers shall
2433 have the power and authority as shall be specified in the
2434 order of their appointment or an amendment thereof.

2435 (e) The judgment shall include an allowance for
2436 interest at the rate the court finds to be fair and equitable



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2437 in all the circumstances, from the date of death,
2438 disqualification, or transfer.

2439 ~~(f) The costs and expenses of any proceeding shall be~~
2440 ~~determined by the court and shall be assessed against the~~
2441 ~~parties in a manner the court deems equitable.~~

2442 ~~(g) The expenses shall include reasonable compensation~~
2443 ~~for and reasonable expenses of the appraisers and a reasonable~~
2444 ~~attorney's fee but shall exclude the fees and expenses of~~
2445 ~~counsel for and of experts employed by any party, but: (1) if~~
2446 ~~the fair value of the transferable interest as determined~~
2447 ~~materially exceeds the amount which the limited liability~~
2448 ~~company offered to pay therefor, or if no offer was made by~~
2449 ~~the limited liability company, the court in its discretion may~~
2450 ~~award to the personal representative of the estate of the~~
2451 ~~deceased member, the disqualified person, or the transferee,~~
2452 ~~as the case may be, the sum the court determines to be~~
2453 ~~reasonable compensation to any expert or experts employed by~~
2454 ~~the personal representative of the estate of the deceased~~
2455 ~~member, the disqualified person, or the transferee, as the~~
2456 ~~case may be, in the proceeding; and (2) if the offer of the~~
2457 ~~limited liability company for the transferable interest~~
2458 ~~materially exceeds the amount of the fair value of the~~
2459 ~~transferable interest as determined, the court, in its~~
2460 ~~discretion, may award to the limited liability company the sum~~
2461 ~~the court determines to be reasonable compensation to any~~
2462 ~~expert or experts employed by the limited liability company in~~
2463 ~~the proceeding.~~

2464 (f) (1) The court in a proceeding commenced under



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2465 subsection (d) shall determine all court costs of the
2466 proceeding, including the reasonable compensation and expenses
2467 of appraisers appointed by the court. The court shall assess
2468 the court costs against the limited liability company, except
2469 that the court may assess court costs against the personal
2470 representative of the estate of the deceased member, the
2471 disqualified person, or the transferee, as the case may be, in
2472 amounts which the court finds equitable, to the extent the
2473 court finds the personal representative of the estate of the
2474 deceased member, the disqualified person, or the transferee,
2475 as the case may be, acted arbitrarily, vexatiously, or not in
2476 good faith with respect to the rights provided by this
2477 section.

2478 (2) The court in a proceeding commenced under
2479 subsection (d) may also assess the expenses of the respective
2480 parties in amounts the court finds equitable:

2481 (A) against the limited liability company and in favor
2482 of the personal representative of the estate of the deceased
2483 member, the disqualified person, or the transferee, as the
2484 case may be, if the court finds the limited liability company
2485 did not substantially comply with the requirements of this
2486 section; or

2487 (B) against either the limited liability company or the
2488 personal representative of the estate of the deceased member,
2489 the disqualified person, or the transferee, as the case may
2490 be, in favor of the other party, if the court finds the party
2491 against whom expenses are assessed acted arbitrarily,
2492 vexatiously, or not in good faith with respect to the rights



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2493 provided by this section.

2494 (3) For purposes of this subsection (f), expenses means
2495 reasonable expenses of any kind that are incurred in
2496 connection with a proceeding brought under subsection (d).

2497 ~~(h)~~ (g) If the purchase or transfer of the transferable
2498 interest of a deceased member, a disqualified person, or a
2499 transferee is not completed within 12 months after the death
2500 of the deceased member or 12 months after the disqualification
2501 or transfer, as the case may be, the limited liability company
2502 shall forthwith cancel the transferable interest on its books
2503 and the personal representative of the estate of the deceased
2504 member, the disqualified person, or the transferee, as the
2505 case may be, shall have no further interest in the
2506 transferable interest other than that person's right to
2507 payment for the transferable interest under this section.

2508 ~~(i)~~ (h) This section shall not require a limited
2509 liability company to purchase a transferable interest of a
2510 disqualified person if the disqualification is for less than
2511 12 months from the date of disqualification. A limited
2512 liability company may require the disqualified person to sell
2513 the disqualified person's transferable interest to the limited
2514 liability company upon any disqualification.

2515 ~~(j)~~ (i) Any provision of a limited liability company
2516 agreement regarding the purchase or transfer of a transferable
2517 interest of a limited liability company performing
2518 professional services shall be specifically enforceable in the
2519 courts of Alabama.

2520 ~~(k)~~ (j) Nothing in this section shall prevent or relieve



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2521 a limited liability company from paying pension benefits or
2522 other deferred compensation for services rendered to or on
2523 behalf of a former member as otherwise permitted by law."

2524 "§10A-5A-10.01

2525 (a) An organization other than a limited liability
2526 company may convert to a limited liability company, and a
2527 limited liability company may convert to an organization other
2528 than a limited liability company pursuant to this section,
2529 Sections 10A-5A-10.02 through 10A-5A-10.03, and a plan of
2530 conversion, if:

2531 (1) the governing statute of the organization that is
2532 not a limited liability company authorizes the conversion;

2533 (2) the law of the jurisdiction governing the
2534 converting organization and the converted organization does
2535 not prohibit the conversion; and

2536 (3) the converting organization and the converted
2537 organization each comply with the governing statute and
2538 organizational documents applicable to that organization in
2539 effecting the conversion.

2540 (b) A plan of conversion must be in writing and must
2541 include:

2542 (1) the name, type of organization, and mailing address
2543 of the principal office of the converting organization, and
2544 its unique identifying number or other designation as assigned
2545 by the Secretary of State, if any, before conversion;

2546 (2) the name, type of organization, and mailing address
2547 of the principal office of the converted organization after
2548 conversion;



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2549 (3) the terms and conditions of the conversion,
2550 including the manner and basis for converting interests in the
2551 converting organization into any combination of money,
2552 interests in the converted organization, and other
2553 consideration allowed in Section 10A-5A-10.01(c); and

2554 (4) the organizational documents of the converted
2555 organization.

2556 (c) In connection with a conversion, rights or
2557 securities of or interests in the converting organization may
2558 be exchanged for or converted into cash, property, or rights
2559 or securities of or interests in the converted organization,
2560 or, in addition to or in lieu thereof, may be exchanged for or
2561 converted into cash, property, or rights or securities of or
2562 interests in another organization or may be cancelled.

2563 (d) At the time of the approval of the plan of
2564 conversion in accordance with Section 10A-5A-10.02, the plan
2565 of conversion is not required to contain or have attached
2566 thereto any disclosure letter, disclosure schedules, or
2567 similar documents or instruments contemplated by the plan of
2568 conversion that modify, supplement, qualify, or make
2569 exceptions to representations, warranties, covenants, or
2570 conditions contained in the plan of conversion."

2571 "§10A-5A-10.05

2572 (a) A limited liability company may merge with one or
2573 more other constituent organizations pursuant to this section,
2574 Sections 10A-5A-10.06 through 10A-5A-10.08, and a plan of
2575 merger, if:

2576 (1) the governing statute of each of the other



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2577 organizations authorizes the merger;

2578 (2) the merger is not prohibited by the law of a
2579 jurisdiction that enacted any of those governing statutes; and

2580 (3) each of the other organizations complies with its
2581 governing statute in effecting the merger.

2582 (b) A plan of merger must be in writing and must
2583 include:

2584 (1) the name, type of organization, and mailing address
2585 of the principal office of each constituent organization, the
2586 jurisdiction of the governing statute of each constituent
2587 organization, and the respective unique identifying number or
2588 other designation as assigned by the Secretary of State, if
2589 any, of each constituent organization;

2590 (2) the name, type of organization, and mailing address
2591 of the principal office of the surviving organization, the
2592 unique identifying number or other designation as assigned by
2593 the Secretary of State, if any, of the surviving organization,
2594 the jurisdiction of the governing statute of the surviving
2595 organization, and, if the surviving organization is to be
2596 created pursuant to the merger, a statement to that effect;

2597 (3) the terms and conditions of the merger, including
2598 the manner and basis for converting the interests in each
2599 constituent organization into any combination of money,
2600 interests in the surviving organization, and other
2601 consideration as allowed by subsection (c);

2602 (4) if the surviving organization is to be created
2603 pursuant to the merger, the surviving organization's
2604 organizational documents; and



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2605 (5) if the surviving organization is not to be created
2606 pursuant to the merger, any amendments to be made by the
2607 merger to the surviving organization's organizational
2608 documents.

2609 (c) In connection with a merger, rights or securities
2610 of or interests in a constituent organization may be exchanged
2611 for or converted into cash, property, or rights or securities
2612 of or interests in the surviving organization, or, in addition
2613 to or in lieu thereof, may be exchanged for or converted into
2614 cash, property, or rights or securities of or interests in
2615 another organization or may be cancelled.

2616 (d) In addition to the requirements of subsection (b),
2617 a plan of merger may:

2618 (1) provide that (i) a constituent organization or any
2619 other party to the plan of merger that fails to perform its
2620 obligations under the plan of merger in accordance with the
2621 terms and conditions of the plan of merger, or that otherwise
2622 fails to comply with the terms and conditions of the plan of
2623 merger, in each case, required to be performed or complied
2624 with prior to the time the merger becomes effective, or that
2625 otherwise fails to consummate, or fails to cause the
2626 consummation of, the merger (whether prior to a specified
2627 date, upon satisfaction or, to the extent permitted by law,
2628 waiver of all conditions to consummation set forth in the plan
2629 of merger, or otherwise) shall be subject, in addition to any
2630 other remedies available at law or in equity, to the penalties
2631 or consequences as are set forth in the plan of merger (which
2632 penalties or consequences may include an obligation to pay to



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2633 the other party or parties to the plan of merger an amount
2634 representing, or based on the loss of, any premium or other
2635 economic entitlement the owners of the other party would be
2636 entitled to receive pursuant to the terms of the plan of
2637 merger if the merger were consummated in accordance with the
2638 terms of the plan of merger) and (ii) if, pursuant to the
2639 terms of the plan of merger, a limited liability company is
2640 entitled to receive payment from another party to the plan of
2641 merger of any amount representing a penalty or consequence (as
2642 specified in clause (i) of this Section 10A-5A-10.02(d)(1)),
2643 the limited liability company shall be entitled to enforce the
2644 other party's payment obligation and, upon receipt of any
2645 payment, shall be entitled to retain the amount of the payment
2646 so received;

2647 (2) provide (i) for the appointment, at or after the
2648 time at which the plan of merger is adopted by the members of
2649 a constituent limited liability company in accordance with the
2650 requirements of Section 10A-5A-10.06, of one or more persons
2651 (which may include the surviving or resulting entity or any
2652 officer, manager, representative, or agent thereof) as
2653 representative of the members of a constituent limited
2654 liability company, including those whose transferable interest
2655 shall be cancelled, converted, or exchanged in the merger, and
2656 for the delegation to that person or persons of the sole and
2657 exclusive authority to take action on behalf of the members
2658 pursuant to the plan of merger, including taking such actions
2659 as the representative determines to enforce (including by
2660 entering into settlements with respect to) the rights of the



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2661 members under the plan of merger, on the terms and subject to
2662 the conditions set forth in the plan of merger, (ii) that any
2663 appointment pursuant to clause (i) of this Section
2664 10A-5A-10.02(d)(2) shall be irrevocable and binding on all
2665 members from and after the adoption of the plan of merger by
2666 the requisite vote of the members pursuant to Section
2667 10A-5A-10.06, and (iii) that any provision adopted pursuant to
2668 this Section 10A-5A-10.02(d)(2) may not be amended after the
2669 merger has become effective or may be amended only with the
2670 consent or approval of persons specified in the plan of
2671 merger; and

2672 (3) contain any other provision not prohibited by law.

2673 (e) At the time of the approval of the plan of merger
2674 in accordance with Section 10A-5A-10.06, the plan of merger is
2675 not required to contain or have attached thereto any
2676 disclosure letter, disclosure schedules, or similar documents
2677 or instruments contemplated by the plan of merger that modify,
2678 supplement, qualify, or make exceptions to representations,
2679 warranties, covenants, or conditions contained in the plan of
2680 merger."

2681 Section 6. Sections 10A-8A-1.07, 10A-8A-2.02,
2682 10A-8A-3.03, 10A-8A-3.04, 10A-8A-5.02, 10A-8A-5.04,
2683 10A-8A-8.02, 10A-8A-8.03, 10A-8A-8.11, 10A-8A-9.01,
2684 10A-8A-9.02, 10A-8A-9.06, 10A-8A-10.01, and 10A-8A-10.03 of
2685 the Code of Alabama 1975, are amended to read as follows:

2686 "§10A-8A-1.07

2687 (a) It is the policy of this chapter and this state to
2688 give maximum effect to the principles of freedom of contract



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2689 and to the enforceability of partnership agreements.

2690 (b) Unless displaced by particular provisions of this
2691 chapter, the principles of law and equity supplement this
2692 chapter.

2693 (c) If an obligation to pay interest arises under this
2694 chapter and the rate is not specified, the rate is the
2695 applicable federal rate as determined from time to time by the
2696 United States Treasury pursuant to 26 U.S.C. §_1274(d) or any
2697 successor law.

2698 (d) The rule that statutes in derogation of the common
2699 law are to be strictly construed shall have no application to
2700 this chapter.

2701 (e) The use of any gender shall be applicable to all
2702 genders. The captions contained in this chapter are for
2703 purposes of convenience only and shall not control or affect
2704 the construction of this chapter.

2705 (f) Sections 7-9A-406 and 7-9A-408 of the Uniform
2706 Commercial Code, and all successor statutes thereto, do not
2707 apply to any interest in a partnership, including all rights,
2708 powers, and interests arising under a partnership agreement or
2709 this chapter. This provision prevails over Sections 7-9A-406
2710 and 7-9A-408 of the Uniform Commercial Code, and all successor
2711 statutes thereto, and is expressly intended to permit the
2712 enforcement of the provisions of a partnership agreement that
2713 would otherwise be ineffective under Sections 7-9A-406 and
2714 7-9A-408 of the Uniform Commercial Code, and all successor
2715 statutes thereto.

2716 (g) Division E of Article 3 of Chapter 1 shall have no



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2717 application to this chapter.

2718 (h) The terms president, ~~vice-president~~ vice president,
2719 secretary, and treasurer, as defined in Chapter 1, shall have
2720 no application to this chapter.

2721 (i) Section 10A-1-2.13(c) shall have no application to
2722 this chapter.

2723 (j) Action validly taken pursuant to one provision of
2724 this chapter shall not be deemed invalid solely because it is
2725 identical or similar in substance to an action that could have
2726 been taken pursuant to some other provision of this chapter
2727 but fails to satisfy one or more requirements prescribed by
2728 such other provision."

2729 "§10A-8A-2.02

2730 (a) A partnership other than a partnership that has an
2731 effective statement of not for profit partnership or an
2732 effective statement of limited liability partnership on file
2733 with the Secretary of State may deliver to the Secretary of
2734 State for filing a statement of partnership for the purpose of
2735 having its partnership agreement governed by the laws of this
2736 state in accordance with Section 10A-8A-1.06(d) and providing
2737 notice of its existence in accordance with Section
2738 10A-8A-1.03(d) (1). A statement of partnership must contain all
2739 of the following:

2740 (1) the name of the partnership which name must comply
2741 with Article 5 of Chapter 1;

2742 ~~(2) the date that the partnership was formed pursuant~~
2743 ~~to, or became governed by, the laws of this state~~ a statement
2744 that the partnership is governed by this chapter;



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2745 (3) the street and mailing address of its principal
2746 office;

2747 (4) the street and mailing address of a registered
2748 office and the name of the registered agent at that office for
2749 service of process in this state which the partnership shall
2750 be required to maintain;

2751 (5) a statement that the partnership was formed for the
2752 purpose of carrying ~~out~~ on a for profit business;

2753 (6) a statement that the partnership has two or more
2754 partners; and

2755 (7) a statement that the partnership agreement is
2756 governed by the laws of this state, and if the partnership
2757 agreement is a written partnership agreement, a declaration
2758 that the written partnership agreement has a provision stating
2759 that the partnership agreement is governed by the laws of this
2760 state.

2761 (b) A partnership other than a partnership that has an
2762 effective statement of partnership or an effective statement
2763 of limited liability partnership on file with the Secretary of
2764 State may deliver to the Secretary of State for filing a
2765 statement of not for profit partnership for the purpose of
2766 setting forth the partners' intention to form a partnership to
2767 carry on a not for profit activity in accordance with Section
2768 10A-8A-2.01(a)(2), having its partnership agreement governed
2769 by the laws of this state in accordance with Section
2770 10A-8A-1.06(d), and providing notice of its existence in
2771 accordance with Section 10A-8A-1.03(d)(2). A statement of not
2772 for profit partnership must contain all of the following:



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2773 (1) the name of the partnership which name must comply
2774 with Article 5 of Chapter 1;

2775 (2) the date that the partnership was formed pursuant
2776 to, or became governed by, the laws of this state;

2777 (3) the street and mailing address of its principal
2778 office;

2779 (4) the street and mailing address of a registered
2780 office and the name of the registered agent at that office for
2781 service of process in this state which the partnership shall
2782 be required to maintain;

2783 (5) a statement that the partnership was formed for the
2784 purpose of carrying ~~out~~ on a not for profit activity in
2785 accordance with Section 10A-8A-2.01(a) (2);

2786 (6) a statement that the partnership has two or more
2787 partners; and

2788 (7) a statement that the partnership agreement is
2789 governed by the laws of this state, and if the partnership
2790 agreement is a written partnership agreement, a declaration
2791 that the written partnership agreement has a provision stating
2792 that the partnership agreement is governed by the laws of this
2793 state.

2794 (c) A statement of partnership and a statement of not
2795 for profit partnership may be amended or restated from time to
2796 time in accordance with Section 10A-1-4.26.

2797 (d) A statement of partnership and a statement of not
2798 for profit partnership shall be executed by two or more
2799 partners authorized to execute the statement of partnership or
2800 statement of not for profit partnership.



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2801 (e) A statement of partnership and a statement of not
2802 for profit partnership shall be accompanied by a fee for the
2803 Secretary of State in the amount prescribed by Section
2804 10A-1-4.31.

2805 (f) If a partnership complies with this section, the
2806 Secretary of State shall file the statement of partnership or
2807 the statement of not for profit partnership, as applicable.

2808 (g) A statement of partnership or a statement of not
2809 for profit partnership, as applicable, takes effect as
2810 determined under Article 4 of Chapter 1.

2811 (h) A partnership that has filed a statement of
2812 partnership is for all purposes the same entity that existed
2813 before the statement of partnership was filed and continues to
2814 be a partnership under the laws of this state.

2815 (i) A statement of partnership and a statement of not
2816 for profit partnership are filing instruments for the purposes
2817 of Chapter 1."

2818 "§10A-8A-3.03

2819 (a) A partnership may deliver to the Secretary of State
2820 for filing a statement of authority, which:

2821 (1) must include the name of the partnership and:

2822 (A) if the partnership has not filed a statement of
2823 partnership, a statement of not for profit partnership, or a
2824 statement of limited liability partnership, (i) the street and
2825 mailing addresses of its principal office ~~and~~, (ii) the name,
2826 street address, and mailing address of its registered agent,
2827 and (iii) if the Secretary of State has assigned a unique
2828 identifying number or other designation to the partnership,



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2829 that number or designation; or

2830 (B) if the partnership has filed a statement of
2831 partnership, a statement of not for profit partnership, or a
2832 statement of limited liability partnership, (i) the street
2833 address and mailing address of its principal office, (ii) the
2834 name, street address, and mailing address of its registered
2835 agent, and (iii) the unique identifying number or other
2836 designation assigned to the partnership by the Secretary of
2837 State.

2838 (2) with respect to any position that exists in or with
2839 respect to the partnership, may state the authority, or
2840 limitations on the authority, of all persons holding the
2841 position to:

2842 (A) sign an instrument transferring real property held
2843 in the name of the partnership; or

2844 (B) enter into other transactions on behalf of, or
2845 otherwise act for or bind, the partnership; and

2846 (3) may state the authority, or limitations on the
2847 authority, of a specific person to:

2848 (A) sign an instrument transferring real property held
2849 in the name of the partnership; or

2850 (B) enter into other transactions on behalf of, or
2851 otherwise act for or bind, the partnership.

2852 (b) To amend or cancel a statement of authority filed
2853 by the Secretary of State, a partnership must deliver to the
2854 Secretary of State for filing an amendment or cancellation
2855 stating:

2856 (1) the name of the partnership;



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2857 (2) if the partnership has not filed a statement of
2858 partnership, a statement of not for profit partnership, or a
2859 statement of limited liability partnership, the street and
2860 mailing addresses of the partnership's principal office;

2861 (3) if the partnership has filed a statement of
2862 partnership, a statement of not for profit partnership, or a
2863 statement of limited liability partnership, the name and
2864 street and mailing addresses of its registered agent;

2865 (4) the date the statement of authority being affected
2866 became effective; ~~and~~

2867 (5) the contents of the amendment or a declaration that
2868 the statement of authority is canceled; and

2869 (6) the unique identifying number or other designation
2870 assigned to the partnership by the Secretary of State.

2871 (c) A statement of authority affects only the power of
2872 a person to bind a partnership to persons that are not
2873 partners.

2874 (d) Subject to subsection (c) and Section
2875 10A-8A-1.03(d) (3) and except as otherwise provided in
2876 subsections (f), (g), and (h), a limitation on the authority
2877 of a person or a position contained in an effective statement
2878 of authority is not by itself evidence of any person's
2879 knowledge or notice of the limitation.

2880 (e) Subject to subsection (c), a grant of authority not
2881 pertaining to transfers of real property and contained in an
2882 effective statement of authority is conclusive in favor of a
2883 person that gives value in reliance on the grant, except to
2884 the extent that when the person gives value:



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2885 (1) the person has knowledge to the contrary;

2886 (2) the statement of authority has been canceled or
2887 restrictively amended under subsection (b); or

2888 (3) a limitation on the grant is contained in another
2889 statement of authority that became effective after the
2890 statement of authority containing the grant became effective.

2891 (f) Subject to subsection (c), an effective statement
2892 of authority that grants authority to transfer real property
2893 held in the name of the partnership, a certified copy of which
2894 statement of authority is recorded in the office of the judge
2895 of probate in the county in which the real property is
2896 located, is conclusive in favor of a person that gives value
2897 in reliance on the grant without knowledge to the contrary,
2898 except to the extent that when the person gives value:

2899 (1) the statement of authority has been canceled or
2900 restrictively amended under subsection (b), and a certified
2901 copy of the cancellation or restrictive amendment has been
2902 recorded in the office of the judge of probate in the county
2903 in which the real property is located; or

2904 (2) a limitation on the grant is contained in another
2905 statement of authority that became effective after the
2906 statement of authority containing the grant became effective,
2907 and a certified copy of the later-effective statement is
2908 recorded in the office of the judge of probate in the county
2909 in which the real property is located.

2910 (g) Subject to subsection (c), if a certified copy of
2911 an effective statement of authority containing a limitation on
2912 the authority to transfer real property held in the name of a



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2913 partnership is recorded in the office of the judge of probate
2914 in the county in which the real property is located, all
2915 persons are deemed to know of the limitation with respect to
2916 the real property located in that county.

2917 (h) Subject to subsection (i), an effective statement
2918 of dissolution is a cancellation of any filed statement of
2919 authority for the purposes of subsection (f) and is a
2920 limitation on authority for purposes of subsection (g).

2921 (i) After a statement of dissolution becomes effective,
2922 a partnership may deliver to the Secretary of State for filing
2923 and, if appropriate, may record a statement of authority that
2924 is designated as a post-dissolution statement of authority.
2925 The statement operates as provided in subsections (f) and (g).

2926 (j) Unless canceled earlier, an effective statement of
2927 authority is canceled by operation of law five years after the
2928 date on which the statement, or its most recent amendment,
2929 becomes effective. The cancellation is effective without
2930 recording under subsection (f) or (g).

2931 (k) An effective statement of denial operates as a
2932 restrictive amendment under this section and may be recorded
2933 by certified copy for purposes of subsection (f)(1).

2934 (l) If a partnership has not filed a statement of
2935 partnership, a statement of not for profit partnership, or a
2936 statement of limited liability partnership and the Secretary
2937 of State has not assigned a unique identifying number or other
2938 designation to that partnership, then the Secretary of State
2939 shall assign a unique identifying number or other designation
2940 to that partnership when that partnership delivers to the



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2941 Secretary of State for filing that partnership's statement of
2942 authority without the need of the partnership delivering to
2943 the Secretary of State for filing a statement of partnership,
2944 a statement of not for profit partnership, or a statement of
2945 limited liability partnership."

2946 "§10A-8A-3.04

2947 A person named in a filed statement of authority
2948 granting that person authority may deliver to the Secretary of
2949 State for filing a statement of denial that:

2950 (1) provides:

2951 (A) the name of the partnership~~and the caption of;~~

2952 (B) the date the statement of authority to which the
2953 statement of denial pertains was filed by the filing officer;

2954 and

2955 (C) the unique identifying number or other designation
2956 assigned by the partnership by the Secretary of State; and

2957 (2) denies the grant of authority.

2958 A statement of denial is a limitation on authority as
2959 provided in Section 10A-8A-3.03."

2960 "§10A-8A-5.02

2961 (a) A transfer, in whole or in part, of a partner's
2962 transferable interest:

2963 (1) is permissible;

2964 (2) does not by itself cause the partner's
2965 dissociation;

2966 (3) does not by itself cause a dissolution and winding
2967 up of the partnership; and

2968 (4) subject to Section 10A-8A-5.05, does not entitle



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2969 the transferee to:

2970 (A) participate in the management or conduct of the
2971 partnership's business or not for profit activity; or

2972 (B) except as otherwise provided in subsection (d),
2973 have access to required information, records, or other
2974 information concerning the partnership's business or not for
2975 profit activity.

2976 (b) A transferee has a right:

2977 (1) to receive, in accordance with the transfer,
2978 distributions to which the transferor would otherwise be
2979 entitled;

2980 (2) to receive upon the dissolution and winding up of
2981 the partnership, in accordance with the transfer, the net
2982 amount otherwise distributable to the transferor; and

2983 (3) to seek under Section 10A-8A-8.01(5) a judicial
2984 determination that it is equitable to wind up the partnership
2985 business or not for profit activity.

2986 (c) A transferable interest may be evidenced by a
2987 certificate of transferable interest issued by the
2988 partnership. A partnership agreement may provide for the
2989 transfer of the transferable interest represented by the
2990 certificate and make other provisions with respect to the
2991 certificate. No certificate of transferable interest shall be
2992 issued in bearer form.

2993 (d) In a dissolution and winding up, a transferee is
2994 entitled to an account of the partnership's transactions only
2995 from the date of dissolution.

2996 (e) Except as otherwise provided in Sections



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2997 10A-8A-6.01(4), 10A-8A-6.01(11), and 10A-8A-6.01(12), when a
2998 partner transfers a transferable interest, the transferor
2999 retains the rights of a partner other than the right to
3000 distributions transferred and retains all duties and
3001 obligations of a partner.

3002 (f) A partnership need not give effect to a
3003 transferee's rights under this section until the partnership
3004 has notice of the transfer.

3005 (g) When a partner transfers a transferable interest to
3006 a person that is admitted as a partner with respect to the
3007 transferred interest, the transferee is liable for the
3008 partner's obligations under Sections 10A-8A-4.04 and
3009 10A-8A-4.09 to the extent that the obligations are known to
3010 the transferee when the transferee voluntarily accepts
3011 admission as a partner.

3012 (h) Notwithstanding anything in Title 43 to the
3013 contrary, a partnership agreement may provide that a
3014 transferable interest may or shall be transferred in whole or
3015 in part, with or without consideration, to one or more persons
3016 at the death of the holder of the transferable interest. Any
3017 transferable interest transferred pursuant to this subsection
3018 shall be subject to any outstanding charging order under
3019 Section 10A-8A-5.03. This subsection does not limit the rights
3020 of creditors of holders of transferable interests against
3021 transferees under this chapter or other laws of this state."

3022 "§10A-8A-5.04

3023 If a partner dies, the deceased partner's personal
3024 representative or other legal representative may:



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3025 (a) for the period of time, if any, that the deceased
3026 partner's personal representative or other legal
3027 representative holds the deceased partner's transferable
3028 interest:

3029 (1) exercise the rights of a holder of transferable
3030 interests under this chapter;

3031 (2) exercise the rights of a transferee under Section
3032 10A-8A-5.02; and

3033 (3) for purposes of settling the estate, exercise the
3034 rights of a current partner under Section 10A-8A-4.10; and

3035 (b) for the period of time that the deceased partner's
3036 personal representative or other legal representative does not
3037 hold the deceased partner's transferable interest, for
3038 purposes of settling the estate, exercise the rights of a
3039 person dissociated as a partner under Section 10A-8A-4.10."

3040 "§10A-8A-8.02

3041 (a) A dissolved partnership continues its existence as
3042 a partnership but may not carry on any business or not for
3043 profit activity except as is appropriate to wind up and
3044 liquidate its business or not for profit activity, including:

3045 (1) collecting its assets;

3046 (2) disposing of its properties that will not be
3047 distributed in kind to persons owning transferable interests;

3048 (3) discharging or making provisions for discharging
3049 its liabilities;

3050 (4) distributing its remaining property in accordance
3051 with Section 10A-8A-8.09; and

3052 (5) doing every other act necessary to wind up and



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3053 liquidate its business or not for profit activity.

3054 (b) In winding up its business or not for profit
3055 activity, a partnership may:

3056 (1) deliver to the Secretary of State for filing a
3057 statement of dissolution setting forth:

3058 (A) The name of the partnership;

3059 (B) If the partnership has filed a statement of
3060 partnership, a statement of not for profit partnership, a
3061 statement of authority, or a statement of limited liability
3062 partnership, the unique identifying number or other
3063 designation as assigned by the Secretary of State;

3064 (C) That the partnership has dissolved;

3065 (D) The name, street address, and mailing address of
3066 the partner who will be winding up the business or not for
3067 profit activity of the partnership pursuant to Section
3068 10A-8A-8.03(a), and if none, the name, street address, and
3069 mailing address of the person appointed pursuant to Section
3070 10A-8A-8.03(b) or (c) to wind up the business or not for
3071 profit activity of the partnership;

3072 (E) If the partnership has filed a statement of
3073 partnership, a statement of not for profit partnership, or a
3074 statement of limited liability partnership, the name, street
3075 address, and mailing address of the partnership's registered
3076 agent; and

3077 (F) Any other information the partnership deems
3078 appropriate;

3079 (2) preserve the partnership's business or not for
3080 profit activity as a going concern for a reasonable time;



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3081 (3) prosecute, defend, or settle actions or
3082 proceedings, whether civil, criminal, or administrative;

3083 (4) transfer the partnership's assets;

3084 (5) resolve disputes by mediation or arbitration; and

3085 (6) merge or convert in accordance with Article 9 of
3086 this chapter or Article 8 of Chapter 1.

3087 (c) The dissolution of a partnership does not:

3088 (1) transfer title to the partnership's property;

3089 (2) prevent the commencement of a proceeding by or
3090 against the partnership in its partnership name;

3091 (3) terminate, abate, or suspend a proceeding pending
3092 by or against the partnership on the effective date of
3093 dissolution;

3094 (4) terminate the authority of its registered agent; or

3095 (5) abate, suspend, or otherwise alter the application
3096 of Section 10A-8A-3.06.

3097 (d) A statement of dissolution is a filing instrument
3098 under Chapter 1.

3099 (e) If a partnership has not filed a statement of
3100 partnership, a statement of not for profit partnership, a
3101 statement of limited liability partnership, or a statement of
3102 authority and the Secretary of State has not assigned a unique
3103 identifying number or other designation to that partnership,
3104 then the Secretary of State shall assign a unique identifying
3105 number or other designation to that partnership when that
3106 partnership delivers to the Secretary of State for filing that
3107 partnership's statement of dissolution without the need of
3108 that partnership delivering to the Secretary of State for



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3109 filing a statement of partnership, a statement of not for
3110 profit partnership, a statement of limited liability
3111 partnership, or a statement of authority."

3112 "§10A-8A-8.03

3113 (a) If a dissolved partnership has a partner or
3114 partners that have not dissociated, that partner or those
3115 partners shall wind up the business or not for profit activity
3116 of the partnership and shall have the powers set forth in
3117 Section 10A-8A-8.04. A person whose dissociation as a partner
3118 resulted in the dissolution of the partnership may participate
3119 in the winding up as if still a partner, unless the
3120 dissociation was wrongful.

3121 (b) If a dissolved partnership does not have a partner
3122 and no person has the right to participate in winding up under
3123 subsection (a), the personal or legal representative of the
3124 last person to have been a partner may wind up the
3125 partnership's business or not for profit activity. If the
3126 representative does not exercise that right, a person to wind
3127 up the partnership's business or not for profit activity may
3128 be appointed by the affirmative vote or consent of transferees
3129 owning a majority of the transferable interests at the time
3130 the consent is to be effective.

3131 (c) A court of competent jurisdiction may order
3132 judicial supervision of the winding up of a dissolved
3133 partnership, including the appointment of a person to wind up
3134 the partnership's business or not for profit activity:

3135 (1) on application of a partner or any person entitled
3136 under the last sentence of subsection (a) to participate in



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3137 the winding up of the dissolved partnership, if the applicant
3138 establishes good cause;

3139 (2) on application of a transferee, if the partnership
3140 does not have a partner and within a reasonable time following
3141 the dissolution no person having the authority to wind up the
3142 business or not for profit activity of the partnership has
3143 been appointed pursuant to subsection (b);

3144 (3) on application of a transferee, if the partnership
3145 does not have a partner and within a reasonable time following
3146 the dissolution the person appointed pursuant to subsection
3147 (b) is not winding up the business or not for profit activity
3148 of the partnership; or

3149 (4) in connection with a proceeding under Section
3150 10A-8A-8.01(4) or (5).

3151 (d) A person appointed under subsection (b) or (c) is
3152 not a partner but:

3153 (1) has the powers of a partner under Section
3154 10A-8A-8.04 but is not liable for the debts, liabilities, and
3155 other obligations of the partnership solely by reason of
3156 having or exercising those powers or otherwise acting to wind
3157 up the business or not for profit activity of the dissolved
3158 partnership; and

3159 (2) shall promptly deliver to the Secretary of State
3160 for filing a statement of dissolution setting forth the items
3161 listed in Section 10A-8A-8.02(b)(1) and the following:

3162 (A) that the partnership does not have a partner;

3163 (B) the name, street address, and mailing address of
3164 each person that has been appointed to wind up the business or



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3165 not for profit activity of the partnership;

3166 (C) that each person has been appointed pursuant to
3167 subsection (b) or (c), as applicable, to wind up the business
3168 or not for profit activity of the partnership;~~and~~

3169 (D) pursuant to this section, that each person has the
3170 powers of a partner under Section 10A-8A-8.04 but is not
3171 liable for the debts, liabilities, and other obligations of
3172 the partnership solely by reason of having or exercising those
3173 powers or otherwise acting to wind up the business or not for
3174 profit activity of the dissolved partnership~~;~~ and

3175 (E) if the partnership has filed a statement of
3176 partnership, a statement of not for profit partnership, a
3177 statement of limited liability partnership or a statement of
3178 authority, the unique identifying number or other designation
3179 as assigned by the Secretary of State.

3180 (e) If a partnership has not filed a statement of
3181 partnership, a statement of not for profit partnership, a
3182 statement of limited liability partnership, or statement of
3183 authority and the Secretary of State has not assigned a unique
3184 identifying number or other designation to that partnership,
3185 then the Secretary of State shall assign a unique identifying
3186 number or other designation to that partnership when the
3187 person required under subsection (d) delivers to the Secretary
3188 of State for filing the statement of dissolution for that
3189 partnership, without the need to deliver to the Secretary of
3190 State for filing a statement of partnership, a statement of
3191 not for profit partnership, a statement of limited liability
3192 partnership, or a statement of authority."



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3193 "§10A-8A-8.11

3194 A partnership that has dissolved, has filed a statement
3195 of dissolution, and is seeking to reinstate in accordance with
3196 Section 10A-8A-8.10, shall deliver to the Secretary of State
3197 for filing a certificate of reinstatement in accordance with
3198 the following:

3199 (a) A certificate of reinstatement shall be delivered
3200 to the Secretary of State for filing. The certificate of
3201 reinstatement shall state:

3202 (1) the name of the partnership before reinstatement;

3203 (2) the name of the partnership following
3204 reinstatement, which partnership name shall comply with
3205 Section 10A-8A-8.12;

3206 (3) the date of formation of the partnership if known;

3207 (4) the date of filing its statement of dissolution, if
3208 any, and all amendments and restatements thereof, and the
3209 office or offices where filed;

3210 (5) if the partnership has filed a statement of
3211 partnership, a statement of not for profit partnership, a
3212 statement of authority, or a statement of limited liability
3213 partnership, the unique identifying number or other
3214 designation as assigned by the Secretary of State;

3215 (6) the date of dissolution of the partnership, if
3216 known;

3217 (7) a statement that all applicable conditions of
3218 Section 10A-8A-8.10 have been satisfied; and

3219 (8) the address of the registered office and the name
3220 of the registered agent at that address in compliance with



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3221 Article 5 of Chapter 1.

3222 (b) ~~A partnership shall deliver to the Secretary of~~
3223 ~~State for filing a statement of dissolution prior to or~~
3224 ~~simultaneously with the certificate of reinstatement.~~ If a
3225 partnership has not filed a statement of partnership, a
3226 statement of not for profit partnership, ~~or~~ a statement of
3227 limited liability partnership ~~prior to filing its,~~ or a
3228 ~~statement of dissolution, the partnership must also deliver to~~
3229 ~~the Secretary of State for filing a statement of partnership,~~
3230 ~~a statement of not for profit partnership, or a statement of~~
3231 ~~limited liability partnership, simultaneously with the~~
3232 ~~certificate of reinstatement~~ and the Secretary of State has
3233 not assigned a unique identifying number or other designation
3234 to that partnership, then the Secretary of State shall assign
3235 a unique identifying number or other designation to that
3236 partnership when the partnership delivers to the Secretary of
3237 State for filing the certificate of reinstatement for that
3238 partnership, without the need to deliver to the Secretary of
3239 State for filing a statement of partnership, a statement of
3240 not for profit partnership, a statement of limited liability
3241 partnership, a statement of authority, or a statement of
3242 dissolution.

3243 (c) A certificate of reinstatement is a filing
3244 instrument under Chapter 1."

3245 "§10A-8A-9.01

3246 As used in this article, unless the context otherwise
3247 requires, the following terms mean:

3248 (1) CONSTITUENT ORGANIZATION means an organization that



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3249 is party to a merger under this article.

3250 (2) CONSTITUENT PARTNERSHIP means a constituent
3251 organization that is a partnership.

3252 (3) CONVERTED ORGANIZATION means the organization into
3253 which a converting organization converts pursuant to this
3254 article.

3255 (4) CONVERTING ORGANIZATION means an organization that
3256 converts into another organization pursuant to this article.

3257 (5) CONVERTING PARTNERSHIP means a converting
3258 organization that is a partnership.

3259 (6) GOVERNING STATUTE of an organization means the
3260 statute that governs the organization's internal affairs.

3261 (7) ORGANIZATION means a partnership, including a
3262 limited liability partnership; limited partnership, including
3263 a limited liability limited partnership; limited liability
3264 company; business trust; corporation; nonprofit corporation;
3265 professional corporation; or any other person having a
3266 governing statute. The term includes domestic and foreign
3267 organizations whether or not organized for profit.

3268 (8) ORGANIZATIONAL DOCUMENTS means:

3269 (A) (i) for a partnership, its partnership agreement
3270 and, if applicable, its statement of partnership, statement of
3271 not for profit partnership, or statement of limited liability
3272 partnership; and (ii) for a foreign partnership, its
3273 partnership agreement and, if applicable, its statement of
3274 foreign limited liability partnership;

3275 (B) for a limited partnership or foreign limited
3276 partnership, its certificate of formation and partnership



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3277 agreement, or comparable writings as provided in its governing
3278 statute;

3279 (C) for a limited liability company or foreign limited
3280 liability company, its certificate of formation and limited
3281 liability company agreement, or comparable writings as
3282 provided in its governing statute;

3283 (D) for a business or statutory trust or foreign
3284 business or statutory trust its agreement of trust and
3285 declaration of trust, or comparable writings as provided in
3286 its governing statute;

3287 (E) for a corporation for profit or foreign corporation
3288 for profit, its certificate of formation, bylaws, and other
3289 agreements among its shareholders that are authorized by its
3290 governing statute, or comparable writings as provided in its
3291 governing statute;

3292 (F) for a nonprofit corporation or foreign nonprofit
3293 corporation, its certificate of formation, bylaws, and other
3294 agreements that are authorized by its governing statute, or
3295 comparable writings as provided in its governing statute;

3296 (G) for a professional corporation or foreign
3297 professional corporation, its certificate of formation,
3298 bylaws, and other agreements among its shareholders that are
3299 authorized by its governing statute, or comparable writings as
3300 provided in its governing statute; and

3301 (H) for any other organization, the basic writings that
3302 create the organization and determine its internal governance
3303 and the relations among the persons that own it, have an
3304 interest in it, or are members of it.



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3305 (9) PLAN OF MERGER. Except as set forth in Section
3306 10A-8A-9.06(e), a plan of merger, whether referred to as a
3307 plan of merger, an agreement of merger, a merger agreement, a
3308 plan and agreement of merger, an agreement and plan of merger,
3309 or otherwise, means a writing described in Section 10A-8A-9.06
3310 and includes any agreement, instrument, or other document
3311 referenced therein or associated therewith that sets forth the
3312 terms and conditions of the merger.

3313 ~~(9)~~ (10) SURVIVING ORGANIZATION means an organization
3314 into which one or more other organizations are merged under
3315 this article, whether the organization pre-existed the merger
3316 or was created pursuant to the merger."

3317 "§10A-8A-9.02

3318 (a) An organization other than a partnership may
3319 convert to a partnership, and a partnership may convert to an
3320 organization other than a partnership pursuant to this
3321 section, Sections 10A-8A-9.03 through 10A-8A-9.05, and a plan
3322 of conversion, if:

3323 (1) the governing statute of the organization that is
3324 not a partnership authorizes the conversion;

3325 (2) the law of the jurisdiction governing the
3326 converting organization and the converted organization does
3327 not prohibit the conversion; and

3328 (3) the converting organization and the converted
3329 organization each comply with the governing statute and
3330 organizational documents applicable to that organization in
3331 effecting the conversion.

3332 (b) A plan of conversion must be in writing and must



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3333 include:

3334 (1) the name, type of organization, and mailing address
3335 of the principal office of the converting organization, and
3336 its unique identifying number or other designation as assigned
3337 by the Secretary of State, if any, before conversion;

3338 (2) the name, type of organization, and mailing address
3339 of the principal office of the converted organization after
3340 conversion;

3341 (3) the terms and conditions of the conversion,
3342 including the manner and basis for converting interests in the
3343 converting organization into any combination of money,
3344 interests in the converted organization, and other
3345 consideration allowed in Section 10A-8A-9.02(c); and

3346 (4) the organizational documents of the converted
3347 organization.

3348 (c) In connection with a conversion, rights or
3349 securities of or interests in the converting organization may
3350 be exchanged for or converted into cash, property, or rights
3351 or securities of or interests in the converted organization,
3352 or, in addition to or in lieu thereof, may be exchanged for or
3353 converted into cash, property, or rights or securities of or
3354 interests in another organization or may be cancelled.

3355 (d) At the time of the approval of the plan of
3356 conversion in accordance with Section 10A-8A-9.03, the plan of
3357 conversion is not required to contain or have attached thereto
3358 any disclosure letter, disclosure schedules, or similar
3359 documents or instruments contemplated by the plan of
3360 conversion that modify, supplement, qualify, or make



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3361 exceptions to representations, warranties, covenants, or
3362 conditions contained in the plan of conversion.

3363 ~~(d)~~ (e) If a partnership is the converting organization
3364 and that partnership does not have an effective statement of
3365 partnership, statement of not for profit partnership, or
3366 statement of limited liability partnership on file with the
3367 Secretary of State, then that partnership must, before
3368 proceeding with a conversion deliver to the Secretary of State
3369 for filing, a statement of partnership, statement of not for
3370 profit partnership, or statement of limited liability
3371 partnership simultaneously with the delivery to the Secretary
3372 of State for filing, of a statement of conversion.

3373 ~~(e)~~ (f) If an organization is converting to a
3374 partnership, the converting organization must deliver to the
3375 Secretary of State for filing a statement of partnership,
3376 statement of not for profit partnership, or a statement of
3377 limited liability partnership in accordance with Section
3378 10A-8A-9.04."

3379 "§10A-8A-9.06

3380 (a) A partnership may merge with one or more other
3381 constituent organizations pursuant to this section, Sections
3382 10A-8A-9.07 through 10A-8A-9.09, and a plan of merger, if:

3383 (1) the governing statute of each of the other
3384 organizations authorizes the merger;

3385 (2) the merger is not prohibited by the law of a
3386 jurisdiction that enacted any of those governing statutes; and

3387 (3) each of the other organizations complies with its
3388 governing statute in effecting the merger.



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3389 (b) A plan of merger must be in writing and must
3390 include:

3391 (1) the name, type of organization, and mailing address
3392 of the principal office of each constituent organization, the
3393 jurisdiction of the governing statute of each constituent
3394 organization, and the respective unique identifying numbers or
3395 other designations as assigned by the Secretary of State, if
3396 any, of each constituent organization;

3397 (2) the name, type of organization, and mailing address
3398 of the principal office of the surviving organization, the
3399 unique identifying number or other designation as assigned by
3400 the Secretary of State, if any, of the surviving organization,
3401 the jurisdiction of the governing statute of the surviving
3402 organization, and, if the surviving organization is to be
3403 created pursuant to the merger, a statement to that effect;

3404 (3) the terms and conditions of the merger, including
3405 the manner and basis for converting the interests in each
3406 constituent organization into any combination of money,
3407 interests in the surviving organization, and other
3408 consideration as allowed by subsection (c);

3409 (4) if the surviving organization is to be created
3410 pursuant to the merger, the surviving organization's
3411 organizational documents; and

3412 (5) if the surviving organization is not to be created
3413 pursuant to the merger, any amendments to be made by the
3414 merger to the surviving organization's organizational
3415 documents.

3416 (c) In connection with a merger, rights or securities



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3417 of or interests in a constituent organization may be exchanged
3418 for or converted into cash, property, or rights or securities
3419 of or interests in the surviving organization, or, in addition
3420 to or in lieu thereof, may be exchanged for or converted into
3421 cash, property, or rights or securities of or interests in
3422 another organization or may be cancelled.

3423 (d) In addition to the requirements of subsection (b),
3424 a plan of merger may:

3425 (1) provide that (i) a constituent organization or any
3426 other party to the plan of merger that fails to perform its
3427 obligations under the plan of merger in accordance with the
3428 terms and conditions of the plan of merger, or that otherwise
3429 fails to comply with the terms and conditions of the plan of
3430 merger, in each case, required to be performed or complied
3431 with prior to the time the merger becomes effective, or that
3432 otherwise fails to consummate, or fails to cause the
3433 consummation of, the merger (whether prior to a specified
3434 date, upon satisfaction or, to the extent permitted by law,
3435 waiver of all conditions to consummation set forth in the plan
3436 of merger, or otherwise) shall be subject, in addition to any
3437 other remedies available at law or in equity, to the penalties
3438 or consequences as are set forth in the plan of merger (which
3439 penalties or consequences may include an obligation to pay to
3440 the other party or parties to the plan of merger an amount
3441 representing, or based on the loss of, any premium or other
3442 economic entitlement the owners of the other party would be
3443 entitled to receive pursuant to the terms of the plan of
3444 merger if the merger were consummated in accordance with the



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3445 terms of the plan of merger) and (ii) if, pursuant to the
3446 terms of the plan of merger, a constituent organization is
3447 entitled to receive payment from another party to the plan of
3448 merger of any amount representing a penalty or consequence (as
3449 specified in clause (i) of this Section 10A-8A-9.06(d)(1)),
3450 the constituent organization shall be entitled to enforce the
3451 other party's payment obligation and, upon receipt of any
3452 payment, shall be entitled to retain the amount of the payment
3453 so received;

3454 (2) provide (i) for the appointment, at or after the
3455 time at which the plan of merger is adopted by the owners of a
3456 constituent organization in accordance with the requirements
3457 of Section 10A-8A-9.07, of one or more persons (which may
3458 include the surviving or resulting entity or any officer,
3459 partner, representative, or agent thereof) as representative
3460 of the owners of a constituent organization, including those
3461 whose ownership interests shall be cancelled, converted, or
3462 exchanged in the merger, and for the delegation to that person
3463 or persons of the sole and exclusive authority to take action
3464 on behalf of the owners pursuant to the plan of merger,
3465 including taking such actions as the representative determines
3466 to enforce (including by entering into settlements with
3467 respect to) the rights of the owners under the plan of merger,
3468 on the terms and subject to the conditions set forth in the
3469 plan of merger, (ii) that any appointment pursuant to clause
3470 (i) of this Section 10A-8A-9.06(d)(2) shall be irrevocable and
3471 binding on all owners from and after the adoption of the plan
3472 of merger by the requisite vote of the partners pursuant to



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3473 Section 10A-8A-9.07, and (iii) that any provision adopted
3474 pursuant to this Section 10A-8A-9.06(d)(2) may not be amended
3475 after the merger has become effective or may be amended only
3476 with the consent or approval of persons specified in the plan
3477 of merger; and

3478 (3) contain any other provision not prohibited by law.

3479 (e) At the time of the approval of the plan of merger
3480 in accordance with Section 10A-8A-9.07, the plan of merger is
3481 not required to contain or have attached thereto any
3482 disclosure letter, disclosure schedules, or similar documents
3483 or instruments contemplated by the plan of merger that modify,
3484 supplement, qualify, or make exceptions to representations,
3485 warranties, covenants, or conditions contained in the plan of
3486 merger."

3487 "§10A-8A-10.01

3488 (a) A partnership may be formed as, or may become, a
3489 limited liability partnership pursuant to this section.

3490 (b) In order to form a limited liability partnership,
3491 the original partnership agreement of the partnership shall
3492 state that the partnership is formed as a limited liability
3493 partnership, and the partnership shall deliver to the
3494 Secretary of State for filing a statement of limited liability
3495 partnership in accordance with subsection (d) of this section.

3496 (c) In order for an existing partnership to become a
3497 limited liability partnership, the terms and conditions on
3498 which the partnership becomes a limited liability partnership
3499 must be approved by the affirmative approval necessary to
3500 amend the partnership agreement and, in the case of a



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3501 partnership agreement that expressly considers obligations to
3502 contribute to the partnership, also the affirmative approval
3503 necessary to amend those provisions, and after such approval,
3504 the partnership shall deliver to the Secretary of State for
3505 filing a statement of limited liability partnership in
3506 accordance with subsection (d).

3507 (d) A statement of limited liability partnership must
3508 contain all of the following:

3509 (1) the name of the limited liability partnership which
3510 must comply with Article 5 of Chapter 1;

3511 (2) the street, and mailing, if different, address of
3512 its principal office-;

3513 (3) the street and mailing address of ~~a~~ the registered
3514 office and the name of the registered agent at that office for
3515 service of process in this state ~~which the partnership shall~~
3516 ~~be required to maintain~~ in accordance with Chapter 1;

3517 (4) a statement that the partnership was formed as a
3518 limited liability partnership in accordance with subsection
3519 (b) or a statement that the statement of limited liability
3520 partnership was approved in accordance with subsection (c);

3521 ~~and~~

3522 (5) a statement that the partnership is a limited
3523 liability partnership-; and

3524 (6) the unique identifying number or other designation,
3525 if any, as assigned to the partnership by the Secretary of
3526 State.

3527 (e) A statement of limited liability partnership may be
3528 amended or restated from time to time in accordance with



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3529 Section 10A-1-4.26.

3530 (f) The statement of limited liability partnership
3531 shall be executed by one or more partners authorized to
3532 execute the statement of limited liability partnership.

3533 (g) The statement of limited liability partnership
3534 shall be accompanied by a fee for the Secretary of State in
3535 the respective amounts prescribed by Section 10A-1-4.31.

3536 (h) The Secretary of State shall file the statement of
3537 limited liability partnership of any partnership as a limited
3538 liability partnership that submits a completed statement of
3539 limited liability partnership with the required fees. The
3540 filing by the Secretary of State of a statement of limited
3541 liability partnership is conclusive evidence that the
3542 partnership has satisfied all conditions required to be a
3543 limited liability partnership.

3544 (i) The statement of limited liability partnership is
3545 effective, and a partnership becomes a limited liability
3546 partnership, immediately on the date the statement of limited
3547 liability partnership is filed with the Secretary of State or
3548 at any later date or time specified in the statement of
3549 limited liability partnership in compliance with Article 4 of
3550 Chapter 1. The status as a limited liability partnership
3551 remains effective, regardless of changes in the partnership,
3552 and partnership continues as a limited liability partnership
3553 until a statement of cancellation is voluntarily filed in
3554 accordance with subsection (m).

3555 (j) The fact that a statement of limited liability
3556 partnership is on file with the Secretary of State is notice



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3557 that the partnership is a limited liability partnership and as
3558 notice of the facts required to be set forth in the statement
3559 of limited liability partnership.

3560 (k) A partnership that has filed a statement of limited
3561 liability partnership as a limited liability partnership is
3562 for all purposes, except as provided in Section 10A-8A-3.06,
3563 the same entity that existed before the statement of limited
3564 liability partnership was filed and continues to be a
3565 partnership under the laws of this state subject to the
3566 limited liability partnership provisions of this chapter. If a
3567 limited liability partnership dissolves and its business or
3568 not for profit activity, or a portion of its business or not
3569 for profit activity is continued without the complete winding
3570 up of partnership's business or not for profit activity, a
3571 partnership which is a successor to the limited liability
3572 partnership shall not be required to file a new statement of
3573 limited liability partnership.

3574 (l) The status of the partnership as a limited
3575 liability partnership and the liability of a partner of the
3576 limited liability partnership shall not be adversely affected
3577 by error or subsequent changes in the information stated in
3578 the statement of limited liability partnership under
3579 subsection (d).

3580 (m) The decision to file a statement of cancellation
3581 shall require the approval of all of the partners of the
3582 partnership. The statement of cancellation must be delivered
3583 for filing to the Secretary of State and must contain the
3584 following:



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3585 (1) the name of the limited liability partnership;

3586 (2) ~~the date and office or offices in which it filed~~
3587 ~~its statement of limited liability partnership, and all~~
3588 ~~amendments and restatements thereof~~ the unique identifying
3589 number or other designation as assigned to the partnership by
3590 the Secretary of State;

3591 (3) the street and mailing address of its principal
3592 office;

3593 (4) the street and mailing address of its registered
3594 office and the name of the registered agent at that office for
3595 service of process in this state which the partnership was
3596 required to maintain;

3597 (5) a statement that the statement of cancellation was
3598 approved in accordance with this subsection; and

3599 (6) any other information that the partners determine
3600 to include.

3601 (n) A statement of cancellation must be executed by one
3602 or more partners authorized to execute the statement of
3603 cancellation.

3604 (o) The statement of cancellation is effective, and a
3605 partnership ceases to be a limited liability partnership,
3606 immediately on the date the statement of cancellation is
3607 delivered to the Secretary of State for filing or at any later
3608 date or time specified in the statement of cancellation in
3609 compliance with Article 4 of Chapter 1. The statement of
3610 cancellation shall not cause the dissolution of the
3611 partnership.

3612 (p) The filing of a statement of cancellation of a



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3613 limited liability partnership does not affect the limited
3614 liability of partners for debts, obligations or liabilities of
3615 the partnership which occur or were incurred prior to the
3616 filing of the statement of cancellation.

3617 (q) A dissolved limited liability partnership shall
3618 continue its status as a limited liability partnership unless
3619 a statement of cancellation is voluntarily filed in accordance
3620 with subsection (m).

3621 (r) The statement of limited liability partnership and
3622 the statement of cancellation are filing instruments for the
3623 purposes of Chapter 1."

3624 "§10A-8A-10.03

3625 (a) In the case of a limited liability partnership
3626 performing professional services, upon the death of a partner,
3627 upon a partner becoming a disqualified person, or upon a
3628 transferable interest being transferred by operation of law or
3629 court decree to a disqualified person, the transferable
3630 interest of the deceased partner or of the disqualified person
3631 may be transferred to a qualified person and, if not so
3632 transferred, subject to Section 10A-8A-4.09, shall be
3633 purchased by the limited liability partnership as provided in
3634 this section.

3635 (b) If the purchase price of the transferable interest
3636 is not ~~fixed by~~ determined in accordance with the partnership
3637 agreement, the limited liability partnership, within six
3638 months after the death or 30 days after the disqualification
3639 or transfer, as the case may be, shall make a written offer to
3640 pay ~~to the holder of~~ for the transferable interest a specified



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3641 price deemed by the limited liability partnership to be the
3642 fair value of the transferable interest as of the date of the
3643 death, disqualification, or transfer. The offer shall be ~~given~~
3644 delivered to the personal representative of the estate of the
3645 deceased partner, the disqualified person, or the transferee,
3646 as the case may be, and shall be accompanied by a balance
3647 sheet of the limited liability partnership, as of the latest
3648 available date and not more than 12 months prior to the making
3649 of the offer, and a profit and loss statement of the limited
3650 liability partnership for the 12-month period ended on the
3651 date of the balance sheet.

3652 (c) If ~~within 30 days after the date of the written~~
3653 ~~offer from the limited liability partnership~~ the fair value of
3654 the transferable interest is agreed upon between the personal
3655 representative of the estate of the deceased partner, the
3656 disqualified person, or the transferee, as the case may be,
3657 and the limited liability partnership, payment therefor shall
3658 be made within 90 days, or such other period as the parties
3659 may agree, ~~after the date of the offer~~. Upon payment of the
3660 agreed value, the personal representative of the estate of the
3661 deceased partner, the disqualified person, or the transferee,
3662 as the case may be, shall cease to have any interest in, or
3663 claim to, the transferable interest.

3664 (d) If ~~within 30 days from the date of the written~~
3665 ~~offer from the limited liability partnership,~~ the fair value
3666 of the transferable interest is not agreed upon between the
3667 personal representative of the estate of the deceased partner,
3668 the disqualified person, or the transferee, as the case may



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3669 be, and the limited liability partnership ~~do not so agree as~~
3670 ~~to the fair value of the transferable interest~~ within 30 days
3671 of the delivery of the written offer, then either party may
3672 commence a civil action in the designated court, and if none,
3673 in the circuit court for the county in which the limited
3674 liability partnership's principal office within this state is
3675 located, and if the limited liability partnership does not
3676 have a principal office within this state, then in the circuit
3677 court for the county in which the limited liability
3678 partnership's most recent registered office is located
3679 requesting that the fair value of the transferable interest be
3680 found and determined. If the limited liability partnership
3681 does not deliver a written offer in accordance with subsection
3682 (b), then the personal representative of the estate of the
3683 deceased partner, the disqualified person, or the transferee,
3684 as the case may be, may commence a civil action in the
3685 designated court, and if none, in the circuit court for the
3686 county in which the limited liability partnership's principal
3687 office is located in this state, and if none in this state, in
3688 the circuit court for the county in which the limited
3689 liability partnership's most recent registered office is
3690 located requesting that the fair value of the transferable
3691 interest be found and determined. The personal representative
3692 of the estate of the deceased partner, the disqualified
3693 person, or the transferee, as the case may be, wherever
3694 residing, shall be made a party to the proceeding as an action
3695 against that person's transferable interest quasi in rem.
3696 Service shall be made in accordance with the rules of civil



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3697 procedure. The personal representative of the estate of the
3698 deceased partner, the disqualified person, or the transferee,
3699 as the case may be, shall be entitled to a judgment against
3700 the limited liability partnership for the amount of the fair
3701 value of that person's transferable interest as of the date of
3702 death, disqualification, or transfer. The court may order that
3703 the judgment be paid in installments and with interest and on
3704 terms as the court may determine. The court, if it so elects,
3705 may appoint one or more persons as appraisers to receive
3706 evidence and recommend a decision on the question of fair
3707 value. The appraisers shall have the power and authority as
3708 shall be specified in the order of their appointment or an
3709 amendment thereof.

3710 (e) The judgment shall include an allowance for
3711 interest at the rate the court finds to be fair and equitable
3712 in all the circumstances, from the date of death,
3713 disqualification, or transfer.

3714 ~~(f) The costs and expenses of any proceeding shall be~~
3715 ~~determined by the court and shall be assessed against the~~
3716 ~~parties in a manner the court deems equitable.~~

3717 ~~(g) The expenses shall include reasonable compensation~~
3718 ~~for and reasonable expenses of the appraisers and a reasonable~~
3719 ~~attorney's fee but shall exclude the fees and expenses of~~
3720 ~~counsel for and of experts employed by any party; but:~~

3721 ~~(1) if the fair value of the transferable interest as~~
3722 ~~determined materially exceeds the amount which the limited~~
3723 ~~liability partnership offered to pay therefor, or if no offer~~
3724 ~~was made by the limited liability partnership, the court, in~~



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3725 ~~its discretion, may award to the personal representative of~~
3726 ~~the estate of the deceased partner, the disqualified person,~~
3727 ~~or the transferee, as the case may be, the sum the court~~
3728 ~~determines to be reasonable compensation to any expert or~~
3729 ~~experts employed by the personal representative of the estate~~
3730 ~~of the deceased partner, the disqualified person, or the~~
3731 ~~transferee, as the case may be, in the proceeding; and~~

3732 ~~(2) if the offer of the limited liability partnership~~
3733 ~~for the transferable interest materially exceeds the amount of~~
3734 ~~the fair value of the transferable interest as determined, the~~
3735 ~~court, in its discretion, may award to the limited liability~~
3736 ~~partnership the sum the court determines to be reasonable~~
3737 ~~compensation to any expert or experts employed by the limited~~
3738 ~~liability partnership in the proceeding.~~

3739 (f) (1) The court in a proceeding commenced under
3740 subsection (d) shall determine all court costs of the
3741 proceeding, including the reasonable compensation and expenses
3742 of appraisers appointed by the court. The court shall assess
3743 the court costs against the limited liability partnership,
3744 except that the court may assess court costs against the
3745 personal representative of the estate of the deceased partner,
3746 the disqualified person, or the transferee, as the case may
3747 be, in amounts which the court finds equitable, to the extent
3748 the court finds the personal representative of the estate of
3749 the deceased partner, the disqualified person, or the
3750 transferee, as the case may be, acted arbitrarily,
3751 vexatiously, or not in good faith with respect to the rights
3752 provided by this section.



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3753 (2) The court in a proceeding commenced under
3754 subsection (d) may also assess the expenses of the respective
3755 parties in amounts the court finds equitable:

3756 (A) against the limited liability partnership and in
3757 favor of the personal representative of the estate of the
3758 deceased partner, the disqualified person, or the transferee,
3759 as the case may be, if the court finds the limited liability
3760 partnership did not substantially comply with the requirements
3761 of this section; or

3762 (B) against either the limited liability partnership or
3763 the personal representative of the estate of the deceased
3764 partner, the disqualified person, or the transferee, as the
3765 case may be, in favor of the other party, if the court finds
3766 the party against whom expenses are assessed acted
3767 arbitrarily, vexatiously, or not in good faith with respect to
3768 the rights provided by this section.

3769 (3) For purposes of this subsection (f), expenses means
3770 reasonable expenses of any kind that are incurred in
3771 connection with a proceeding brought under subsection (d).

3772 ~~(h)~~ (g) If the purchase or transfer of the transferable
3773 interest of a deceased partner, a disqualified person, or a
3774 transferee is not completed within 12 months after the death
3775 of the deceased partner or 12 months after the
3776 disqualification or transfer, as the case may be, the limited
3777 liability partnership shall forthwith cancel the transferable
3778 interest on its books and the personal representative of the
3779 estate of the deceased partner, the disqualified person, or
3780 the transferee, as the case may be, shall have no further



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3781 interest in the transferable interest other than that person's
3782 right to payment for the transferable interest under this
3783 section.

3784 ~~(i)~~ (h) This section shall not require a limited
3785 liability partnership to purchase a transferable interest of a
3786 disqualified person if the disqualification is for less than
3787 12 months from the date of disqualification. A limited
3788 liability partnership may require the disqualified person to
3789 sell the disqualified person's transferable interest to the
3790 limited liability partnership upon any disqualification.

3791 ~~(j)~~ (i) Any provision of a partnership agreement
3792 regarding the purchase or transfer of a transferable interest
3793 of a limited liability partnership performing professional
3794 services shall be specifically enforceable in the courts of
3795 Alabama.

3796 ~~(k)~~ (j) Nothing in this section shall prevent or relieve
3797 a limited liability partnership from paying pension benefits
3798 or other deferred compensation for services rendered to or on
3799 behalf of a former partner as otherwise permitted by law."

3800 Section 7. Sections 10A-9A-1.07, 10A-9A-2.06,
3801 10A-9A-7.02, 10A-9A-7.04, 10A-9A-9.02, 10A-9A-10.01,
3802 10A-9A-10.02, and 10A-9A-10.06 of the Code of Alabama 1975,
3803 are amended to read as follows:

3804 "§10A-9A-1.07

3805 (a) It is the policy of this chapter and this state to
3806 give maximum effect to the principles of freedom of contract
3807 and to the enforceability of partnership agreements.

3808 (b) Unless displaced by particular provisions of this



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3809 chapter, the principles of law and equity supplement this
3810 chapter.

3811 (c) If an obligation to pay interest arises under this
3812 chapter and the rate is not specified, the rate is the
3813 applicable federal rate as determined from time to time by the
3814 United States Treasury pursuant to 26 U.S.C. §_1274(d) or any
3815 successor law.

3816 (d) The rule that statutes in derogation of the common
3817 law are to be strictly construed shall have no application to
3818 this chapter.

3819 (e) The use of any gender shall be applicable to all
3820 genders. The captions contained in this chapter are for
3821 purposes of convenience only and shall not control or affect
3822 the construction of this chapter.

3823 (f) Sections 7-9A-406 and 7-9A-408 of the Uniform
3824 Commercial Code, and all successor statutes thereto, do not
3825 apply to any interest in a limited partnership, including all
3826 rights, powers, and interests arising under a partnership
3827 agreement or this chapter. This provision prevails over
3828 Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code,
3829 and all successor statutes thereto, and is expressly intended
3830 to permit the enforcement of the provisions of a partnership
3831 agreement that would otherwise be ineffective under Sections
3832 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all
3833 successor statutes thereto.

3834 (g) Division E of Article 3 of Chapter 1 shall have no
3835 application to this chapter.

3836 (h) The terms president, vice president, secretary, and



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3837 treasurer, as defined in Chapter 1, shall have no application
3838 to this chapter.

3839 (i) Section 10A-1-2.13(c) shall have no application to
3840 this chapter.

3841 (j) Action validly taken pursuant to one provision of
3842 this chapter shall not be deemed invalid solely because it is
3843 identical or similar in substance to an action that could have
3844 been taken pursuant to some other provision of this chapter
3845 but fails to satisfy one or more requirements prescribed by
3846 such other provision."

3847 "§10A-9A-2.06

3848 (a) The Secretary of State, upon request and payment of
3849 the requisite fee, shall furnish to any person a certificate
3850 of existence for a limited partnership if the writings filed
3851 in the office of the Secretary of State show that the limited
3852 partnership has been formed under the laws of this state. A
3853 certificate of existence shall reflect only the information on
3854 file with the Secretary of State. To the extent writings have
3855 been delivered to the Secretary of State, the certificate of
3856 existence must state:

3857 (1) the limited partnership's name;

3858 (2) that the limited partnership was formed under the
3859 laws of this state, the date of formation, and the filing
3860 office in which the certificate of formation was filed;

3861 (3) whether a statement of dissolution of the limited
3862 partnership has been delivered to the Secretary of State for
3863 filing;

3864 (4) whether the limited partnership has delivered to



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3865 the Secretary of State for filing a certificate of
3866 reinstatement;

3867 (5) the unique identifying number or other designation
3868 as assigned by the Secretary of State; and

3869 (6) other facts of record in the office of the
3870 Secretary of State which may be requested by the applicant.

3871 (b) The Secretary of State, upon request and payment of
3872 the requisite fee, shall furnish to any person a certificate
3873 of authorization for a foreign limited partnership if the
3874 writings filed in the office of the Secretary of State show
3875 that the Secretary of State has filed a certificate of
3876 authority, has not revoked the certificate of authority, and
3877 has not filed a notice of cancellation. A certificate of
3878 authorization must state:

3879 (1) the foreign limited partnership's name and any
3880 alternate name for use in this state under Article 5 of
3881 Chapter 1;

3882 (2) that the foreign limited partnership is authorized
3883 to conduct activities and affairs in this state;

3884 (3) that the Secretary of State has not revoked the
3885 foreign limited partnership's certificate of authority;

3886 (4) that the foreign limited partnership has not filed
3887 with the Secretary of State a certificate of withdrawal, a
3888 notice of cancellation, or otherwise terminated its
3889 certificate of authority;

3890 (5) the unique identifying number or other designation
3891 as assigned by the Secretary of State; and

3892 (6) other facts of record in the office of the



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3893 Secretary of State which may be requested by the applicant.

3894 (c) Subject to any qualification stated in the
3895 certificate, a certificate of existence or authorization
3896 issued by the Secretary of State may be relied upon as
3897 conclusive evidence that the limited partnership or foreign
3898 limited partnership is in existence or is authorized to
3899 transact activities and affairs in this state.

3900 (d) The Secretary of State shall not be required to
3901 issue a certificate of existence for a limited partnership if
3902 its certificate of formation was filed prior to January 1,
3903 2011; provided, however, that the Secretary of State shall
3904 issue a certificate of existence upon the filing by the
3905 limited partnership of a certificate of information with the
3906 Secretary of State which must ~~div~~ comply with Section
3907 10A-1-3.08(b).

3908 ~~(1) state all information required in Section~~
3909 ~~10A-9A-2.01(a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6);~~
3910 ~~and~~

3911 ~~(2) list and attach certified copies of all writings~~
3912 ~~filed as to the limited partnership."~~

3913 "§10A-9A-7.02

3914 (a) A transfer, in whole or in part, of a partner's
3915 transferable interest:

3916 (1) is permissible;

3917 (2) does not by itself cause the partner's
3918 dissociation;

3919 (3) does not by itself cause a dissolution and winding
3920 up of the limited partnership; and



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3921 (4) subject to Section 10A-9A-7.04, does not entitle
3922 the transferee to:

3923 (A) participate in the management or conduct of the
3924 limited partnership's activities and affairs; or

3925 (B) except as otherwise provided in subsection (d),
3926 have access to required information, records, or other
3927 information concerning the partnership's activities and
3928 affairs.

3929 (b) A transferee has the right to receive, in
3930 accordance with the transfer, distributions to which the
3931 transferor would otherwise be entitled.

3932 (c) A transferable interest may be evidenced by a
3933 certificate of transferable interest issued by the limited
3934 partnership. A partnership agreement may provide for the
3935 transfer of the transferable interest represented by the
3936 certificate and make other provisions with respect to the
3937 certificate. No certificate of transferable interest shall be
3938 issued in bearer form.

3939 (d) In a dissolution and winding up, a transferee is
3940 entitled to an account of the limited partnership's
3941 transactions only from the date of dissolution.

3942 (e) Except as otherwise provided in Sections
3943 10A-9A-6.01(b)(3), 10A-9A-6.01(b)(10), 10A-9A-6.01(b)(11),
3944 10A-9A-6.03(4)(B), 10A-9A-6.03(11), and 10A-9A-6.03(12) when a
3945 partner transfers a transferable interest, the transferor
3946 retains the rights of a partner other than the right to
3947 distributions transferred and retains all duties and
3948 obligations of a partner.



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3949 (f) A limited partnership need not give effect to a
3950 transferee's rights under this section until the limited
3951 partnership has notice of the transfer.

3952 (g) When a partner transfers a transferable interest to
3953 a person that is admitted as a partner with respect to the
3954 transferred interest, the transferee is liable for the
3955 partner's obligations under Sections 10A-9A-5.02 and
3956 10A-9A-5.08 to the extent that the obligations are known to
3957 the transferee when the transferee voluntarily accepts
3958 admission as a partner.

3959 (h) Notwithstanding anything in Title 43 to the
3960 contrary, a partnership agreement may provide that a
3961 transferable interest may or shall be transferred in whole or
3962 in part, with or without consideration, to one or more persons
3963 at the death of the holder of the transferable interest. Any
3964 transferable interest transferred pursuant to this subsection
3965 shall be subject to any outstanding charging order under
3966 Section 10A-9A-7.03. This subsection does not limit the rights
3967 of creditors of holders of transferable interests against
3968 transferees under this chapter or other laws of this state."

3969 "§10A-9A-7.04

3970 If a partner dies, the deceased partner's personal
3971 representative or other legal representative may:

3972 (a) for the period of time, if any, that the deceased
3973 partner's personal representative or other legal
3974 representative holds the deceased partner's transferable
3975 interest:

3976 (1) exercise the rights of a holder of transferable



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3977 interests under this chapter;

3978 (2) exercise the rights of a transferee under Section
3979 10A-9A-7.02; and

3980 (3) for purposes of settling the estate, exercise the
3981 rights of a current limited partner under Section 10A-9A-3.04;
3982 and

3983 (b) for the period of time that the deceased partner's
3984 personal representative or other legal representative does not
3985 hold the deceased partner's transferable interest, for
3986 purposes of settling the estate, exercise the rights of a
3987 person dissociated as a limited partner under Section
3988 10A-9A-3.04."

3989 "§10A-9A-9.02

3990 A partner may commence or maintain a derivative action
3991 in the right of a limited partnership to ~~enforce a right of~~
3992 ~~the limited partnership~~ recover for an injury to the limited
3993 partnership by complying with this article."

3994 "§10A-9A-10.01

3995 As used in this article, unless the context otherwise
3996 requires, the following terms mean:

3997 (1) CONSTITUENT LIMITED PARTNERSHIP means a constituent
3998 organization that is a limited partnership.

3999 (2) CONSTITUENT ORGANIZATION means an organization that
4000 is party to a merger under this article.

4001 (3) CONVERTED ORGANIZATION means the organization into
4002 which a converting organization converts pursuant to this
4003 article.

4004 (4) CONVERTING LIMITED PARTNERSHIP means a converting



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4005 organization that is a limited partnership.

4006 (5) CONVERTING ORGANIZATION means an organization that
4007 converts into another organization pursuant to this article.

4008 (6) GENERAL PARTNER means a general partner of a
4009 limited partnership.

4010 (7) GOVERNING STATUTE of an organization means the
4011 statute that governs the organization's internal affairs.

4012 (8) ORGANIZATION means a general partnership, including
4013 a limited liability partnership; limited partnership,
4014 including a limited liability limited partnership; limited
4015 liability company; business trust; corporation; nonprofit
4016 corporation; professional corporation; or any other person
4017 having a governing statute. The term includes domestic and
4018 foreign organizations whether or not organized for profit.

4019 (9) ORGANIZATIONAL DOCUMENTS means:

4020 (A) for a general partnership or foreign general
4021 partnership, its partnership agreement and if applicable, its
4022 registration as a limited liability partnership or a foreign
4023 limited liability partnership;

4024 (B) for a limited partnership or foreign limited
4025 partnership, its certificate of formation and partnership
4026 agreement, or comparable writings as provided in its governing
4027 statute;

4028 (C) for a limited liability company or foreign limited
4029 liability company, its certificate of formation and limited
4030 liability company agreement, or comparable writings as
4031 provided in its governing statute;

4032 (D) for a business or statutory trust or foreign



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4033 business or statutory trust its agreement of trust and
4034 declaration of trust, or comparable writings as provided in
4035 its governing statute;

4036 (E) for a corporation for profit or foreign corporation
4037 for profit, its certificate of formation, bylaws, and other
4038 agreements among its shareholders that are authorized by its
4039 governing statute, or comparable writings as provided in its
4040 governing statute;

4041 (F) for a nonprofit corporation or foreign nonprofit
4042 corporation, its certificate of formation, bylaws, and other
4043 agreements that are authorized by its governing statute, or
4044 comparable writings as provided in its governing statute;

4045 (G) for a professional corporation or foreign
4046 professional corporation, its certificate of formation,
4047 bylaws, and other agreements among its shareholders that are
4048 authorized by its governing statute, or comparable writings as
4049 provided in its governing statute; and

4050 (H) for any other organization, the basic writings that
4051 create the organization and determine its internal governance
4052 and the relations among the persons that own it, have an
4053 interest in it, or are members of it.

4054 (10) PLAN OF MERGER. Except as set forth in Section
4055 10A-9A-10.06(e), a plan of merger, whether referred to as a
4056 plan of merger, an agreement of merger, a merger agreement, a
4057 plan and agreement of merger, an agreement and plan of merger,
4058 or otherwise, means a writing described in Section
4059 10A-9A-10.06 and includes any agreement, instrument, or other
4060 document referenced therein or associated therewith that sets



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4061 forth the terms and conditions of the merger.

4062 ~~(10)~~ (11) SURVIVING ORGANIZATION means an organization
4063 into which one or more other organizations are merged under
4064 this article, whether the organization pre-existed the merger
4065 or was created pursuant to the merger. "

4066 "§10A-9A-10.02

4067 (a) An organization other than a limited partnership
4068 may convert to a limited partnership, and a limited
4069 partnership may convert to an organization other than a
4070 limited partnership pursuant to this section, Sections
4071 10A-9A-10.03 through 10A-9A-10.05, and a plan of conversion,
4072 if:

4073 (1) the governing statute of the organization that is
4074 not a limited partnership authorizes the conversion;

4075 (2) the law of the jurisdiction governing the
4076 converting organization and the converted organization does
4077 not prohibit the conversion; and

4078 (3) the converting organization and the converted
4079 organization each comply with the governing statute and
4080 organizational documents applicable to that organization in
4081 effecting the conversion.

4082 (b) A plan of conversion must be in writing and must
4083 include:

4084 (1) the name, type of organization, and mailing address
4085 of the principal office of the converting organization, and
4086 its unique identifying number or other designation as assigned
4087 by the Secretary of State, if any, before conversion;

4088 (2) the name, type of organization, and mailing address



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4089 of the principal office of the converted organization after
4090 conversion;

4091 (3) the terms and conditions of the conversion,
4092 including the manner and basis for converting interests in the
4093 converting organization into any combination of money,
4094 interests in the converted organization, and other
4095 consideration allowed in Section 10A-9A-10.02(c); and

4096 (4) the organizational documents of the converted
4097 organization.

4098 (c) In connection with a conversion, rights or
4099 securities of or interests in the converting organization may
4100 be exchanged for or converted into cash, property, or rights
4101 or securities of or interests in the converted organization,
4102 or, in addition to or in lieu thereof, may be exchanged for or
4103 converted into cash, property, or rights or securities of or
4104 interests in another organization or may be cancelled.

4105 (d) At the time of the approval of the plan of
4106 conversion in accordance with Section 10A-9A-10.03, the plan
4107 of conversion is not required to contain or have attached
4108 thereto any disclosure letter, disclosure schedules, or
4109 similar documents or instruments contemplated by the plan of
4110 conversion that modify, supplement, qualify, or make
4111 exceptions to representations, warranties, covenants, or
4112 conditions contained in the plan of conversion."

4113 "§10A-9A-10.06

4114 (a) A limited partnership may merge with one or more
4115 other constituent organizations pursuant to this section,
4116 Sections 10A-9A-10.07 through 10A-9A-10.09, and a plan of



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4117 merger, if:

4118 (1) the governing statute of each of the other
4119 organizations authorizes the merger;

4120 (2) the merger is not prohibited by the law of a
4121 jurisdiction that enacted any of those governing statutes; and

4122 (3) each of the other organizations complies with its
4123 governing statute in effecting the merger.

4124 (b) A plan of merger must be in writing and must
4125 include:

4126 (1) the name, type of organization, and mailing address
4127 of the principal office of each constituent organization, the
4128 jurisdiction of the governing statute of each constituent
4129 organization, and the respective unique identifying numbers or
4130 other designations as assigned by the Secretary of State, if
4131 any, of each constituent organization;

4132 (2) the name, type of organization, and mailing address
4133 of the principal office of the surviving organization, the
4134 unique identifying number or other designation as assigned by
4135 the Secretary of State, if any, of the surviving organization,
4136 the jurisdiction of the governing statute of the surviving
4137 organization, and, if the surviving organization is to be
4138 created pursuant to the merger, a statement to that effect;

4139 (3) the terms and conditions of the merger, including
4140 the manner and basis for converting the interests in each
4141 constituent organization into any combination of money,
4142 interests in the surviving organization, and other
4143 consideration as allowed by subsection (c);

4144 (4) if the surviving organization is to be created



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4145 pursuant to the merger, the surviving organization's
4146 organizational documents; and

4147 (5) if the surviving organization is not to be created
4148 pursuant to the merger, any amendments to be made by the
4149 merger to the surviving organization's organizational
4150 documents.

4151 (c) In connection with a merger, rights or securities
4152 of or interests in a constituent organization may be exchanged
4153 for or converted into cash, property, or rights or securities
4154 of or interests in the surviving organization, or, in addition
4155 to or in lieu thereof, may be exchanged for or converted into
4156 cash, property, or rights or securities of or interests in
4157 another organization or may be cancelled.

4158 (d) In addition to the requirements of subsection (b),
4159 a plan of merger may:

4160 (1) provide that (i) a constituent organization or any
4161 other party to the plan of merger that fails to perform its
4162 obligations under the plan of merger in accordance with the
4163 terms and conditions of the plan of merger, or that otherwise
4164 fails to comply with the terms and conditions of the plan of
4165 merger, in each case, required to be performed or complied
4166 with prior to the time the merger becomes effective, or that
4167 otherwise fails to consummate, or fails to cause the
4168 consummation of, the merger (whether prior to a specified
4169 date, upon satisfaction or, to the extent permitted by law,
4170 waiver of all conditions to consummation set forth in the plan
4171 of merger, or otherwise) shall be subject, in addition to any
4172 other remedies available at law or in equity, to the penalties



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4173 or consequences as are set forth in the plan of merger (which
4174 penalties or consequences may include an obligation to pay to
4175 the other party or parties to the plan of merger an amount
4176 representing, or based on the loss of, any premium or other
4177 economic entitlement the owners of the other party would be
4178 entitled to receive pursuant to the terms of the plan of
4179 merger if the merger were consummated in accordance with the
4180 terms of the plan of merger) and (ii) if, pursuant to the
4181 terms of the plan of merger, a constituent organization is
4182 entitled to receive payment from another party to the plan of
4183 merger of any amount representing a penalty or consequence (as
4184 specified in clause (i) of this Section 10A-9A-10.06(d) (1),
4185 the constituent organization shall be entitled to enforce the
4186 other party's payment obligation and, upon receipt of any
4187 payment, shall be entitled to retain the amount of the payment
4188 so received;

4189 (2) provide (i) for the appointment, at or after the
4190 time at which the plan of merger is adopted by the owners of a
4191 constituent organization in accordance with the requirements
4192 of Section 10A-9A-10.07, of one or more persons (which may
4193 include the surviving or resulting entity or any officer,
4194 partner, manager, representative, or agent thereof) as
4195 representative of the owners of a constituent organization,
4196 including those whose ownership interests shall be cancelled,
4197 converted, or exchanged in the merger, and for the delegation
4198 to that person or persons of the sole and exclusive authority
4199 to take action on behalf of the owners pursuant to the plan of
4200 merger, including taking such actions as the representative



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4201 determines to enforce (including by entering into settlements
4202 with respect to) the rights of the owners under the plan of
4203 merger, on the terms and subject to the conditions set forth
4204 in the plan of merger, (ii) that any appointment pursuant to
4205 clause (i) of this Section 10A-9A-10.06(d) (2) shall be
4206 irrevocable and binding on all owners from and after the
4207 adoption of the plan of merger by the requisite vote of the
4208 partners pursuant to Section 10A-9A-10.07, and (iii) that any
4209 provision adopted pursuant to this Section 10A-9A-10.06(d) (2)
4210 may not be amended after the merger has become effective or
4211 may be amended only with the consent or approval of persons
4212 specified in the plan of merger; and
4213 (3) contain any other provision not prohibited by law.
4214 (e) At the time of the approval of the plan of merger
4215 in accordance with Section 10A-9A-10.07, the plan of merger is
4216 not required to contain or have attached thereto any
4217 disclosure letter, disclosure schedules, or similar documents
4218 or instruments contemplated by the plan of merger that modify,
4219 supplement, qualify, or make exceptions to representations,
4220 warranties, covenants, or conditions contained in the plan of
4221 merger."

4222 Section 8. Sections 10A-2A-3.05, 10A-2A-8.27,
4223 10A-3A-3.05, and 10A-3A-8.26 are added to the Code of Alabama
4224 1975, to read as follows:

4225 §10A-2A-3.05. Independent legal significance.

4226 Action validly taken pursuant to one provision of this
4227 chapter shall not be deemed invalid solely because it is
4228 identical or similar in substance to an action that could have



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4229 been taken pursuant to some other provision of this chapter
4230 but fails to satisfy one or more requirements prescribed by
4231 such other provision.

4232 §10A-2A-8.27. Authorization of agreements and other
4233 instruments.

4234 (a) Whenever this chapter expressly requires the board
4235 of directors to approve or take other action with respect to
4236 any agreement, instrument, plan, or document, such agreement,
4237 instrument, plan, or document may be approved by the board of
4238 directors in final form or in substantially final form.
4239 Substantially final form means that all of the material terms
4240 are set forth in the agreement, instrument, plan, or document,
4241 or are determinable through other information or materials
4242 presented to or known by the board of directors, or are
4243 determinable by a combination thereof.

4244 (b) If the board of directors shall have acted to
4245 approve or take other action with respect to an agreement,
4246 instrument, plan, or document that is expressly required by
4247 this chapter to be approved by the board of directors, the
4248 board of directors may, but is not required to, at any time
4249 after providing the approval or taking such other action adopt
4250 a resolution ratifying the agreement, instrument, plan, or
4251 document, and the ratification shall be deemed to be effective
4252 as of the time of the original approval or other action by the
4253 board of directors and to satisfy any requirement under this
4254 chapter that the board of directors approve or take other
4255 action with respect to the agreement, instrument, plan, or
4256 document in a specific manner or sequence.



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4257 §10A-3A-3.05. Independent legal significance.

4258 Action validly taken pursuant to one provision of this
4259 chapter shall not be deemed invalid solely because it is
4260 identical or similar in substance to an action that could have
4261 been taken pursuant to some other provision of this chapter
4262 but fails to satisfy one or more requirements prescribed by
4263 such other provision.

4264 §10A-3A-8.26. Authorization of agreements and other
4265 instruments.

4266 (a) Whenever this chapter expressly requires the board
4267 of directors to approve or take other action with respect to
4268 any agreement, instrument, plan, or document, such agreement,
4269 instrument, plan, or document may be approved by the board of
4270 directors in final form or in substantially final form.
4271 Substantially final form means that all of the material terms
4272 are set forth in the agreement, instrument, plan, or document,
4273 or are determinable through other information or materials
4274 presented to or known by the board of directors, or are
4275 determinable by a combination thereof.

4276 (b) If the board of directors shall have acted to
4277 approve or take other action with respect to an agreement,
4278 instrument, plan, or document that is expressly required by
4279 this chapter to be approved by the board of directors, the
4280 board of directors may, but is not required to, at any time
4281 after providing the approval or taking such other action adopt
4282 a resolution ratifying the agreement, instrument, plan, or
4283 document, and the ratification shall be deemed to be effective
4284 as of the time of the original approval or other action by the



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4285 board of directors and to satisfy any requirement under this
4286 chapter that the board of directors approve or take other
4287 action with respect to the agreement, instrument, plan, or
4288 document in a specific manner or sequence.

4289 Section 9. The amendments to Sections 10A-1-8.02,
4290 10A-2A-11.02, 10A-5A-10.05, 10A-8A-9.06, and 10A-9A-10.06 made
4291 by this act shall apply to all contracts made by a
4292 corporation, nonprofit corporation, limited liability company,
4293 partnership (including a limited liability partnership), and
4294 limited partnership (including a limited liability limited
4295 partnership) and all agreements, instruments, or documents
4296 approved by the board of directors, governing authorities,
4297 members, managers, partners, or person or group of persons
4298 having approval rights of those entities and all plans of
4299 merger and plans of conversion entered into by a corporation,
4300 nonprofit corporation, limited liability company, partnership
4301 (including a limited liability partnership), and limited
4302 partnership (including a limited liability limited
4303 partnership), in each case whether or not the contracts,
4304 agreements, instruments, documents, plans of merger, or plans
4305 of conversion are made, approved, or entered into on or before
4306 August 1, 2025, except that the amendments to Sections
4307 10A-1-8.02, 10A-2A-11.02, 10A-5A-10.05, 10A-8A-9.06, and
4308 10A-9A-10.06 shall not apply to or affect any civil action or
4309 proceeding completed or pending on or before August 1, 2025.

4310 Section 10. This act shall be effective on August 1,
4311 2025.

4312