



*Florida Department of State
Division of Corporations*

*Florida
Limited Liability
Company Act*

Division of Corporations • P.O. Box 6327 • Tallahassee, Florida 32314

FOREWORD

The Division of Corporations of the Florida Department of State produces this booklet specifically for the convenience of those who frequently refer to Chapter 608, Florida Statutes. Also included are excerpts from Chapter 621, F.S., regarding Professional Service Corporations. All history notes commonly found in the Florida Statutes have been omitted. This booklet is not an official published version of the Florida Statutes and is not intended to be considered as such.

This booklet also contains some basic filing forms, filing fees and a Division telephone directory. Other filing forms are available from the Division's website. We hope this publication will be helpful to you when filing with the Division of Corporations.

Division of Corporations

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(6) “Capital account” means the agreed value of the initial contributions as provided in s. 608.4211, increased by the agreed value of subsequent contributions to capital, if any, and reduced by distributions of capital, unless otherwise provided in the articles of organization or the operating agreement.

(7) “Contribution” means any cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to the limited liability company as a member.

(8) “Conveyance” means any assignment, transfer, sale, lease, mortgage, hypothecation, or encumbrance.

(9) “Court” includes every court and judge having jurisdiction in the action.

(10) “Distribution” means a direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their economic interests.

(11) “Entity” means, without limitation, any corporation; unincorporated association or business; limited liability company; business trust, real estate investment trust, common law trust, or other trust, general partnership, limited liability partnership, limited partnership, limited liability limited partnership, joint venture, or two or more persons having a joint or common economic interest; any state, local, federal, or foreign government, governmental subdivision, agency, or instrumentality; or any other domestic or foreign entity that is formed pursuant to the provisions of applicable law.

(12) “Foreign limited liability company” means a limited liability company formed under the laws of any state other than Florida or under the laws of any foreign country or other foreign jurisdiction.

(13) “Individual” means a natural person and includes the estate of a natural person.

(14) “Insolvent” means the inability of a limited liability company to pay the limited liability company’s debts as they become due in the ordinary course of business or that the fair value of the limited liability company’s total assets would be

less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved and terminated at the time of the distribution, to satisfy the preferential distribution rights of the limited liability company’s members accrued through such dissolution and termination.

(15) “Knowledge” means a person’s actual knowledge of a fact, and does not include constructive knowledge of a fact.

(16) “Limited liability company” or “company” means a limited liability company organized and existing under this chapter.

(17) “Majority-in-interest of the members” means, unless otherwise provided in the articles of organization or operating agreement, members owning more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company.

(18) “Manager” means a person who is appointed or elected to manage a manager-managed company and, unless otherwise provided in the articles of organization or operating agreement, a manager may be, but need not be, a member of the limited liability company.

(19) “Manager-managed company” means a limited liability company that is designated to be managed by one or more managers.

(20) “Managing member” means a member appointed or elected as a managing member of a member-managed company.

(21) “Member” means any person who has been admitted to a limited liability company as a member in accordance with this chapter and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

(22) “Member-managed company” means a limited liability company other than a manager-managed company.

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(23) “Membership interest,” “member’s interest,” or “interest” means a member’s share of the profits and the losses of the limited liability company, the right to receive distributions of the limited liability company’s assets, voting rights, management rights, or any other rights under this chapter or the articles of organization or operating agreement.

(24) “Operating agreement” means, subject to s. 608.423, written or oral provisions that are adopted for the management and regulation of the affairs of the limited liability company and that set forth the relationships of the members, managers, or managing members and the limited liability company. The term includes amendments to the operating agreement.

(25) “Person” means an individual or an entity.

(26) “Personal or other legal representative” means, as to a natural person, the executor, administrator, guardian, conservator, or other legal representative of the natural person and, as to a person other than a natural person, the legal representative or successor of such person.

608.403 Purpose.—A limited liability company may be organized under this chapter for any lawful purpose, but remains subject to statutes and regulations of the laws of this state for regulating and controlling its business, which shall control when in conflict with this chapter.

608.404 Powers.—Unless its articles of organization or operating agreement provide otherwise, each limited liability company organized and existing under this chapter shall have the same powers as an individual to do all things necessary to carry out its business and affairs, including, without limitation, the power to:

- (1) Sue and be sued, and defend, in its name.
- (2) Purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located.
- (3) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property.

(4) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity.

(5) Make contracts or guarantees, or incur liabilities; borrow money; issue its notes, bonds, or other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company; or make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the business of a corporation the majority of the outstanding stock of which is owned, directly or indirectly, by the contracting limited liability company; a corporation which owns, directly or indirectly, a majority of the outstanding membership interests of the contracting limited liability company; or a corporation the majority of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, the majority of the outstanding membership interests of the contracting limited liability company, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion, or attainment of the business of the contracting limited liability company; or make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the business of the contracting limited liability company.

(6) Lend money, invest or reinvest its funds, and receive and hold real or personal property as security for repayment.

(7) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

(8) Select managers or managing members and appoint officers, directors, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

(9) Make donations for the public welfare or for charitable, scientific, or educational purposes.

(10) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans,

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option plans, and benefit or incentive plans for any or all of its current or former managers, members, officers, agents, and employees.

(11) Be a promoter, incorporator, shareholder, partner, member, associate, or manager of any corporation, partnership, joint venture, trust, or other entity.

(12) Make payments or donations or do any other act not inconsistent with law that furthers the business of the limited liability company.

608.405 Formation.—One or more persons may form a limited liability company.

608.406 Limited liability company name.—

(1) A limited liability company name:

(a) Must contain the words “limited liability company,” the abbreviation “L.L.C.,” or the designation “LLC” as the last words of the name of every limited liability company formed under the provisions of this chapter. The word “limited” may be abbreviated as “Ltd.,” and the word “company” may be abbreviated as “Co.” Omission of the words “limited liability company,” the abbreviation “L.L.C.,” or the designation “LLC” in the use of the name of the limited liability company shall render any person who knowingly participates in the omission, or knowingly acquiesces in the omission, liable for any indebtedness, damage, or liability caused by the omission.

(b) May not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted in this chapter and its articles of organization.

(c) May not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

(2) The name of the limited liability company must be distinguishable on the records of the Division of Corporations of the Department of State, except for fictitious name registrations filed pursuant to s. 865.09 and general partnership registrations filed pursuant to s. 620.8105; however, a limited liability company may register under a

name that is not otherwise distinguishable on the records of the Division of Corporations with written consent of the owner entity provided the consent is filed with the Division of Corporations at the time of registration of such name.

(3) The name of the limited liability company shall be filed with the Department of State for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law.

(4) In the case of any limited liability company in existence prior to July 1, 2007, and registered with the Division of Corporations, the requirement in this section that the name of the entity be distinguishable from the names of other entities and filings shall not apply except when the limited liability company files documents on or after July 1, 2007, that would otherwise have affected its name.

608.407 Articles of organization.—

(1) In order to form a limited liability company, articles of organization of a limited liability company shall be filed with the Department of State by one or more members or authorized representatives of the limited liability company. The articles of organization shall set forth:

(a) The name of the limited liability company, which must satisfy the requirements of s. 608.406.

(b) The mailing address and the street address of the principal office of the limited liability company.

(c) The name and street address of its initial registered agent for service of process in the state. The articles of organization shall include or be accompanied by the written statement required by s. 608.415.

(d) Any other matters that the members elect to include in the articles of organization.

(2) A limited liability company is formed at the time described in s. 608.409 if the person filing the articles of organization has substantially complied with the requirements of this section.

(3) The articles of organization shall be executed by at least one member or the authorized representative of a member.

(4) If the limited liability company is to be managed by one or more managers, the articles of

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organization may, but need not, include a statement that the limited liability company is to be a manager-managed company.

(5) The fact that articles of organization are on file with the Department of State is notice that the entity formed in connection with the filing of the articles of organization is a limited liability company formed under the laws of this state. If the articles of organization contain any information described in subsections (4) and (6), the articles of organization shall be deemed notice of that information as well, provided, if such information has been added or changed by an amendment or restatement of the articles of organization, the articles of organization shall not be deemed notice of such fact until 90 days after the effective date of such amendment or restatement.

(6) The articles of organization may also, but need not, identify one or more persons authorized to serve as a manager or managing member and may describe any limitations upon the authority of a manager or managing member, provided a provision in the articles of organization limiting the authority of a manager or managing member to transfer real property held in the name of the limited liability company is not notice of the limitation, to a person who is not a member or manager of the limited liability company, unless the limitation appears in an affidavit, certificate, or other instrument that bears the name of the limited liability company and is recorded in the office for recording transfers of such real property.

608.408 Execution of articles, certificate, or statement.—

(1) Any articles, certificate, or statement required by this chapter to be filed with the Department of State must be executed in the following manner:

(a) If it is the articles of organization, a certificate of conversion, or a statement of change of registered agent or registered office, it must be signed by a member or by the authorized representative of a member, and by the new registered agent, if applicable; and

(b) If it is the articles of dissolution or revocation of dissolution, it must be signed by members having

the same percentage of membership interests necessary to approve the dissolution or revocation of dissolution.

(2) Any person may sign a certificate through an attorney in fact, but a power of attorney to sign a certificate or statement authorizing the admission of a member must specifically describe the admission.

(3) The execution of a certificate constitutes an affirmation by the person executing the certificate, under the penalties of perjury, that the facts stated therein are true.

(4) If the articles of organization contain or any other document authorized or required to be filed under this chapter contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

608.4081 Filing requirements.—

(1) To be filed by the Department of State, a document must satisfy the following requirements, as supplemented or modified by any other section of this chapter:

(a) This chapter must require or permit filing the document by the Department of State.

(b) The document must be executed as required by s. 608.408.

(c) The document must contain any information required by this chapter and may contain other information the limited liability company elects to include.

(d) The document must be typewritten or printed and must be legible.

(e) The document must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of a foreign limited liability company need not be in English if accompanied by a reasonably authenticated English translation.

(f) If the Department of State has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

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(g) The document must be delivered to the Department of State for filing and must be accompanied by the correct filing fee and any other tax or penalty required by this chapter or other law.

(2) The document may be accompanied by one exact or conformed copy.

(3) Any signature on any certificate authorized to be filed by the Department of State under any provision of this chapter may be a facsimile, a conformed signature, or an electronically transmitted signature.

608.4082 Filing duties of Department of State.—

(1) The Department of State files a document by stamping or otherwise endorsing the document as “filed,” together with the Secretary of State’s official title and the date and time of receipt. After filing a document, the Department of State shall deliver an acknowledgment or certified copy of the document to the domestic or foreign limited liability company or its representative.

(2) The Department of State shall return any document the department refuses to file to the domestic or foreign limited liability company or its representative within 15 days after the document was received for filing, together with a brief, written explanation of the reason for refusal.

(3) If the applicant returns the document with corrections in accordance with the rules of the Department of State within 60 days after it was mailed to the applicant by the Department of State and if at the time of return the applicant so requests in writing, the filing date of the document shall be the filing date that would have been applied had the original document not been deficient, except as to persons who justifiably relied on the record before correction and were adversely affected thereby.

(4) The Department of State’s duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document;

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) If not otherwise provided by law and the provisions of this chapter, the Department of State shall determine, by rule, the appropriate format for, number of copies of, manner of execution of, method of electronic transmission of, and amount of and method of payment of fees for, any document placed under its jurisdiction.

608.409 Effect of filing and issuance of time and date endorsement on the articles of organization.—

(1) Unless a delayed effective date is specified, the limited liability company’s existence begins at the date and time when the articles of organization are filed, as evidenced by the Department of State’s date and time endorsement on the original document, or on a date specified in the articles of organization, if such date is within 5 business days prior to the date of filing.

(2) The articles of organization may specify a delayed effective time and date of commencement of the limited liability company’s existence, and if so specified, the articles of organization shall become effective, and the limited liability company’s existence shall commence, at the time and date specified. If a delayed effective date, but no time, is specified, the articles of organization shall become effective, and the limited liability company’s existence shall commence, at the close of business on the delayed effective date. Unless otherwise permitted by this chapter, a delayed effective date for a document may not be later than the 90th day after the date on which the document is filed.

(3) The Department of State’s filing of the articles of organization is conclusive proof that all conditions precedent to organization have been satisfied except in a proceeding by the state to cancel or revoke the organization or to administratively dissolve the organization.

(4) A limited liability company shall not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining

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subscriptions for or payment of contributions, until the effective date and time of the commencement of the limited liability company's existence.

608.4101 Records to be kept; right to information.—

(1) Each limited liability company shall keep at its principal office the following records:

(a) A current list of the full names and last known business, residence, or mailing addresses of all members, managers, and managing members.

(b) A copy of the articles of organization, all certificates of conversion, and any other documents filed with the Department of State concerning the limited liability company, together with executed copies of any powers of attorney pursuant to which any articles of organization or certificates were executed.

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

(d) Copies of any then-effective operating agreement and any financial statements of the limited liability company for the 3 most recent years.

(e) Unless contained in the articles of organization or the operating agreement, a writing setting out:

1. The amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute.

2. The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made.

3. Any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(2) A limited liability company shall provide members and their agents and attorneys access to its records at the limited liability company's principal office or other reasonable locations specified in the operating agreement. The limited liability company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the

opportunity to inspect and copy records during ordinary business hours. The limited liability company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(3) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(a) Without demand, information concerning the limited liability company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and

(b) On demand, other information concerning the limited liability company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(4) Each manager shall have the right to examine all of the information described in subsection (1) for a purpose reasonably related to his or her position as a manager. The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(5) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(6) Any action to enforce any right arising under this section shall be brought in the appropriate circuit court.

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608.411 Amendments to or restatements of articles of organization.—

(1) The articles of organization of a limited liability company are amended by filing the articles of amendment thereto with the Department of State. The articles of amendment shall set forth:

- (a) The name of the limited liability company.
- (b) The date of filing of the articles of organization.
- (c) The amendment to the articles of organization.

(2) Unless otherwise provided in this chapter or in the articles of amendment, the articles of amendment shall be effective when filed with the Department of State.

(3) A limited liability company may, whenever desired, integrate into a single instrument all provisions of its articles of organization then in effect and it may at the same time further amend its articles of organization by adopting restated articles of organization which meet all the requirements of s. 608.407.

(4) If the restated articles of organization merely restate and integrate but do not further amend the then-effective articles of organization, the limited liability company shall title the filing “Restated Articles of Organization,” together with such other words as the limited liability company deems appropriate. If the restated articles restate and integrate and also further amend in any respect the then-effective articles of organization, the limited liability company shall title the filing “Amended and Restated Articles of Organization,” together with such other words as the limited liability company deems appropriate. In each case described in this subsection, the document shall be executed as provided in this chapter for articles of organization and filed as provided by this chapter with the Department of State.

(5) Restated articles of organization shall state, either in their heading or in an introductory paragraph, the limited liability company’s present name, and, if it has been changed, the name under which it was originally filed; the date of filing of its original articles of organization with the Department of State; and any future effective date or time if other than the date and time of the filing

of the restated articles of organization. Restated articles of organization shall also state that they were duly executed and are being filed in accordance with this section. If the restated articles of organization only restate and integrate and do not further amend the limited liability company’s articles of organization as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated articles of organization, they shall state that fact as well.

(6) Upon the filing of the restated articles of organization with the Department of State, or upon any future effective date or time provided in restated articles of organization, the articles of organization existing prior to such filing shall be superseded and the restated articles of organization, including any further amendment or changes made thereby, shall become the limited liability company’s articles of organization. The original effective date of the limited liability company’s formation shall remain unchanged.

(7) Any amendment or change effected in connection with the restatement and integration of the articles of organization shall be subject to any other provisions of this chapter, not inconsistent with this section, which would apply if separate articles of amendment were filed to effect such amendment or change.

608.4115 Correcting the articles of organization filed of record.—

(1) A limited liability company or foreign limited liability company may correct the articles of organization filed of record with the Department of State within 30 business days after filing if the record contains a false or erroneous statement or was defectively signed.

(2) The articles of organization filed of record are corrected:

- (a) By preparing articles of correction that:
 - 1. Describe the articles of organization filed of record, including their filing date, or attach a copy of the articles of organization to the articles of correction.

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2. Specify the incorrect statement and the reason the statement is incorrect or the manner in which the signing was defective.

3. Correct the incorrect statement or defective signing.

(b) By delivering the articles of correction to the Department of State for filing.

(3) The articles of correction are effective retroactively to the effective date of the articles of organization they correct except as to persons relying on the uncorrected articles of organization and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

608.415 Registered office and registered agent.—

(1) Each limited liability company shall have and continuously maintain in this state:

(a) A registered office, which may be the same as its place of business; and

(b) A registered agent, which agent may be either:

1. An individual who resides in this state whose business office is identical with such registered office.

2. A foreign or domestic entity authorized to transact business in this state, having a business office identical with such registered office.

(2) A registered agent or a successor registered agent appointed pursuant to s. 608.416 on whom process may be served shall each file a statement in writing with the Department of State accepting the appointment as registered agent simultaneously with being designated. Such statement or acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position as provided for in this chapter.

(3) The Department of State shall maintain an accurate record of the registered agents and registered office for the service of process and shall furnish any information disclosed thereby promptly upon request and payment of the required fee.

(4) A limited liability company may not prosecute, maintain, or defend any action in any court until the limited liability company complies with the provisions of this section and pays to the

Department of State a penalty of \$5 for each day it has failed to comply or \$500, whichever amount is less, and pays any other amount required under this chapter.

608.416 Change of registered office or registered agent.—

(1) A limited liability company may change its registered office or agent by filing with the Department of State a statement setting forth:

(a) The name of the limited liability company.

(b) The street address of its current registered office.

(c) If the street address of its registered office is to be changed, the new street address.

(d) If its current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent to the appointment, either on the statement or attached to it.

(e) That such change was authorized by affirmative vote of the members or as otherwise provided in the articles of organization or the operating agreement of the limited liability company.

(2) Any registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the limited liability company at its principal office address shown in its most recently filed document. The agency is terminated and the registered office discontinued, if so provided, on the 31st day after the date on which the statement was filed with the Department of State. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the resigning registered agent.

(3) A registered agent may change the address of the registered office of any limited liability company for which such agent is the registered agent by notifying the limited liability company in writing of the change, signing, either manually or in facsimile, and delivering to the Department of State

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for filing a statement that complies with the requirements of paragraphs (1)(a)-(d), and reciting that the limited liability company has been notified of the change.

608.4211 Contributions to capital and liability for contribution.—

- (1) The contribution of a member may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.
- (2) A promise by a member to contribute to the limited liability company is not enforceable unless it is set out in writing signed by the member.
- (3) Unless otherwise provided in the articles of organization or operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of the member's death or disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the agreed value, as stated in the records of the limited liability company required to be kept pursuant to this chapter, of the stated contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the articles of organization or operating agreement or applicable law.
- (4) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, the creditor of a limited liability company, who extends credit or otherwise acts in reasonable reliance upon that obligation after the member has signed a writing that indicates the obligation and before the amendment or cancellation of the writing to indicate the

compromise, may enforce the original obligation to the extent the creditor relied on the obligation when extending credit.

- (5) The articles of organization or operating agreement of a limited liability company may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalties or consequences may take the form of reducing the defaulting member's proportionate membership interest in the limited liability company, subordinating the defaulting member's interest in the limited liability company to that of the nondefaulting members, a forced sale of the defaulting member's membership interest, the forfeiture of the defaulting member's membership interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of the defaulting member's membership interest by appraisal or by formula and redemption or sale of the defaulting member's membership interest at such value, or other penalties or consequences.

608.422 Management of the limited liability company.—

- (1) Unless otherwise provided in its articles of organization or the operating agreement, the limited liability company shall be a member-managed company.
- (2) In a member-managed company, unless otherwise provided in its articles of organization or operating agreement:
 - (a) Management shall be vested in its members or elected managing members in proportion to the then-current percentage or other interest of members in the profits of the limited liability company owned by all of the members or elected managing members.
 - (b) Except as otherwise provided in subsection (3) or in this chapter, the decision of a majority-in-interest of the members or elected managing members shall be controlling.
- (3) If the articles of organization or the operating agreement provide for the management of the

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limited liability company by a manager or managers, the management of the limited liability company shall be vested in a manager or managers and the limited liability company shall be a manager-managed company.

(4) In a manager-managed company, unless otherwise provided in its articles of organization or operating agreement:

(a) Each manager has equal rights in the management and conduct of the limited liability company's business.

(b) Except as otherwise provided in subsection (3) or in this chapter, any matter relating to the business of the limited liability company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers.

(c) A manager:

1. Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority-in-interest of the members; and
2. Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(5) Action requiring the consent of members or managers under this chapter may be taken without a meeting, subject to the limitations of s. 608.4231.

(6) Unless otherwise provided in the articles of organization or operating agreement, a member, managing member, or manager may appoint a proxy to vote or otherwise act for the member, managing member, or manager by signing an appointment instrument, either personally or by the member's, managing member's, or manager's attorney-in-fact.

(7) Unless otherwise provided in the articles of organization or operating agreement, a member, managing member, or manager may also hold the offices and have such other responsibilities accorded to them by the members and set out in the articles of organization or the operating agreement of the limited liability company.

608.4225 General standards for managers and managing members.—

(1) Subject to ss. 608.4226 and 608.423, each manager and managing member shall owe a duty of loyalty and a duty of care to the limited liability company and all of the members of the limited liability company.

(a) Subject to s. 608.4226, the duty of loyalty is limited to:

1. Accounting to the limited liability company and holding as trustee for the limited liability company any property, profit, or benefit derived by such manager or managing member in the conduct or winding up of the limited liability company business or derived from a use by such manager or managing member of limited liability company property, including the appropriation of a limited liability company opportunity.
2. Refraining from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company.
3. Refraining from competing with the limited liability company in the conduct of the limited liability company business before the dissolution of the limited liability company.

(b) The duty of care is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(c) Each manager and managing member shall discharge the duties to the limited liability company and its members under this chapter or under the articles of organization or operating agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

(d) A manager or managing member does not violate a duty or obligation under this chapter or under the articles of organization or operating agreement merely because the manager's or managing member's conduct furthers such manager's or managing member's own interest.

(e) A manager or managing member may lend money to and transact other business with the limited liability company. As to each loan or

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transaction, the rights and obligations of the manager or managing member are the same as those of a person who is not a member, subject to other applicable law.

(f) This section applies to a person winding up the limited liability company business as the personal or other legal representative of the last surviving member as if such person were a manager or managing member.

(2) In discharging a manager's or managing member's duties, a manager or managing member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more members or employees of the limited liability company whom the manager or managing member reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the manager or managing member reasonably believes are within the persons' professional or expert competence; or

(c) A committee of managers, members, or managing members of which the affected manager or managing member is not a participant if the manager or managing member reasonably believes the committee merits confidence.

(3) In discharging a manager's or managing member's duties, a manager or managing member may consider such factors as the manager or managing member deems relevant, including the long-term prospects and interests of the limited liability company and its members, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the limited liability company, the communities and society in which the limited liability company operates, and the economy of the state and the nation.

(4) A member, manager, or managing member is not acting in good faith if the member, manager, or managing member has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(5) A manager or managing member is not liable for any action taken as a manager or managing member, or any failure to take any action, if the

manager or managing member performed the duties of the manager's or managing member's position in compliance with this section.

608.4226 Conflicts of interest.—

(1) No contract or other transaction between a limited liability company and one or more of its members, managers, or managing members or any other limited liability company, corporation, firm, association, or entity in which one or more of its members, managers, or managing members are managers, managing members, directors, or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such members, managers, or managing members are present at the meeting of the members, managers, or managing members or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the managers or managing members or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested members, managers, or managing members;

(b) The fact of such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the limited liability company at the time it is authorized by the managers, managing members, a committee, or the members.

(2) For purposes of paragraph (1)(a) only, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the managers or managing members, or of the committee, who have no relationship or interest in the transaction described in subsection (1), but a transaction may not be authorized, approved, or ratified under this section by a single manager of a manager-managed company or a single managing member of a member-managed company, unless the company is

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a single member limited liability company. If a majority of the managers or managing members who have no such relationship or interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a manager or managing member with such relationship or interest in the transaction does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection, but such presence or vote of those managers or managing members may be counted for purposes of determining whether the transaction is approved under other sections of this chapter.

(3) For purposes of paragraph (1)(b) only, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority-in-interest of the members entitled to be counted under this subsection. Membership interests owned by or voted under the control of a manager or managing member who has a relationship or interest in the transaction described in subsection (1) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under paragraph (1)(b). The vote of those membership interests, however, is counted in determining whether the transaction is approved under other sections of this act. A majority-in-interest of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

608.4227 Liability of members, managing members, and managers.—

(1) Except as provided in this chapter, the members, managers, and managing members of a limited liability company are not liable, solely by reason of being a member or serving as a manager or managing member, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company;

(2) Any such member, managing member, manager, or other person acting under the articles of organization or operating agreement of a limited liability company is not liable to the limited liability company or to any such other member, managing member, or manager for the member's, managing member's, manager's, or other person's good faith reliance on the provisions of the limited liability company's articles of organization or operating agreement; and

(3) The member's, managing member's, manager's, or other person's duties and liabilities may be expanded or restricted by provisions in a limited liability company's articles of organization or operating agreement.

608.4228 Limitation of liability of managers and managing members.—

(1) A manager or a managing member shall not be personally liable for monetary damages to the limited liability company, its members, or any other person for any statement, vote, decision, or failure to act regarding management or policy decisions by a manager or a managing member, unless:

(a) The manager or managing member breached or failed to perform the duties as a manager or managing member; and

(b) The manager's or managing member's breach of, or failure to perform, those duties constitutes any of the following:

1. A violation of the criminal law, unless the manager or managing member had a reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe such conduct was unlawful. A judgment or other final adjudication against a manager or managing member in any criminal proceeding for a violation of the criminal law estops that manager or managing member from contesting the fact that such breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the manager or managing member from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that such conduct was unlawful.

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2. A transaction from which the manager or managing member derived an improper personal benefit, either directly or indirectly.
3. A distribution in violation of s. 608.426.
4. In a proceeding by or in the right of the limited liability company to procure a judgment in its favor or by or in the right of a member, conscious disregard of the best interest of the limited liability company, or willful misconduct.
5. In a proceeding by or in the right of someone other than the limited liability company or a member, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
 - (2) For the purposes of this section, the term “recklessness” means acting, or failing to act, in conscious disregard of a risk known, or so obvious that it should have been known, to the manager or managing member, and known to the manager or managing member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or failure to act.
 - (3) A manager or managing member is deemed not to have derived an improper personal benefit from any transaction if the transaction and the nature of any personal benefit derived by the manager or managing member are not prohibited by state or federal law or the articles of organization or operating agreement and, without further limitation, the transaction and the nature of any personal benefit derived by a manager or managing member are disclosed or known to the members, and the transaction was authorized, approved, or ratified by the vote of a majority-in-interest of the members other than the managing member, or the transaction was fair and reasonable to the limited liability company at the time it was authorized by the manager or managing member, notwithstanding that a manager or managing member received a personal benefit.
 - (4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the existence

of other circumstances under which a manager will be deemed not to have derived an improper benefit.

608.4229 Indemnification of members, managers, managing members, officers, employees, and agents.—

(1) Subject to such standards and restrictions, if any, as are set forth in its articles of organization or operating agreement, a limited liability company may, and shall have the power to, but shall not be required to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

(2) Notwithstanding subsection (1), indemnification or advancement of expenses shall not be made to or on behalf of any member, manager, managing member, officer, employee, or agent if a judgment or other final adjudication establishes that the actions, or omissions to act, of such member, manager, managing member, officer, employee, or agent were material to the cause of action so adjudicated and constitute any of the following:

- (a) A violation of criminal law, unless the member, manager, managing member, officer, employee, or agent had no reasonable cause to believe such conduct was unlawful.
- (b) A transaction from which the member, manager, managing member, officer, employee, or agent derived an improper personal benefit.
- (c) In the case of a manager or managing member, a circumstance under which the liability provisions of s. 608.426 are applicable.
- (d) Willful misconduct or a conscious disregard for the best interests of the limited liability company in a proceeding by or in the right of the limited liability company to procure a judgment in its favor or in a proceeding by or in the right of a member.

608.423 Limited liability company operating agreement; nonwaivable provisions.—

(1) Except as otherwise provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the limited liability company and the conduct of its business,

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establish duties in addition to those set forth in this chapter, and to govern relations among the members, managers, and company. Any inconsistency between written and oral operating agreements shall be resolved in favor of the written agreement. The members of a limited liability company may enter into an operating agreement before, after, or at the time the articles of organization are filed, and the operating agreement takes effect on the date of the formation of the limited liability company or on any other date provided in the operating agreement. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and limited liability company.

(2) The operating agreement may not:

(a) Unreasonably restrict a right to information or access to records under s. 608.4101;

(b) Eliminate the duty of loyalty under s. 608.4225, but the agreement may:

1. Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

2. Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) Unreasonably reduce the duty of care under s. 608.4225;

(d) Eliminate the obligation of good faith and fair dealing under s. 608.4225, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(e) Vary the requirement to wind up the limited liability company's business in a case specified in this chapter; or

(f) Restrict rights of a person, other than a manager, member, or transferee of a member's distributional interest, under this chapter.

(3) The power to adopt, alter, amend, or repeal the operating agreement of a limited liability company shall be vested in the members of the limited liability company unless vested in the manager or managers of the limited liability company by the

articles of organization or operating agreement, provided that any amendment to a written operating agreement shall be in writing. The operating agreement adopted by the members or by the manager or managers may be repealed or altered; a new operating agreement may be adopted by the members; and the members may prescribe in any operating agreement made by them that such operating agreement may not be altered, amended, or repealed by the manager or managers.

(4) Unless the articles of organization or the operating agreement provides otherwise, if the management of the limited liability company is vested in a manager or managers, the managers may adopt an operating agreement to be effective only in an emergency as defined in subsection (7). The emergency operating agreement, which is subject to amendment or repeal by the members, may make all provisions necessary for managing the limited liability company during an emergency, including procedures for calling a meeting of the managers and designation of additional or substitute managers.

(5) All provisions of the regular operating agreement consistent with the emergency regulations remain effective during the emergency. The emergency operating agreement is not effective after the emergency ends.

(6) Actions taken by the limited liability company in good faith in accordance with the emergency operating agreement have the effect of binding the limited liability company and may not be used to impose liability on a manager, employee, or agent of the limited liability company.

(7) An emergency exists for purposes of this section if the limited liability company's managers cannot readily be assembled because of some catastrophic event.

608.4231 Voting by members and managers.—

(1) The articles of organization or operating agreement may provide for classes or groups of members having such relative rights, powers, and duties as the articles of organization or operating agreement may provide, and may make provision for the future creation in the manner provided in the

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articles of organization or operating agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. The articles of organization or operating agreement may provide for the taking of an action, including the amendment of the articles of organization or operating agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the articles of organization or operating agreement a class or group of limited liability company interests that was not previously outstanding. The articles of organization or operating agreement may provide that any member or class or group of members shall have no voting rights.

(2) The articles of organization or operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or manager on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis.

(3) If no conflicting voting provision is contained in the articles of organization or operating agreement:

(a) The members of a limited liability company shall vote in proportion to their then-current percentage or other allocable interest in the profits of the limited liability company or, in the case of a member who has assigned the member's entire economic interest in the limited liability company to a person who has not been admitted as a member, in proportion to the then-current percentage or other allocable interest in the profits of the limited liability company that the assigning member would have, had the assignment not been made.

(b) In all matters in which a vote is required, a vote of a majority-in-interest of the members shall be sufficient unless provided otherwise in the limited liability company's articles of organization or operating agreement or this chapter.

(4) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, in no event shall the articles of organization be amended by a vote of less than a majority-in-interest of the members.

(5) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, members shall have the right to vote on a dissolution of the limited liability company as provided in s. 608.441 and on a merger of the limited liability company as provided in s. 608.4381.

(6) Except as otherwise provided in the articles of organization or the operating agreement, if the members have appointed more than one manager or managing member to manage the business of the limited liability company, decisions of the managers or managing members shall be made by majority vote of the managers or managing members if at a meeting, or by unanimous written consent. Unless otherwise provided in the articles of organization or operating agreement, on any matter that is to be voted on by one or more managers or managing members, the managers or managing members may vote in person or by proxy. Within 10 days after obtaining such authorization by written consent, notice must be given to those managers or managing members who have not consented in writing or who are not entitled to vote on the action.

(7) The articles of organization or operating agreement which grants a right to vote may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(8) Unless otherwise provided in the articles of organization or operating agreement, on any matter that is to be voted on by members, the members may take such action without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, are signed by the members having not less than the

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minimum number of votes that would be necessary to authorize or take such action at a meeting, but in no event by a vote of less than a majority-in-interest of the members that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in the articles of organization or operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy. Within 10 days after obtaining such authorization by written consent, notice must be given to those members who have not consented in writing or who are not entitled to vote on the action.

608.4232 Admission of additional members.—

Except as otherwise provided in the articles of organization or the operating agreement, no person may be admitted as a member unless a majority-in-interest of the members consent in writing to the admission of the additional member.

608.4235 Agency of members and managers or managing members.—

(1) Subject to subsections (2) and (3):

(a) In a member-managed company, each member is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the limited liability company's name, for apparently carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the company binds the limited liability company, unless the member had no authority to act for the limited liability company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

(b) An act of a member which is not apparently for carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized by appropriate vote of the other members.

(2) Subject to subsection (3), in a manager-managed company:

(a) A member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member. Each manager is an agent of the limited liability company for the purpose of its business, and an act of a manager, including the signing of an instrument in the limited liability company's name, for apparently carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the company binds the limited liability company, unless the manager had no authority to act for the limited liability company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(b) An act of a manager which is not apparently for carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized under s. 608.422.

(3) Unless the articles of organization or operating agreement limit the authority of a member, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the limited liability company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

608.4236 Delegation of rights and powers to manage.—Unless otherwise provided in the limited liability company's articles of organization or operating agreement, a member or manager of a limited liability company has the power and authority to delegate to one or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including the power and authority to delegate to agents, boards of managers, managing members or directors, officers and assistant officers, and employees of a member or manager of the limited liability company, and the power and authority to

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delegate by a management agreement or another agreement with, or otherwise, to other persons. Unless otherwise provided in the limited liability company's articles of organization or operating agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company.

608.4237 Membership termination upon events of bankruptcy.

—A person ceases to be a member of a limited liability company upon the occurrence of any of the following:

- (1) Unless otherwise provided in the articles of organization or operating agreement, or with the written consent of all members, a member:
 - (a) Makes an assignment for the benefit of creditors;
 - (b) Files a voluntary petition in bankruptcy;
 - (c) Is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;
 - (d) Files a petition or answer seeking for herself or himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
 - (e) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or
 - (f) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties; or
- (2) Unless otherwise provided in the articles of organization or operating agreement, or with the written consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence of a trustee,

receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

608.4238 Unauthorized assumption of powers.

—All persons purporting to act as or on behalf of a limited liability company, having actual knowledge that there was no organization of a limited liability company under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also had actual knowledge that there was no organization of a limited liability company.

608.425 Limited liability company property.

- (1) All property originally contributed to the limited liability company or subsequently acquired by a limited liability company by purchase or otherwise is limited liability company property.
- (2) Unless otherwise provided in the articles of organization or the operating agreement, property acquired with limited liability company funds is limited liability company property.
- (3) Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company, if they are executed in accordance with this chapter.

608.426 Distributions; impairment of capital.

- (1) The limited liability company may make distributions to its members in accordance with the provisions contained in the operating agreement, except that no distribution may be made if after the distribution the limited liability company would be insolvent. If the operating agreement does not provide for the payment of distributions to members, the distributions shall be made on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

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(2) The managers or managing members of a limited liability company may base a determination that a distribution is not prohibited under subsection (1) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances. In the case of any distribution based upon such financial statement or such a valuation, each such distribution shall be identified as a distribution based upon such financial statements or a fair valuation of assets, and the amount distributed shall be disclosed to the receiving members concurrent with their receipt of the distribution.

(3) A manager or managing member who votes for or assents to a distribution made in violation of this section, the articles of incorporation, or the operating agreement, is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without such violation if it is established that the manager or managing member did not perform the manager's or managing member's duties in compliance with s. 608.4225. In any proceeding commenced under this section, a manager or managing member has all of the defenses ordinarily available to a manager or managing member.

(4) A manager or managing member held liable under subsection (3) for an unlawful distribution is entitled to contribution:

(a) From every other manager or managing member who is also liable under subsection (3) for the unlawful distribution; and

(b) From each member to the extent of the amount the member accepted knowing the distribution was made in violation of this section, the articles of incorporation, or the operating agreement.

(5) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the distribution was made. In the case of a distribution in the form of indebtedness, each payment of principal or interest is treated as a distribution.

608.4261 Sharing of profits and losses.—The profits and losses of the limited liability company shall be allocated among the members in the manner provided in the articles of organization or the operating agreement. If the articles of organization do not or the operating agreement does not provide for the allocation of profits and losses among members, profits and losses shall be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent such contributions have been received by the limited liability company and have not been returned.

608.427 Withdrawal of member and distribution upon withdrawal.—

(1) A member may withdraw from a limited liability company only at the time or upon the occurrence of an event specified in the articles of organization or operating agreement and in accordance with the articles of organization or operating agreement. Notwithstanding anything to the contrary under applicable law, unless the articles of organization or operating agreement provides otherwise, a member may not resign from a limited liability company prior to the dissolution and winding up of the limited liability company. Notwithstanding anything to the contrary under applicable law, the articles of organization or operating agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

(2) Upon withdrawal, a withdrawing member is entitled to receive any distribution to which the withdrawing member is entitled under the articles of organization or operating agreement, and, if not otherwise provided in the articles of organization and operating agreement, the withdrawing member is entitled to receive, within a reasonable time after withdrawal, the fair value of the withdrawing member's interest in the limited liability company as of the date of resignation based upon the withdrawing member's right to share in distributions from the limited liability company.

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(3) In the absence of a statement in the articles of organization or the operating agreement to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of the member's contribution, has only the right to demand and receive cash in return for the member's contribution to capital.

608.428 Liability upon wrongful distribution.—

(1) If a member receives a distribution in violation of the articles of organization, the operating agreement, or this chapter, the member is liable to the limited liability company for a period of 3 years thereafter for the amount of the distribution wrongfully made.

(2) A member may not receive a distribution from a limited liability company to the extent that, after giving effect to the distribution, the limited liability company would be insolvent.

608.431 Nature of interest of member in limited liability company.—An interest of a member in a limited liability company is personal property.

608.432 Assignment of member's interest.—

(1) A limited liability company interest is assignable in whole or in part except as provided in the articles of organization or operating agreement. The assignee of a member's interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in the articles of organization or operating agreement and upon:

(a) The approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; or
(b) Compliance with any procedure provided for in the articles of organization or operating agreement.

(2) Unless otherwise provided in the articles of organization or operating agreement:

(a) An assignment of a membership interest does not entitle the assignee to become or to exercise any rights or powers of a member;

(b) An assignment of a membership interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(c) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the membership interest of such member. Unless otherwise provided in the articles of organization or operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(3) The articles of organization or operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company.

(4) Unless otherwise provided in the articles of organization or operating agreement and except to the extent assumed by agreement, until an assignee of a membership interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(5) Unless otherwise provided in the articles of organization or operating agreement, a limited liability company may acquire, by purchase, redemption, or otherwise, any membership interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the articles of organization or operating agreement, any such interest so acquired by the limited liability company shall be deemed canceled.

608.433 Right of assignee to become member.—

(1) Unless otherwise provided in the articles of organization or operating agreement, an assignee of a limited liability company interest may become a member only if all members other than the member assigning the interest consent.

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(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of the assigning member under the articles of organization, the operating agreement, and this chapter. An assignee who becomes a member also is liable for the obligations of the assignee's assignor to make and return contributions as provided in s. 608.4211 and wrongful distributions as provided in s. 608.428. However, the assignee is not obligated for liabilities which are unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or the operating agreement.

(3) If an assignee of a limited liability company interest becomes a member, the assignor is not released from liability to the limited liability company under s. 608.4211, s. 608.4228, or s. 608.426.

(4)(a) On application to a court of competent jurisdiction by any judgment creditor of a member or a member's assignee, the court may enter a charging order against the limited liability company interest of the judgment debtor or assignee rights for the unsatisfied amount of the judgment plus interest.

(b) A charging order constitutes a lien on the judgment debtor's limited liability company interest or assignee rights. Under a charging order, the judgment creditor has only the rights of an assignee of a limited liability company interest to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled from the limited liability company, to the extent of the judgment, including interest.

(c) This chapter does not deprive any member or member's assignee of the benefit of any exemption law applicable to the member's limited liability company interest or the assignee's rights to distributions from the limited liability company.

(5) Except as provided in subsections (6) and (7), a charging order is the sole and exclusive remedy by which a judgment creditor of a member or member's assignee may satisfy a judgment from the judgment debtor's interest in a limited liability company or rights to distributions from the limited liability company.

(6) In the case of a limited liability company having only one member, if a judgment creditor of a member or member's assignee establishes to the satisfaction of a court of competent jurisdiction that distributions under a charging order will not satisfy the judgment within a reasonable time, a charging order is not the sole and exclusive remedy by which the judgment creditor may satisfy the judgment against a judgment debtor who is the sole member of a limited liability company or the assignee of the sole member, and upon such showing, the court may order the sale of that interest in the limited liability company pursuant to a foreclosure sale. A judgment creditor may make a showing to the court that distributions under a charging order will not satisfy the judgment within a reasonable time at any time after the entry of the judgment and may do so at the same time that the judgment creditor applies for the entry of a charging order.

(7) In the case of a limited liability company having only one member, if the court orders foreclosure sale of a judgment debtor's interest in the limited liability company or of a charging order lien against the sole member of the limited liability company pursuant to subsection (6):

(a) The purchaser at the court-ordered foreclosure sale obtains the member's entire limited liability company interest, not merely the rights of an assignee;

(b) The purchaser at the sale becomes the member of the limited liability company; and

(c) The person whose limited liability company interest is sold pursuant to the foreclosure sale or is the subject of the foreclosed charging order ceases to be a member of the limited liability company.

(8) In the case of a limited liability company having more than one member, the remedy of foreclosure on a judgment debtor's interest in such limited liability company or against rights to distribution from such limited liability company is not available to a judgment creditor attempting to satisfy the judgment and may not be ordered by a court.

(9) Nothing in this section shall limit:

(a) The rights of a creditor that has been granted a consensual security interest in a limited liability

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company interest to pursue the remedies available to such secured creditor under other law applicable to secured creditors;

(b) The principles of law and equity which affect fraudulent transfers;

(c) The availability of the equitable principles of alter ego, equitable lien, or constructive trust, or other equitable principles not inconsistent with this section; or

(d) The continuing jurisdiction of the court to enforce its charging order in a manner consistent with this section.

608.434 Power of estate of deceased or incompetent member; dissolved or terminated member.—

(1) If a member who is an individual dies or if a court of competent jurisdiction adjudges a member who is an individual to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all the member's rights for the purpose of settling the member's estate or administering the member's property, including any power the member had to give an assignee the right to become a member.

(2) If a member is a corporation, limited liability company, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

608.4351 Appraisal rights; definitions.—The following definitions apply to this section and ss. 608.4352-608.43595:

(1) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of s. 608.4352(2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Appraisal event" means an event described in s. 608.4352(1).

(3) "Beneficial member" means a person who is the beneficial owner of a membership interest held in a voting trust or by a nominee on the beneficial owner's behalf.

(4) "Converted entity" means the other business entity into which a domestic limited liability company converts pursuant to ss. 608.4401-608.4404.

(5) "Fair value" means the value of the member's membership interests determined:

(a) Immediately before the effectuation of the appraisal event to which the member objects.

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the transaction to which the member objects unless exclusion would be inequitable to the limited liability company and its remaining members.

(c) For a limited liability company with 10 or fewer members, without discounting for lack of marketability or minority status.

(6) "Interest" means interest from the effective date of the appraisal event to which the member objects until the date of payment, at the rate of interest determined for judgments in accordance with s. 55.03, determined as of the effective date of the appraisal event.

(7) "Limited liability company" means the domestic limited liability company that issued the membership interest held by a member demanding appraisal and, for matters covered in ss. 608.4352-608.43595, includes the converted entity in a conversion or the surviving entity in a merger.

(8) "Record member" means each person who is identified as a member in the current list of members maintained in accordance with s. 608.4101 by the limited liability company, or to the extent the limited liability company has failed to maintain a current list, each person that is the rightful owner of a membership interest in the limited liability company. An assignee of a membership interest is not a record member.

(9) "Senior executive" means a manager or managing member or the chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function of a limited liability company or of a

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manager or managing member of the limited liability company.

(10) “Member” means a record member or a beneficial member.

(11) “Membership interest” has the same meaning set forth in s. 608.402, except, if the appraisal rights of a member under s. 608.4352 pertain to only a certain class or series of a membership interest, the term “membership interest” means only the membership interest pertaining to such class or series.

(12) “Surviving entity” means the other business entity into which a domestic limited liability company is merged pursuant to ss. 608.438-608.4383.

608.4352 Right of members to appraisal.—

(1) A member of a domestic limited liability company is entitled to appraisal rights, and to obtain payment of the fair value of that member’s membership interest, in the following events:

(a) Consummation of a merger of such limited liability company pursuant to this act and the member possessed the right to vote upon the merger; or

(b) Consummation of a conversion of such limited liability company pursuant to this act and the member possessed the right to vote upon the conversion.

(2) Notwithstanding subsection (1), the availability of appraisal rights shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for membership interests which are:

1. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

2. Not listed or designated as provided in subparagraph 1. but are issued by a limited liability company that has at least 500 members and all membership interests of the limited liability company, including membership interests that are limited to a right to receive distributions, have a market value of at least \$10 million, exclusive of

the value of any such interests held by its managing members, managers, and other senior executives owning more than 10 percent of the rights to receive distributions from the limited liability company.

(b) The applicability of paragraph (a) shall be determined as of the date fixed to determine the members entitled to receive notice of, and to vote upon, the appraisal event.

(c) Paragraph (a) shall not apply, and appraisal rights shall be available pursuant to subsection (1), for any members who are required by the appraisal event to accept for their membership interests anything other than cash or a proprietary interest of an entity that satisfies the standards set forth in paragraph (a) at the time the appraisal event becomes effective.

(d) Paragraph (a) shall not apply, and appraisal rights shall be available pursuant to subsection (1), for the holders of a membership interest if:

1. Any of the members’ interests in the limited liability company or the limited liability company’s assets are being acquired or converted, whether by merger, conversion, or otherwise, pursuant to the appraisal event by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1-year period immediately preceding approval of the appraisal event was, the beneficial owner of 20 percent or more of those interests in the limited liability company entitled to vote on the appraisal event, excluding any such interests acquired pursuant to an offer for all interests having such voting rights if such offer was made within 1 year prior to the appraisal event for consideration of the same kind and of a value equal to or less than that paid in connection with the appraisal event; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval of the appraisal event had, the power, contractually or otherwise, to cause the appointment or election of any senior executives; or

2. Any of the members’ interests in the limited liability company or the limited liability company’s assets are being acquired or converted, whether by merger, conversion, or otherwise, pursuant to the appraisal event by a person, or by an affiliate of a

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person, who is, or at any time in the 1-year period immediately preceding approval of the appraisal event was, a senior executive of the limited liability company or a senior executive of any affiliate of the limited liability company, and that senior executive will receive, as a result of the limited liability company action, a financial benefit not generally available to members, other than:

- a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the appraisal event;
- b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the appraisal event that are not more favorable than those existing before the appraisal event or, if more favorable, that have been approved by the limited liability company; or
- c. In the case of a managing member or manager of the limited liability company who will, during or as the result of the appraisal event, become a managing member, manager, general partner, or director of the surviving or converted entity or one of its affiliates, those rights and benefits as a managing member, manager, general partner, or director that are provided on the same basis as those afforded by the surviving or converted entity generally to other managing members, managers, general partners, or directors of the surviving or converted entity or its affiliate.
- (e) For the purposes of sub-subparagraph (d)1.a. only, the term “beneficial owner” means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the right to vote, or to direct the voting of, an interest in a limited liability company with respect to approval of the appraisal event, provided a member of a national securities exchange shall not be deemed to be a beneficial owner of an interest in a limited liability company held directly or indirectly by it on behalf of another person solely because such member is the recordholder of interests in the limited liability company if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders

of the interests in the limited liability company to be voted. When two or more persons agree to act together for the purpose of voting such interests, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting interests in the limited liability company beneficially owned by any member of the group.

(3) A member entitled to appraisal rights under this section and ss. 608.4353-608.43595 may not challenge a completed appraisal event unless the appraisal event:

(a) Was not effectuated in accordance with the applicable provisions of this section and ss. 608.4353-608.43595, or the limited liability company’s articles of organization or operating agreement; or

(b) Was procured as a result of fraud or material misrepresentation.

(4) A limited liability company may modify, restrict, or eliminate the appraisal rights provided in this section and ss. 608.4353-608.43595 in its operating agreement.

608.4353 Assertion of rights by nominees and beneficial owners.—

(1) A record member may assert appraisal rights as to fewer than all the membership interests registered in the record member’s name which are owned by a beneficial member only if the record member objects with respect to all membership interests of the class or series owned by that beneficial member and notifies the limited liability company in writing of the name and address of each beneficial member on whose behalf appraisal rights are being asserted. The rights of a record member who asserts appraisal rights for only part of the membership interests of the class or series held of record in the record member’s name under this subsection shall be determined as if the membership interests to which the record member objects and the record member’s other membership interests were registered in the names of different record members.

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(2) A beneficial member may assert appraisal rights as to a membership interest held on behalf of the member only if such beneficial member:

(a) Submits to the limited liability company the record member's written consent to the assertion of such rights no later than the date referred to in s. 608.4356(2)(b)2.

(b) Does so with respect to all membership interests of the class or series that are beneficially owned by the beneficial member.

608.4354 Notice of appraisal rights.—

(1) If a proposed appraisal event is to be submitted to a vote at a members' meeting, the meeting notice must state that the limited liability company has concluded that members are, are not, or may be entitled to assert appraisal rights under this act.

(2) If the limited liability company concludes that appraisal rights are or may be available, a copy of ss. 608.4351-608.43595 must accompany the meeting notice sent to those record members entitled to exercise appraisal rights.

(3) If the appraisal event is to be approved other than by a members' meeting, the notice referred to in subsection (1) must be sent to all members at the time that consents are first solicited, whether or not consents are solicited from all members, and include the materials described in s. 608.4356.

608.4355 Notice of intent to demand payment.—

(1) If a proposed appraisal event is submitted to a vote at a members' meeting, or is submitted to a member pursuant to a consent vote, a member who is entitled to and who wishes to assert appraisal rights with respect to any class or series of membership interests:

(a) Must deliver to a manager or managing member of the limited liability company before the vote is taken, or within 20 days after receiving the notice pursuant to s. 608.4354(3) if action is to be taken without a member meeting, written notice of such person's intent to demand payment if the proposed appraisal event is effectuated.

(b) Must not vote, or cause or permit to be voted, any membership interests of such class or series in favor of the appraisal event.

(2) A person who may otherwise be entitled to appraisal rights, but who does not satisfy the requirements of subsection (1), is not entitled to payment under ss. 608.4351-608.43595.

608.4356 Appraisal notice and form.—

(1) If the proposed appraisal event becomes effective, the limited liability company must deliver a written appraisal notice and form required by paragraph (2)(a) to all members who satisfied the requirements of s. 608.4355.

(2) The appraisal notice must be sent no earlier than the date the appraisal event became effective and no later than 10 days after such date and must:

(a) Supply a form that specifies the date that the appraisal event became effective and that provides for the member to state:

1. The member's name and address.
2. The number, classes, and series of membership interests as to which the member asserts appraisal rights.
3. That the member did not vote for the transaction.
4. Whether the member accepts the limited liability company's offer as stated in subparagraph (b)4.
5. If the offer is not accepted, the member's estimated fair value of the membership interests and a demand for payment of the member's estimated value plus interest.

(b) State:

1. Where the form described in paragraph (a) must be sent.
2. A date by which the limited liability company must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice and form described in this subsection are sent, and that the member shall have waived the right to demand appraisal with respect to the membership interests unless the form is received by the limited liability company by such specified date.

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3. In the case of membership interests represented by a certificate, the location at which certificates for such certificated membership interests must be deposited, if that action is required by the limited liability company, and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph 2.

4. The limited liability company's estimate of the fair value of the membership interests.

5. An offer to each member who is entitled to appraisal rights to pay the limited liability company's estimate of fair value set forth in subparagraph 4.

6. That, if requested in writing, the limited liability company will provide to the member so requesting, within 10 days after the date specified in subparagraph 2., the number of members who return the forms by the specified date and the total number of membership interests owned by them.

7. The date by which the notice to withdraw under s. 608.4357 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) Be accompanied by:

1. Financial statements of the limited liability company that issued the membership interests to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the limited liability company's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.

2. A copy of ss. 608.4351-608.43595.

608.4357 Perfection of rights; right to withdraw.—

(1) A member who wishes to exercise appraisal rights must execute and return the form received pursuant to s. 608.4356(1) and, in the case of certificated membership interests and if the limited liability company so requires, deposit the member's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 608.4356(2)(b)2. Once a member deposits that

member's certificates or, in the case of uncertificated membership interests, returns the executed form described in s. 608.4356(2), the member loses all rights as a member, unless the member withdraws pursuant to subsection (3). Upon receiving a demand for payment from a member who holds an uncertificated membership interest, the limited liability company shall make an appropriate notation of the demand for payment in its records.

(2) The limited liability company may restrict the transfer of such membership interests from the date the member delivers the items required by subsection (1).

(3) A member who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to s. 608.4356(2)(b)7. A member who fails to so withdraw from the appraisal process may not thereafter withdraw without the limited liability company's written consent.

(4) A member who does not execute and return the form and, in the case of certificated membership interests, deposit that member's certificates, if so required by the limited liability company, each by the date set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.

(5) If the member's right to receive fair value is terminated other than by the purchase of the membership interest by the limited liability company, all rights of the member, with respect to such membership interest, shall be reinstated effective as of the date the member delivered the items required by subsection (1), including the right to receive any intervening payment or other distribution with respect to such membership interest, or, if any such rights have expired or any such distribution other than a cash payment has been completed, in lieu thereof at the election of the limited liability company, the fair value thereof in cash as determined by the limited liability company as of the time of such expiration or completion, but without prejudice otherwise to any action or

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proceeding of the limited liability company that may have been taken by the limited liability company on or after the date the member delivered the items required by subsection (1).

608.43575 Member's acceptance of limited liability company's offer.—

(1) If the member states on the form provided in s. 608.4356(1) that the member accepts the offer of the limited liability company to pay the limited liability company's estimated fair value for the membership interest, the limited liability company shall make such payment to the member within 90 days after the limited liability company's receipt of the items required by s. 608.4357(1).

(2) Upon payment of the agreed value, the member shall cease to have any interest in the membership interest.

608.4358 Procedure if member is dissatisfied with offer.—

(1) A member who is dissatisfied with the limited liability company's offer as set forth pursuant to s. 608.4356(2)(b)5. must notify the limited liability company on the form provided pursuant to s. 608.4356(1) of the member's estimate of the fair value of the membership interest and demand payment of that estimate plus interest.

(2) A member who fails to notify the limited liability company in writing of the member's demand to be paid the member's estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 608.4356(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the limited liability company pursuant to s. 608.4356(2)(b)5.

608.43585 Court action.—

(1) If a member makes demand for payment under s. 608.4358 which remains unsettled, the limited liability company shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the membership interest and accrued interest. If the limited liability company does not commence the

proceeding within the 60-day period, any member who has made a demand pursuant to s. 608.4358 may commence the proceeding in the name of the limited liability company.

(2) The proceeding shall be commenced in the appropriate court of the county in which the limited liability company's principal office in this state is located or, if none, the county in which its registered agent is located. If the limited liability company is a foreign limited liability company without a registered agent in this state, the proceeding shall be commenced in the county in this state in which the principal office or registered agent of the domestic limited liability company was located at the time of the appraisal event.

(3) All members, whether or not residents of this state, whose demands remain unsettled shall be made parties to the proceeding as in an action against their membership interests. The limited liability company shall serve a copy of the initial pleading in such proceeding upon each member party who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident member party by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to the order. The members demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each member made a party to the proceeding is entitled to judgment for the amount of the fair value of such member's membership interests, plus interest, as found by the court.

(6) The limited liability company shall pay each such member the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the member shall

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cease to have any interest in the membership interests.

608.4359 Court costs and counsel fees.—

(1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the members demanding appraisal, in amounts the court finds equitable, to the extent the court finds such members acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all members demanding appraisal if the court finds the limited liability company did not substantially comply with ss. 608.4353 and 608.4356; or

(b) Against either the limited liability company or a member demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the services of counsel for any member were of substantial benefit to other members similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the members who were benefited.

(4) To the extent the limited liability company fails to make a required payment pursuant to s. 608.43575, the member may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including attorney's fees.

608.43595 Limitation on limited liability company payment.—

(1) No payment shall be made to a member seeking appraisal rights if, at the time of payment, the limited liability company is unable to meet the distribution standards of s. 608.428. In such event, the member shall, at the member's option:

(a) Withdraw the notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the limited liability company; or

(b) Retain the status as a claimant against the limited liability company and, if the limited liability company is liquidated, be subordinated to the rights of creditors of the limited liability company but have rights superior to the members not asserting appraisal rights and, if it is not liquidated, retain the right to be paid for the membership interest, which right the limited liability company shall be obliged to satisfy when the restrictions of this section do not apply.

(2) The member shall exercise the option under paragraph (1)(a) or paragraph (1)(b) by written notice filed with the limited liability company within 30 days after the limited liability company has given written notice that the payment for the membership interests cannot be made because of the restrictions of this section. If the member fails to exercise the option, the member shall be deemed to have withdrawn the notice of intent to assert appraisal rights.

608.438 Merger of limited liability company.—

(1) As used in this section and ss. 608.4381-608.4383, the term "other business entity" or "another business entity" means a corporation, a limited liability company, a common law or business trust or association, a real estate investment trust, a general partnership, including a limited liability partnership, a limited partnership, including a limited liability limited partnership, or any other domestic or foreign entity that is organized under a governing law or other applicable law.

(2) Unless otherwise provided in the articles of organization or the operating agreement of a limited

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liability company, pursuant to a plan of merger, a limited liability company may merge with or into one or more limited liability companies or other business entities formed, organized, or incorporated under the laws of this state or any other state, the United States, foreign country, or other foreign jurisdiction, if:

- (a) Each limited liability company that is a party to the merger complies with the applicable provisions of this chapter and complies with the terms of its articles of organization and operating agreement.
 - (b) Each domestic partnership that is a party to the merger complies with the applicable provisions of chapter 620.
 - (c) Each domestic corporation that is a party to the merger complies with the applicable provisions of chapter 607.
 - (d) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each such other business entity complies with such laws in effecting the merger.
- (3) The plan of merger shall set forth:
- (a) The name of each limited liability company and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting limited liability company or other business entity into which each other limited liability company or other business entity plans to merge, which is, in this section and in ss. 608.4381-608.4383, designated as the surviving entity.
 - (b) The terms and conditions of the merger.
 - (c) The manner and basis of converting the interests of the members of each limited liability company that is a party to the merger and the interests, partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into interests, partnership interests, shares, obligations, or other securities of the surviving entity or any other limited liability company or other business entity or, in whole or in part, into cash or other property, and the manner and

basis of converting rights to acquire interests of each limited liability company that is a party to the merger and rights to acquire interests, partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire interests, partnership interests, shares, obligations, or other securities of the surviving entity or any other limited liability company or other business entity or, in whole or in part, into cash or other property.

(d) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(4) The plan of merger may set forth:

(a) If a limited liability company is to be the surviving entity, any amendments to, or a restatement of, the articles of organization or the operating agreement of the surviving entity, and such amendments or restatement shall be effective at the effective date of the merger.

(b) The effective date of the merger, which may be on or after the date of filing the certificate of merger.

(c) A provision authorizing one or more of the limited liability companies that are parties to the merger to abandon the proposed merger pursuant to s. 608.4381(7).

(d) A statement of, or a statement of the method of determining, the "fair value," as defined in s. 608.4351, of an interest in any domestic limited liability company that is a party to the merger.

(e) Other provisions relating to the merger.

608.4381 Action on plan of merger.—

(1) Unless the articles of organization or the operating agreement of a limited liability company require a greater than majority vote, the plan of merger shall be approved in writing by a majority of the managers who are members of a limited liability company that is a party to the merger in which management is not reserved to its members. If no manager is a member, the plan of merger shall be approved by vote of the members as set forth in this section. Unless the articles of organization or the operating agreement of a limited liability company

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require a greater than majority vote or provide for another method of determining the voting rights of each of its members, and whether or not management is reserved to its members, the plan of merger shall be approved in writing by a majority-in-interest of the members of a limited liability company that is a party to the merger, and, if applicable, the vote of each member shall be weighted in accordance with s. 608.4231; provided, unless the articles of organization or the operating agreement of the limited liability company require a greater than majority vote or provide for another method of determining the voting rights of each of its members, if there is more than one class or group of members, the merger shall be approved by a majority-in-interest of the members of each such class or group, and, if applicable, the vote of each member shall be weighted in accordance with s. 608.4231.

(2) In addition to the approval required by subsection (1), if the surviving entity is a partnership or limited partnership, no member of a limited liability company that is a party to the merger shall, as a result of the merger, become a general partner of such partnership or limited partnership unless such member specifically consents in writing to becoming a general partner of such partnership or limited partnership, and unless such written consent is obtained from each such member, such merger shall not become effective under s. 608.4383. Any member providing such consent in writing shall be deemed to have voted in favor of the plan of merger for purposes of ss. 608.4351-608.43595.

(3) All members of each limited liability company that is a party to the merger shall be given written notice of any meeting or other action with respect to the approval of a plan of merger as provided in subsection (4), not fewer than 30 or more than 60 days before the date of the meeting at which the plan of merger shall be submitted for approval by the members of such limited liability company; provided, if the plan of merger is submitted to the members of the limited liability company for their written approval or other action without a meeting, such notification shall be given to each member not

fewer than 30 or more than 60 days before the effective date of the merger. Pursuant to s. 608.455, the notification required by this subsection may be waived in writing by the person or persons entitled to such notification.

(4) The notification required by subsection (3) shall be in writing and shall include:

(a) The date, time, and place of the meeting, if any, at which the plan of merger is to be submitted for approval by the members of the limited liability company, or, if the plan of merger is to be submitted for written approval or by other action without a meeting, a statement to that effect.

(b) A copy or summary of the plan of merger.

(c) The statement or statements required by ss. 608.4351-608.43595 regarding availability of appraisal rights, if any, to members of the limited liability company.

(d) The date on which such notification was mailed or delivered to the members.

(e) Any other information concerning the plan of merger.

(5) The notification required by subsection (3) shall be deemed to be given at the earliest date of:

(a) The date such notification is received;

(b) Five days after the date such notification is deposited in the United States mail addressed to the member at the member's address as it appears in the books and records of the limited liability company, with postage thereon prepaid;

(c) The date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(d) The date such notification is given in accordance with the provisions of the articles of organization or the operating agreement of the limited liability company.

(6) A plan of merger may provide for the manner, if any, in which the plan of merger may be amended at any time before the effective date of the merger, except after the approval of the plan of merger by the members of a limited liability company that is a party to the merger, the plan of merger may not be amended to:

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- (a) Change the amount or kind of interests, partnership interests, shares, obligations, other securities, cash, rights, or any other property to be received by the members of such limited liability company in exchange for or on conversion of their interests;
- (b) If the surviving entity is a limited liability company, change any term of the articles of organization or the operating agreement of the surviving entity, except for changes that otherwise could be adopted without the approval of the members of the surviving entity;
- (c) If the surviving entity is not a limited liability company, change any term of the articles of incorporation or comparable governing document of the surviving entity, except for changes that otherwise could be adopted by the board of directors or comparable representatives of the surviving entity; or
- (d) Change any of the terms and conditions of the plan of merger if any such change, alone or in the aggregate, would materially and adversely affect the members, or any class or group of members, of such limited liability company.

If an amendment to a plan of merger is made in accordance with the plan and articles of merger have been filed with the Department of State, an amended certificate of merger executed by each limited liability company and other business entity that is a party to the merger shall be filed with the Department of State prior to the effective date of the merger.

- (7) Unless the limited liability company's articles of organization or operating agreement or the plan of merger provide otherwise, notwithstanding the prior approval of the plan of merger by any limited liability company that is a party to the merger in which management is not reserved to its members, and at any time prior to the filing of articles of merger with the Department of State, the planned merger may be abandoned, subject to any contractual rights, by any such limited liability company by the affirmative vote of a majority of its managers without further action by its members, in accordance with the procedure set forth in the plan

of merger or, if none is set forth, in the manner determined by the managers of such limited liability company.

608.4382 Certificate of merger.—

- (1) After a plan of merger is approved by each limited liability company and each other business entity that is a party to the merger, the surviving entity shall deliver to the Department of State for filing a certificate of merger, which shall be executed by each limited liability company and by each other business entity as required by applicable law, and which shall set forth:
 - (a) The plan of merger.
 - (b) A statement that the plan of merger was approved by each limited liability company that is a party to the merger in accordance with the applicable provisions of this chapter, and, if applicable, a statement that the written consent of each member of such limited liability company who, as a result of the merger, becomes a general partner of the surviving entity has been obtained pursuant to s. 608.4381(2).
 - (c) A statement that the plan of merger was approved by each domestic partnership that is a party to the merger in accordance with the applicable provisions of chapter 620.
 - (d) A statement that the plan of merger was approved by each domestic corporation that is a party to the merger in accordance with the applicable provisions of chapter 607.
 - (e) A statement that the plan of merger was approved by each other business entity that is a party to the merger, other than limited liability companies, partnerships, and corporations formed, organized, or incorporated under the laws of this state, in accordance with the applicable laws of the state, country, or jurisdiction under which such other business entity is formed, organized, or incorporated.
 - (f) The effective date of the merger, which may be on or after the date of filing the certificate of merger, subject to the limitations in s. 608.409(2), provided, if the certificate of merger does not provide for an effective date of the merger, the

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effective date shall be the date on which the certificate of merger is filed.

(g) If the surviving entity is another business entity formed, organized, or incorporated under the laws of any state, country, or jurisdiction other than this state:

1. The address, including street and number, if any, of its principal office under the laws of the state, country, or jurisdiction in which it was formed, organized, or incorporated.
2. If the surviving entity is a foreign entity and is not authorized to transact business in this state, a statement that the surviving entity appoints the Secretary of State as its agent for service of process in a proceeding to enforce obligations of each limited liability company that merged into such entity, including any appraisal rights of its members under ss. 608.4351-608.43595, and the street and mailing address of an office which the Department of State may use for purposes of s. 48.181.
3. A statement that the surviving entity has agreed to pay to any members with appraisal rights the amount to which such members are entitled under ss. 608.4351-608.43595.

(2) A copy of the certificate of merger, certified by the Department of State, may be filed in the official records of any county in this state in which any party to the merger holds an interest in real property.

(3) A domestic limited liability company is not required to file a certificate of merger pursuant to subsection (1) if the domestic limited liability company is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger in accordance with s. 607.1109(1), s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and (2), and if the articles of merger or certificate of merger substantially complies with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (2).

608.4383 Effect of merger.—When a merger becomes effective:

(1) Every limited liability company and other business entity that is a party to the merger merges into the surviving entity and the separate existence

of every limited liability company and other business entity that is a party to the merger, except the surviving entity, ceases.

(2) The title to all real estate and other property, or any interest therein, owned by each domestic limited liability company and other business entity that is a party to the merger is vested in the surviving entity without reversion or impairment by reason of this chapter.

(3) The surviving entity shall thereafter be responsible and liable for all the liabilities and obligations of each limited liability company and other business entity that is a party to the merger, including liabilities arising out of the appraisal rights under ss. 608.4351-608.43595 with respect to such merger under applicable law.

(4) Any claim existing or action or proceeding pending by or against any limited liability company or other business entity that is a party to the merger may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the limited liability company or other business entity which ceased existence.

(5) Neither the rights of creditors nor any liens upon the property of any limited liability company or other business entity shall be impaired by such merger.

(6) If a limited liability company is the surviving entity, the articles of organization and the operating agreement of such limited liability company in effect immediately prior to the time the merger becomes effective shall be the articles of organization and the operating agreement of the surviving entity, except as amended or restated to the extent provided in the plan of merger.

(7) The partnership and membership interests, shares, obligations, or other securities and other interests, and the rights to acquire such shares, obligations, or other securities and other interests, of each limited liability company and other business entity that is a party to the merger shall be converted into partnership and membership interests, shares, obligations, or other securities and other interests, or rights to such securities, obligations, or other interests, of the surviving entity or, in whole or in part, into cash or other property as provided in the

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plan of merger, and the former members of each limited liability company merging into another business entity shall be entitled only to the rights provided in the plan of merger and to their appraisal rights, if any, under ss. 608.4351-608.43595, or other applicable law.

608.439 Conversion of certain entities to a limited liability company.—

(1) As used in this section, the term “other business entity” or “another business entity” means a corporation; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, provided such term shall not include a domestic limited liability company.

(2) Any other business entity may convert to a domestic limited liability company if the conversion is permitted by the laws of the jurisdiction that enacted the statute or other applicable law governing the other business entity and the other business entity complies with such laws and the requirements of this section in effecting the conversion. The other business entity shall file with the Department of State in accordance with s. 608.4081:

(a) A certificate of conversion that has been executed by one or more authorized persons in accordance with s. 608.408, and by the other business entity as required by applicable law.

(b) Articles of organization that comply with s. 608.407 and have been executed by one or more authorized persons in accordance with s. 608.408.

(3) The certificate of conversion to a limited liability company shall state:

(a) The date on which and jurisdiction in which the other entity was first organized and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company.

(b) The name of the other entity immediately prior to the filing of the certificate of conversion.

(c) The name of the limited liability company as set forth in its articles of organization filed in accordance with subsection (2).

(d) Subject to the limitations in s. 608.409(2), the delayed effective date or time (which shall be a date or time certain) of the conversion to a limited liability company if it is not to be effective upon the filing of the certificate of conversion and the articles of organization, provided such delayed effective date and time may not be different than the effective date of the articles of organization.

(4) Upon the filing in the Department of State of the certificate of conversion to a limited liability company and the articles of organization or upon the delayed effective date or time of the certificate of conversion and the articles of organization, the other entity shall be converted into a domestic limited liability company and the limited liability company shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding s. 608.409, the existence of the limited liability company shall be deemed to have commenced when the other entity commenced its existence in the jurisdiction in which the other entity was first organized.

(5) The conversion of any other entity into a domestic limited liability company shall not affect any obligations or liabilities of the other entity incurred prior to its conversion into a domestic limited liability company or the personal liability of any person incurred prior to such conversion.

(6) When any conversion becomes effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the other entity that has converted, and all property, real, personal, and mixed, and all debts due to such other entity, as well as all other things and causes of action belonging to such other entity, shall be vested in the domestic limited liability company into which it was converted and shall thereafter be the property of the domestic limited liability company as they were of the other entity that has converted, and the title to any real property vested by deed or otherwise in such other entity shall not revert or be in any way impaired by reason of this chapter, but all rights of creditors and all liens upon any property of such

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other entity shall be preserved unimpaired, and all debts, liabilities, and duties of the other entity that has converted shall thenceforth attach to the domestic limited liability company and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.

(7) Unless otherwise agreed, or as required under applicable non-Florida law, the converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of the converting entity and shall constitute a continuation of the existence of the converting entity in the form of a domestic limited liability company.

(8) Prior to filing a certificate of conversion with the Department of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and the articles of organization or operating agreement shall be approved by the same authorization required to approve the conversion. As part of such an approval, a plan of conversion or other record may describe the manner and basis of converting the shares, partnership interests, limited liability company interests, obligations, or securities of, or other interests in, the other business entity which is to be converted, or any rights to acquire any such shares, interests, obligations, or other securities, into limited liability company interests, obligations, or other securities of the domestic limited liability company, or rights to acquire interests, obligations, or other securities, or, in whole or in part, into cash or other consideration. Such a plan or other record may also contain other provisions relating to the conversion, including without limitation the right of the other business entity to abandon a proposed conversion, or an effective date for the conversion that is not inconsistent with paragraph (3)(d).

(9) The provisions of this section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any other entity to this state by any other means provided for

in the articles of organization or operating agreement or other agreement or as otherwise permitted by law, including by the amendment of the articles of organization or operating agreement or other agreement.

608.4401 Conversion of a domestic limited liability company into another business entity.—

(1) As used in this section and ss. 608.4402, 608.4403, and 608.4404, the term “other business entity” or “another business entity” means a corporation; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, provided such term shall not include a domestic limited liability company.

(2) Pursuant to a plan of conversion complying and approved in accordance with this section and s. 608.4402, a domestic limited liability company may convert to another business entity organized under the laws of this state or any other state, the United States, a foreign country, or any other foreign jurisdiction, if:

(a) The domestic limited liability company converting to the other business entity complies with the applicable provisions of this chapter and any applicable terms in its articles of organization and operating agreement.

(b) The conversion is permitted by the laws of the jurisdiction that enacted the law or other applicable law under which the other business entity is governed and the other business entity complies with such laws in effecting the conversion.

(3) The plan of conversion shall set forth:

(a) The name of the domestic limited liability company and the name and jurisdiction of the other business entity into which the domestic limited liability company is to be converted.

(b) The terms and conditions of the conversion, including the manner and basis of converting the limited liability company interests or other securities, or any rights to acquire limited liability company interests or other securities, of the

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domestic limited liability company into the partnership interests, shares, obligations, securities, or other interests in the other business entity, or any rights to acquire any partnership interests, shares, obligations, securities, or other interests, or, in whole or in part, into cash or other consideration.

(c) The statements required to be set forth in the plan of conversion by the laws under which the other business entity is governed.

(4) The plan of conversion shall include, or have attached, the articles, certificate, registration, or other organizational document by which the other business entity has been organized under its governing law.

(5) A plan of conversion may provide for the manner, if any, in which the plan of conversion may be amended at any time before the effective date of the conversion, except after the approval of the plan of conversion by the members of the limited liability company to be converted, the plan of conversion may not be amended to:

(a) Change the amount or kind of partnership interests, shares, obligations, securities, cash, rights, or any other consideration to be received by the members of such limited liability company in exchange for or on conversion of their member interests in or other securities of the limited liability company;

(b) Change any term of the articles of incorporation or organization, bylaws, partnership or operating agreement, or comparable governing document of the surviving entity, except for changes that otherwise could be adopted without approval of the members approving the plan of conversion; or

(c) Change any of the terms and conditions of the plan of conversion if any such change, alone or in the aggregate, would materially and adversely affect the members, or any class or group of members, of such limited liability company.

If an amendment to a plan of conversion is made in accordance with the plan of conversion and a certificate of conversion has been filed with the Department of State, an amended certificate of conversion executed by the limited liability

company shall be filed with the Department of State prior to the effective date of the conversion.

(6) The plan of conversion may also set forth any other provisions relating to the conversion, including, without limitation, a statement of the method of determining the fair value, as defined in s. 608.4351, of an interest in the limited liability company.

608.4402 Action on plan of conversion.—

(1) Unless the articles of organization or the operating agreement of a limited liability company requires a greater than majority vote, the plan of conversion shall be approved in writing by a majority of the managers who are members of a converting limited liability company in which management is not reserved to its members. If no manager is a member, the plan of conversion shall be approved by vote of the members as set forth in this section. Unless the articles of organization or the operating agreement of the converting limited liability company requires a greater than majority vote or provides for another method of determining the voting rights of each of its members, and whether or not management is reserved to its members, the plan of conversion shall be approved in writing by a majority-in-interest of the members of the converting limited liability company and, if applicable, the vote of each member shall be weighted in accordance with s. 608.4231, provided, unless the articles of organization or the operating agreement of the converting limited liability company requires a greater than majority vote or provides for another method of determining the voting rights of each of its members, if there is more than one class or group of members, the conversion shall be approved by a majority-in-interest of the members of each such class or group, and, if applicable, the vote of each member shall be weighted in accordance with s. 608.4231.

(2) In addition to the approval required by subsection (1), if the other business entity is a partnership or limited partnership, no member of a converting limited liability company shall become a general partner of such partnership or limited

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partnership as a result of the conversion unless such member specifically consents in writing to becoming a general partner of such partnership or limited partnership, and, unless such written consent is obtained from each such member, the conversion shall not become effective under s. 608.4404. Any member providing such consent in writing shall also be deemed to have voted in favor of the plan of conversion for purposes of ss. 608.4351-608.43595.

(3) All members of the limited liability company to be converted shall be given written notice of any meeting or other action with respect to the approval of a plan of conversion as provided in subsections (4) and (5), not fewer than 30 or more than 60 days before the date of the meeting at which the plan of conversion shall be submitted for approval by the members of such limited liability company, provided, if the plan of conversion is submitted to the members of the limited liability company for their written approval or other action without a meeting, such notification shall be given to each member not fewer than 30 or more than 60 days before the effective date of the conversion. Pursuant to s. 608.455, the notification required by this subsection may be waived in writing by any person entitled to such notification.

(4) The notification required by subsection (3) shall be in writing and shall include:

(a) The date, time, and place of the meeting, if any, at which the plan of conversion is to be submitted for approval by the members of the limited liability company or, if the plan of conversion is to be submitted for written approval or by other action without a meeting, a statement to that effect.

(b) A copy or summary of the plan of conversion.

(c) The statement or statements required by ss. 608.4351-608.43595 concerning availability of appraisal rights, if any, to members of the limited liability company.

(d) The date on which such notification was mailed or delivered to the members.

(e) Any other information concerning the plan of conversion.

(5) The notification required by subsection (3) shall be deemed to be given at the earliest date of:

(a) The date such notification is received;

(b) Five days after the date such notification is deposited in the United States mail addressed to the member at the member's address as it appears in the books and records of the limited liability company, with postage thereon prepaid;

(c) The date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(d) The date such notification is given in accordance with the provisions of the articles of organization or the operating agreement of the limited liability company.

(6) Unless the converting limited liability company's articles of organization or operating agreement or the plan of conversion provides otherwise, notwithstanding the prior approval of the plan of conversion by the managers or members of a converting limited liability company in which management is not reserved to its members, and at any time prior to the filing of the certificate of conversion with the Department of State, the planned conversion may be abandoned, subject to any contractual rights, by such limited liability company by the affirmative vote of a majority of its managers without further action by its members, in accordance with the procedure set forth in the plan of conversion, or if none is set forth in such plan, in the manner determined by the managers of such limited liability company.

608.4403 Certificate of conversion.—

(1) After a plan of conversion is approved by a converting limited liability company, the limited liability company shall deliver to the Department of State for filing a certificate of conversion, which shall be executed by the converting limited liability company, and which shall set forth:

(a) A statement that the limited liability company has been converted into another business entity in compliance with this chapter and that the conversion complies with the law or other applicable law governing the other business entity.

(b) A statement that the plan of conversion was approved by the converting limited liability

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company in accordance with this chapter and, if applicable, a statement that the written consent of each member of such limited liability company who, as a result of the conversion, becomes a general partner of the surviving entity has been obtained pursuant to s. 608.4402(2).

(c) The effective date of the conversion, which, subject to the limitations in s. 608.409(2), may be on or after the date of filing the certificate of conversion, but which shall not be different than the effective date of the conversion under the laws governing the other business entity into which the limited liability company has been converted.

(d) The address, including street and number, if any, of the principal office of the other business entity under the laws of the state, country, or jurisdiction in which such entity was organized.

(e) If the other business entity is a foreign entity and is not authorized to transact business in this state, a statement that the other business entity appoints the Secretary of State as its agent for service of process in a proceeding to enforce obligations of the converting limited liability company, including any appraisal rights of its members under ss. 608.4351-608.43595 and the street and mailing address of an office which the Department of State may use for purposes of s. 48.181.

(f) A statement that the other business entity has agreed to pay to any members having appraisal rights the amount to which such members are entitled under ss. 608.4351-608.43595.

(2) A copy of the certificate of conversion, certified by the Department of State, may be filed in the official records of any county in this state in which the converting limited liability company holds an interest in real property.

(3) A converting limited liability company is not required to file a certificate of conversion pursuant to subsection (1) if the converting limited liability company files a certificate of conversion that substantially complies with the requirements of this section pursuant to s. 607.1115, s. 620.2104(1)(b), or s. 620.8914(1)(b) and contains the signatures required by this chapter. In such a case, the other

certificate of conversion may also be used for purposes of subsection (2).

608.4404 Effect of conversion.—When a conversion becomes effective:

(1) A domestic limited liability company that has been converted into another business entity pursuant to this chapter is for all purposes the same entity that existed before the conversion.

(2) The title to all real property and other property, or any interest therein, owned by the domestic limited liability company at the time of its conversion into the other business entity remains vested in the converted entity without reversion or impairment by operation of this chapter.

(3) The other business entity into which the domestic limited liability company was converted shall continue to be responsible and liable for all the liabilities and obligations of such limited liability company, including any liability to members having appraisal rights under ss. 608.4351-608.43595 with respect to such conversion.

(4) Any claim existing or action or proceeding pending by or against any domestic limited liability company that is converted into another business entity may be continued as if the conversion did not occur. If the converted entity is a foreign entity, such entity shall be deemed to have consented to the jurisdiction of the courts of this state to enforce any obligation of the converting domestic limited liability company if, before the conversion, the converting domestic limited liability company was subject to suit in this state on the obligation. A converted entity that is a foreign entity and not authorized to transact business in this state appoints the Department of State as its agent for service of process for purposes of enforcing an obligation under this subsection, including any appraisal rights of members under ss. 608.4351-608.43595 to the extent applicable to the conversion. Service on the Department of State under this subsection is made in the same manner and with the same consequences as under s. 48.181.

(5) Neither the rights of creditors nor any liens upon the property of a domestic limited liability company that is converted into another business

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entity under this chapter shall be impaired by such conversion.

(6) The member interests, obligations, and other securities, or rights to acquire any member interests, obligations, or other securities, of the domestic limited liability company shall be converted into the shares, partnership interests, interests, obligations, or other securities of the other business entity, including any rights to acquire any such shares, interests, obligations, or other securities, or, in whole or in part, into cash or other consideration as provided in the plan of conversion. The former members of the converting domestic limited liability company shall be entitled only to the rights provided in the plan of conversion and to their appraisal rights, if any, under ss. 608.4351-608.43595 or other applicable law.

608.441 Dissolution.—

(1) A limited liability company organized under this chapter shall be dissolved, and the limited liability company's affairs shall be concluded, upon the first to occur of any of the following events:

- (a) At the time specified in the articles of organization or operating agreement, but if no such time is set forth in the articles of organization or operating agreement, then the limited liability company shall have a perpetual existence;
- (b) Upon the occurrence of events specified in the articles of organization or operating agreement;
- (c) Unless otherwise provided in the articles of organization or operating agreement, upon the written consent of all of the members of the limited liability company;
- (d) At any time there are no members; however, unless otherwise provided in the articles of organization or operating agreement, the limited liability company is not dissolved and is not required to be wound up if, within 90 days, or such other period as provided in the articles of organization or operating agreement, after the occurrence of the event that terminated the continued membership of the last remaining member, the personal or other legal representative of the last remaining member agrees in writing to continue the limited liability company and agrees to

the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or

(e) The entry of an order of dissolution by a circuit court pursuant to subsection (3).

(2) So long as the limited liability company continues to have at least one remaining member, and except as provided in paragraph (1)(d) or as otherwise provided in the articles of organization or operating agreement, the death, retirement, resignation, expulsion, bankruptcy, or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

(3) Unless otherwise provided in the articles of organization or operating agreement, on application by or for a member, the circuit court may order dissolution of a limited liability company if it is established by a preponderance of the evidence that it is not reasonably practicable to carry on the business of the limited liability company in conformity with the articles of organization or the operating agreement.

(4) Following the occurrence of any of the events specified in this section which cause the dissolution of the limited liability company, the limited liability company shall deliver articles of dissolution to the Department of State for filing.

608.4411 Revocation of dissolution.—

(1) A limited liability company may revoke its dissolution at any time prior to the expiration of 120 days following the effective date of the articles of dissolution.

(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized.

(3) After revocation of dissolution is authorized, the limited liability company may revoke the dissolution by delivering articles of revocation of

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dissolution to the Department of State for filing, together with a copy of its articles of dissolution, that set forth:

- (a) The name of the limited liability company.
- (b) The effective date of the dissolution that was revoked.
- (c) The date that the revocation of dissolution was authorized.
- (4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the limited liability company resumes carrying on its business as if dissolution never occurred.

608.4421 Claims against dissolved limited liability company.—

- (1) A dissolved limited liability company may dispose of the known claims against it by following the procedures described in subsections (2), (3), and (4).
- (2) The dissolved limited liability company shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:
 - (a) Provide a reasonable description of the claim that the claimant may be entitled to assert.
 - (b) State whether the claim is admitted or not admitted, in whole or in part, and, if admitted:
 1. The amount that is admitted, which may be as of a given date.
 2. Any interest obligation if fixed by an instrument of indebtedness.
 - (c) Provide a mailing address where a claim may be sent.
 - (d) State the deadline, which may not be fewer than 120 days after the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved limited liability company.
 - (e) State that the limited liability company may make distributions thereafter to other claimants and its members or former members without further notice.

(3) A dissolved limited liability company may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing written notice of such rejection to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. A notice sent by the limited liability company pursuant to this subsection shall be accompanied by a copy of this section.

(4) A dissolved limited liability company electing to follow the procedures described in subsections (2) and (3) shall also give notice of the dissolution of the limited liability company to persons with claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. Such notice shall be in substantially the form, and sent in the same manner, as described in subsection (2).

(5) A dissolved limited liability company shall offer any claimant whose claim is contingent, conditional, or unmatured such security as the limited liability company determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved limited liability company shall deliver such offer to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. If the claimant offered such security does not deliver in writing to the dissolved limited liability company a notice rejecting the offer within 120 days after receipt of such offer for security, the claimant is deemed to have accepted such security as the sole source from which to satisfy the claimant's claim against the limited liability company.

(6) A dissolved limited liability company which has given notice in accordance with subsections (2) and (4) shall petition the circuit court in the county where the limited liability company's principal office is located or was located at the effective date of dissolution to determine the amount and form of security that will be sufficient to provide

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compensation to any claimant who has rejected the offer for security made pursuant to subsection (5).

(7) A dissolved limited liability company which has given notice in accordance with subsection (2) shall petition the circuit court in the county where the limited liability company's principal office is located or was located at the effective date of dissolution to determine the amount and form of security which will be sufficient to provide compensation to claimants whose claims are known to the limited liability company but whose identities are unknown. The court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

(8) The giving of any notice or making of any offer pursuant to the provisions of this section shall not revive any claim then barred or constitute acknowledgment by the dissolved limited liability company that any person to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

(9) A dissolved limited liability company which has followed the procedures described in subsections (2)-(7):

- (a) Shall pay the claims admitted or made and not rejected in accordance with subsection (3).
- (b) Shall post the security offered and not rejected pursuant to subsection (5).
- (c) Shall post any security ordered by the circuit court in any proceeding under subsections (6) and (7).
- (d) Shall pay or make provision for all other obligations of the limited liability company.

Such claims or obligations shall be paid in full, and any such provision for payments shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the

extent of funds legally available therefor. Any remaining funds shall be distributed pursuant to s. 608.444; however, such distribution may not be made before the expiration of 150 days from the date of the last notice of rejections given pursuant to subsection (3).

(10) A dissolved limited liability company which has not followed the procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims known to the limited liability company and all claims which are known to the dissolved limited liability company but for which the identity of the claimant is unknown. Such claims shall be paid in full, and any such provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed pursuant to s. 608.444.

(11) A member of a dissolved limited liability company, the assets of which were distributed pursuant to subsection (9) or subsection (10) is not liable for any claim against the limited liability company in an amount in excess of such member's pro rata share of the claim or the amount distributed to the member, whichever is less.

(12) A member of a dissolved limited liability company, the assets of which were distributed pursuant to subsection (9) is not liable for any claim against the limited liability company on which a proceeding is not begun prior to the expiration of 3 years following the effective date of dissolution.

(13) The aggregate liability of any member of a dissolved limited liability company for claims against the dissolved limited liability company may not exceed the amount distributed to the member in dissolution.

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608.4431 Effect of dissolution.—

- (1) A dissolved limited liability company continues its existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) Collecting its assets.
 - (b) Disposing of its properties that will not be distributed in kind to its members.
 - (c) Discharging or making provision for discharging its liabilities.
 - (d) Distributing its assets in accordance with s. 608.444.
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a limited liability company does not:
 - (a) Transfer title to the limited liability company assets.
 - (b) Prevent commencement of a proceeding by or against the limited liability company in its name.
 - (c) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution.
 - (d) Terminate the authority of the registered agent of the limited liability company.
- (3) The name of the dissolved limited liability company shall not be available for assumption or use by another limited liability company until 120 days after the effective date of dissolution.

608.444 Distribution of assets upon dissolution.—In settling accounts after dissolution of a limited liability company, the assets of the limited liability company must be distributed in the following order:

- (1) To creditors, including members who are creditors, to the extent permitted by law in satisfaction of liabilities of the limited liability company, whether by payment or establishment of reserves, other than liabilities for distributions to members under s. 608.426 or s. 608.427.
- (2) Except as provided in the operating agreement, to members and former members in satisfaction of liabilities for distributions under s. 608.426 or s. 608.427.

- (3) Except as provided in the articles of organization or the operating agreement, to members pro rata in proportion to their then-current percentage, or other interests in the profits, of the limited liability company.

608.445 Articles of dissolution.—The articles of dissolution shall set forth:

- (1) The name of the limited liability company.
- (2) The effective date of the limited liability company's dissolution.
- (3) A description of the occurrence that resulted in the limited liability company's dissolution pursuant to s. 608.441.
- (4) The fact that all debts, obligations, and liabilities of the limited liability company have been paid or discharged, or that adequate provision has been made therefor pursuant to s. 608.4421.
- (5) The fact that all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests.
- (6) The fact that there are no suits pending against the limited liability company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

608.446 Filing of articles of dissolution.—

- (1) The articles of dissolution of the limited liability company shall be delivered to the Department of State. If the Department of State finds that such articles of dissolution conform to law, it shall, when all fees and license taxes have been paid as prescribed in this chapter, file the articles of dissolution.
- (2) The certificate of dissolution shall be returned to the representative of the dissolved limited liability company. Upon the issuance of such certificate of dissolution, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate action as provided in this chapter. The manager or managers in office at the time of dissolution, or the survivors of them, or, if none, the members, shall thereafter be trustees for the members and creditors of the dissolved limited liability company; and as

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such the trustees shall have authority to distribute any property of the limited liability company discovered after dissolution, to convey real estate, and to take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

608.447 Cancellation of articles of organization.—The articles of organization of a limited liability company shall be canceled by the Department of State upon issuance of the certificate of dissolution.

608.448 Grounds for administrative dissolution.—

- (1) The Department of State may commence a proceeding under s. 608.4481 to administratively dissolve a limited liability company if:
- (a) The limited liability company has failed to file its annual report and pay the annual report filing fee by 5 p.m. Eastern Time on the third Friday in September.
 - (b) The limited liability company is without a registered agent or registered office in this state for 30 days or more.
 - (c) The limited liability company does not notify the Department of State within 30 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
 - (d) The limited liability company has failed to answer truthfully and fully, within 30 days after mailing or within such additional time as fixed by the Department of State, interrogatories propounded by the Department of State.
 - (e) The limited liability company's period of duration has expired.
- (2) The enumeration in subsection (1) of grounds for administrative dissolution shall not exclude actions or special proceedings by the Department of Legal Affairs or any state officials for the annulment or dissolution of a limited liability company for other causes as provided in any other law of this state.

608.4481 Procedure for and effect of administrative dissolution.—

- (1) If the Department of State determines that one or more grounds exist under s. 608.448 for dissolving a limited liability company, it shall serve the limited liability company with notice of its intent to administratively dissolve the limited liability company. If the limited liability company has provided the department with an electronic mail address, such notice shall be by electronic transmission. Administrative dissolution for failure to file an annual report shall occur on the fourth Friday in September of each year. The Department of State shall issue a certificate of dissolution to each dissolved limited liability company. Issuance of the certificate of dissolution may be by electronic transmission to any limited liability company that has provided the department with an electronic mail address.
- (2) If the limited liability company does not correct each ground for dissolution under s. 608.448(1)(b), (c), (d), or (e) or demonstrate to the reasonable satisfaction of the Department of State that each ground determined by the Department of State does not exist within 60 days after issuance of the notice, the Department of State shall administratively dissolve the limited liability company by issuing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. Issuance of the certificate of dissolution may be by electronic transmission to any limited liability company that has provided the department with an electronic mail address.
- (3) A limited liability company administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under s. 608.4431 and notify claimants under s. 608.4421.
- (4) A manager or member of a limited liability company dissolved pursuant to this section, purporting to act on behalf of the limited liability company, is personally liable for the debts, obligations, and liabilities of the limited liability company arising from such action and incurred subsequent to the limited liability company's administrative dissolution only if the manager or

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member has actual notice of the administrative dissolution at the time such action is taken; but such liability shall be terminated upon the ratification of such action by the limited liability company's members subsequent to the reinstatement of the limited liability company under s. 608.4482.

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

608.4482 Reinstatement following administrative dissolution.—

(1)(a) A limited liability company administratively dissolved under s. 608.4481 may apply to the Department of State for reinstatement at any time after the effective date of dissolution. The application shall:

1. Recite the name of the limited liability company and the effective date of its administrative dissolution.
2. State that the ground or grounds for dissolution either did not exist or have been eliminated and that no further grounds currently exist for dissolution.
3. State that the limited liability company's name satisfies the requirements of s. 608.406.
4. State that all fees owed by the limited liability company and computed at the rate provided by law at the time the limited liability company applies for reinstatement have been paid.

(b) As an alternative to the procedures of paragraph (a), an administratively dissolved limited liability company may submit a current annual report, signed by the registered agent, which substantially complies with the requirements of paragraph (a).

(2) If the Department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability company.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited

liability company resumes carrying on its business as if the administrative dissolution had never occurred.

(4) The name of the dissolved limited liability company shall not be available for assumption or use by another limited liability company until 1 year after the effective date of dissolution unless the dissolved limited liability company provides the Department of State with an affidavit executed as required by s. 608.408 permitting the immediate assumption or use of the name by another limited liability company.

608.4483 Appeal from denial or reinstatement.—

- (1) If the Department of State denies a limited liability company's application for reinstatement following administrative dissolution, it shall serve the limited liability company with a written notice that explains the reason or reasons for denial.
- (2) After exhaustion of administrative remedies, the limited liability company may appeal the denial of reinstatement to the appropriate court as provided in s. 120.68 within 30 days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Department of State's certificate of dissolution, the limited liability company's application for reinstatement, and the department's notice of denial.

(3) The court may summarily order the Department of State to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

608.449 Grounds for judicial dissolution.—A circuit court may dissolve a limited liability company:

(1)(a) In a proceeding by the Department of Legal Affairs if it is established that:

1. The limited liability company obtained its articles of organization through fraud; or

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2. The limited liability company has continued to exceed or abuse the authority conferred upon it by law.

(b) The enumeration in paragraph (a) of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a limited liability company for other causes as provided in any other law of this state.

(2) In a proceeding by a manager or member if it is established that:

(a) The managers, managing members, or members are deadlocked in the management of the limited liability company affairs, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered; or

(b) The limited liability company's assets are being misappropriated or wasted.

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on that judgment returned unsatisfied, and the limited liability company is insolvent; or

(b) The limited liability company has admitted in writing that the creditor's claim is due and owing and the limited liability company is insolvent.

(4) In a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision.

608.4491 Procedure for judicial dissolution.—

(1) Venue for a proceeding brought under s. 608.449 lies in the circuit court of the county where the limited liability company's principal office is or was last located, as shown by the records of the Department of State, or, if none in this state, where its registered office is or was last located.

(2) It is not necessary to make members parties to a proceeding to dissolve a limited liability company unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a limited liability company may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other

action required to preserve the limited liability company's assets wherever located, and carry on the business of the limited liability company until a full hearing can be held.

608.4492 Receivership or custodianship.—

(1) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the limited liability company. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian.

The court appointing a receiver or custodian has exclusive jurisdiction over the limited liability company and all of its property wherever located.

(2) The court may appoint a person authorized to act as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

1. May dispose of all or any part of the assets of the limited liability company wherever located, at a public or private sale, if authorized by the court.

2. May sue and defend in the receiver's own name as receiver of the limited liability company in all courts of this state.

(b) The custodian may exercise all of the powers of the limited liability company, through or in place of its managers or members, to the extent necessary to manage the affairs of the limited liability company in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the limited liability company and its members and creditors.

(5) The court from time to time during the receivership or custodianship may order

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compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the limited liability company or proceeds from the sale of assets.

(6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of a limited liability company. The ancillary receiver shall serve ancillary to a receiver located in any other state, whenever the court deems that circumstances exist requiring the appointment of such a receiver. The court may appoint such an ancillary receiver for a foreign limited liability company even though no receiver has been appointed elsewhere. Such receivership shall be converted into an ancillary receivership when an order entered by a court of competent jurisdiction in the other state provides for a receivership of the limited liability company.

608.4493 Decree of dissolution.—

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in s. 608.449 exist, it may enter a decree dissolving the limited liability company and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Department of State, which shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the limited liability company's business and affairs in accordance with s. 608.4431 and the notification of claimants in accordance with s. 608.4421, subject to the provisions of subsection (3).

(3) In a proceeding for judicial dissolution, the court may require all creditors of the limited liability company to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall not be less than 4 months from the date of the order, as the last day for filing of claims. The court shall prescribe the deadline for filing claims that shall be given to creditors and claimants. Prior to the date so fixed, the court may extend the time for the filing of

claims by court order. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the limited liability company. Nothing in this section affects the enforceability of any recorded mortgage or lien or the perfected security interest or rights of a person in possession of real or personal property.

608.4511 Annual report for Department of State.—

(1) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this state shall deliver to the Department of State for filing a sworn annual report on such forms as the Department of State prescribes that sets forth:

(a) The name of the limited liability company and the state or country under the law of which it is organized.

(b) The date of organization or, if a foreign limited liability company, the date on which it was admitted to do business in this state.

(c) The street address and the mailing address of its principal office.

(d) The limited liability company's federal employer identification number or, if none, whether one has been applied for.

(e) The names and business, residence, or mailing address of its managing members or managers.

(f) The street address of its registered office and the name of its registered agent at that office in this state.

(g) Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this chapter.

(2) Proof to the satisfaction of the Department of State that on or before May 1 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed timely compliance with this requirement.

(3) If an annual report does not contain the information required by this section, the Department of State shall promptly notify the reporting domestic or foreign limited liability company in writing and

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return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Department of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(4) Each report shall be executed by the limited liability company by a managing member or manager or, if the limited liability company is in the hands of a receiver or trustee, shall be executed on behalf of the limited liability company by such receiver or trustee, and the signing thereof shall have the same legal effect as if made under oath, without the necessity of appending such oath thereto.

(5) The first annual report shall be delivered to the Department of State between January 1 and May 1 of the year following the calendar year in which a domestic limited liability company was organized or a foreign limited liability company was authorized to transact business. Subsequent annual reports shall be delivered to the Department of State between January 1 and May 1 of the subsequent calendar years.

(6) Information in the annual report shall be current as of the date the annual report is executed on behalf of the limited liability company.

(7) Any limited liability company failing to file an annual report which complies with the requirements of this section shall not be permitted to prosecute, maintain, or defend any action in any court of this state until such report is filed and all fees, penalties, and taxes due under this chapter are paid and shall be subject to dissolution or cancellation of its certificate of authority to do business as provided in this chapter.

(8) The department shall prescribe the forms on which to make the annual report called for in this section and may substitute the uniform business report, pursuant to s. 606.06, as a means of satisfying the requirement of this part.

608.452 Fees of the Department of State.—The fees of the Department of State under this chapter are as follows:

- (1) For furnishing a certified copy, \$30.
- (2) For filing original articles of organization, articles of revocation of dissolution, or a foreign limited liability company's application for a certificate of authority to transact business, \$100.
- (3) For filing a certificate of merger of limited liability companies or other business entities, \$25 per constituent party to the merger, unless a specific fee is required for a party in other applicable law.
- (4) For filing an annual report, \$50.
- (5) For filing an application for reinstatement after an administrative or judicial dissolution or a revocation of authority to transact business, \$100.
- (6) For filing a certificate designating a registered agent or changing a registered agent, \$25.
- (7) For filing a registered agent's statement of resignation from an active limited liability company, \$85.
- (8) For filing a registered agent's statement of resignation from a dissolved limited liability company, \$25.
- (9) For filing a certificate of conversion of a limited liability company, \$25.
- (10) For filing any other limited liability company document, \$25.
- (11) For furnishing a certificate of status, \$5.

608.455 Waiver of notice.—When, under the provisions of this chapter or under the provisions of the articles of organization or operating agreement of a limited liability company, notice is required to be given to a member of a limited liability company or to a manager of a limited liability company having a manager or managers, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

608.461 Jurisdiction of the circuit court.—The circuit courts shall have jurisdiction to enforce the provisions of this chapter.

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608.462 Parties to actions by or against limited liability company.—A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except when the object is to enforce a member’s right against, or liability to, the limited liability company.

608.463 Service of process.—

- (1) Process against a limited liability company may be served:
 - (a) In accordance with chapter 48 or chapter 49, as if the limited liability company were a partnership.
 - (b) Upon the registered agent at the agent’s street address.
- (2) Any notice to or demand on a limited liability company organized pursuant to this chapter may be made:
 - (a) By delivery to a manager of the limited liability company, if the management of the limited liability company is vested in one or more managers, or by delivery to a member, if the management of the limited liability company is vested in the members.
 - (b) By mailing a writing, which notice or demand in writing is mailed to the registered office of the limited liability company in this state or to another address in this state which is the principal office of the limited liability company.
- (3) Nothing contained in this section shall limit or affect the right to serve, in any other manner now or hereafter permitted by law, any process, notice, or demand required or permitted by law to be served upon a limited liability company.

608.471 Tax exemption on income of certain limited liability companies.—

- (1) A limited liability company classified as a partnership for federal income tax purposes, or a single member limited liability company which is disregarded as an entity separate from its owner for federal income tax purposes, and organized pursuant to this chapter or qualified to do business in this state as a foreign limited liability company is not an “artificial entity” within the purview of s. 220.02 and is not subject to the tax imposed under

chapter 220. If a single member limited liability company is disregarded as an entity separate from its owner for federal income tax purposes, its activities are, for purposes of taxation under chapter 220, treated in the same manner as a sole proprietorship, branch, or division of the owner.

(2) For purposes of taxation under chapter 220, a limited liability company formed in this state or authorized to transact business in this state as a foreign limited liability company shall be classified as a partnership, or a limited liability company which has only one member shall be disregarded as an entity separate from its owner for federal income tax purposes, unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified identically to its classification for federal income tax purposes. For purposes of taxation under chapter 220, a member or an assignee of a member of a limited liability company formed in this state or qualified to do business in this state as a foreign limited liability company shall be treated as a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes.

(3) Single-member limited liability companies and other entities that are disregarded for federal income tax purposes must be treated as separate legal entities for all non-income-tax purposes. The Department of Revenue shall adopt rules to take into account that single-member disregarded entities such as limited liability companies and qualified subchapter S corporations may be disregarded as separate entities for federal tax purposes and therefore may report and account for income, employment, and other taxes under the taxpayer identification number of the owner of the single-member entity.

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608.501 Foreign limited liability company; authority to transact business required.—

- (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the Department of State.
- (2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):
 - (a) Maintaining, defending, or settling any proceeding.
 - (b) Holding meetings of the managers or members or carrying on other activities concerning internal company affairs.
 - (c) Maintaining bank accounts.
 - (d) Maintaining managers or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities.
 - (e) Selling through independent contractors.
 - (f) Soliciting or obtaining orders, whether by mail or through employees, agents or otherwise, if the orders require acceptance outside this state before they become contracts.
 - (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
 - (i) Transacting business in interstate commerce.
 - (j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.
 - (k) Owning and controlling a subsidiary corporation or limited liability company incorporated in or transacting business within this state or voting the stock of any corporation which it has lawfully acquired.
 - (l) Owning a limited partnership interest in a limited partnership that is doing business within this state, unless such limited partner manages or controls the partnership or exercises the powers and duties of a general partner.
 - (m) Owning, without more, real or personal property.

(3) The list of activities in subsection (2) is not exhaustive.

(4) This section has no application to the question of whether any foreign limited liability company is subject to service of process and suit in this state under any law of this state.

608.502 Consequences of transacting business without authority.—

- (1) A foreign limited liability company transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.
- (2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.
- (3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign limited liability company or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.
- (4) A foreign limited liability company which transacts business in this state without authority to do so shall be liable to this state for the years or parts thereof during which it transacted business in this state without authority in an amount equal to all fees, penalties, and taxes which would have been imposed by this chapter upon such limited liability company had it duly applied for and received authority to transact business in this state as required by this chapter. In addition to the payments thus prescribed, such limited liability company shall be liable for a civil penalty of not less than \$500 or more than \$1,000 for each year or part thereof during which it transacts business in this state without a certificate of authority. The Department of

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State may collect all penalties due under this subsection.

(5) Notwithstanding subsections (1) and (2), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any of its contracts, deeds, mortgages, security interests, or acts or prevent it from defending any proceeding in this state.

(6) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having transacted business in this state without a certificate of authority.

(7) If a foreign limited liability company transacts business in this state without a certificate of authority, the foreign limited liability company appoints the Secretary of State as its agent for substitute service of process pursuant to s. 48.181 for claims arising out of the transaction of business in this state.

608.503 Application for certificate of authority.—

(1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the Department of State for filing. Such application shall be made on forms prescribed and furnished by the Department of State and shall set forth:

- (a) The name of the foreign limited liability company, which shall satisfy the requirements of s. 608.506.
- (b) The jurisdiction under the law of which it is organized.
- (c) Its date of organization and period of duration.
- (d) The street address of its principal office.
- (e) The street address of its registered office in this state and the name of its registered agent at that office.
- (f) Whether or not the limited liability company is manager-managed and, if so, the usual business addresses of its managing members or managers.
- (g) The nature of the business or purposes to be conducted or promoted in this state.

(h) Such additional information as may be necessary or appropriate in order to enable the Department of State to determine whether such limited liability company is entitled to file an application for authority to transact business in this state and to determine and assess the fees, penalties, and taxes payable as prescribed in this chapter.

(2) The foreign limited liability company shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the official having custody of records in the jurisdiction under the law of which it is organized, not more than 90 days prior to delivery of the application to the Department of State. A translation of the certificate, under oath of the translator, shall be attached to a certificate which is in a language other than the English language.

(3) A foreign limited liability company shall not be denied authority to transact business in this state by reason of the fact that the laws of the jurisdiction under which such limited liability company is organized governing its organization and internal affairs differ from the laws of this state.

608.504 Amended certificate of authority.—

(1) A foreign limited liability company authorized to transact business in this state shall make application to the Department of State to obtain an amended certificate of authority if any statement in the limited liability company's application was false or becomes false due to change in circumstances or if the foreign limited liability company changes:

- (a) Its limited liability company name.
 - (b) The period of its duration.
 - (c) The jurisdiction of its organization.
- (2) Such application shall be made within 30 days after the occurrence of any change set forth in subsection (1), shall be made on forms prescribed by the Department of State, shall be executed and filed in the same manner as an original application for authority, and shall set forth:
- (a) The name of the foreign limited liability company as it appears on the records of the Department of State.
 - (b) The jurisdiction of its organization.

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(c) The date it was authorized to do business in this state.

(d) If the name of the foreign limited liability company has been changed, the name relinquished, the new name, a statement that the change of name has been effected under the laws of the jurisdiction of its organization, and the date the change was effected.

(e) If the amendment changes its period of duration, a statement of such change.

(f) If the amendment changes the jurisdiction of its organization, a statement of such change.

(3) The requirements of s. 608.503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

608.505 Effect of certificate of authority.—

(1) A certificate of authority authorizes the foreign limited liability company to which it is issued to transact business in this state subject, however, to the right of the Department of State to suspend or revoke the certificate as provided in this chapter.

(2) A foreign limited liability company with a valid certificate of authority has the same but no greater rights and privileges than a domestic limited liability company. Unless otherwise provided by this chapter, a foreign limited liability company is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic limited liability company of like character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign limited liability company authorized to transact business in this state. The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern the foreign limited liability company's organization, internal affairs, and the liability of its managers, members, and their transferees.

608.506 Name of foreign limited liability company.—

(1) A foreign limited liability company is not entitled to file an application for a certificate of authority unless the name of such limited liability company satisfies the requirements of s. 608.406. If

the limited liability company name of a foreign limited liability company does not satisfy the requirements of s. 608.406, the foreign limited liability company, to obtain or maintain a certificate of authority to transact business in this state may use a fictitious name to transact business in this state if it delivers to the Department of State for filing a copy of the consent of its managing members or managers, adopting the fictitious name. The fictitious name adopted shall satisfy the requirements of s. 608.406.

(2) If a foreign limited liability company authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of s. 608.406, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of s. 608.406 and obtains an amended certificate of authority under s. 608.504.

608.507 Registered office and registered agent of foreign limited liability company.—

Each foreign limited liability company in this state must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business.

(2) A registered agent, which may be either:

(a) An individual who resides in this state and whose business office is identical with the registered office; or

(b) A foreign or domestic entity authorized to transact business in this state which has a business office identical with the registered office.

608.508 Change of registered office and registered agent of foreign limited liability company.—

(1) A foreign limited liability company authorized to transact business in this state may change its registered office or registered agent by delivering to the Department of State for filing a statement of change which satisfies the requirements of s. 608.408 and sets forth:

(a) Its name.

(b) The street address of its current registered office.

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(c) If the current registered office is to be changed, the street address of its new registered office.

(d) The name of its current registered agent.

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

(f) That, after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of such agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Department of State for filing a statement of change that complies with the requirements of paragraphs (1)(a)-(f) and recites that the limited liability company has been notified of the change.

608.509 Resignation of registered agent or foreign limited liability company.—

(1) The registered agent of a foreign limited liability company may resign his or her agency appointment by signing and delivering to the Department of State for filing the original statement of resignation and mailing a copy of such statement to the limited liability company at the limited liability company's principal office address shown in its most recent annual report or, if none, shown in its certificate of authority or most recently filed document. This statement of resignation shall state that a copy of such statement has been mailed to the limited liability company at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.

(2) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

608.5101 Service of process; notice or demand on a foreign limited liability company.—

(1) The registered agent of a foreign limited liability company authorized to transact business in this state is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

(2) A foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign limited liability company at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign limited liability company:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in this state under s. 608.511; or

(c) Has had its certificate of authority revoked under s. 608.513.

(3) Service is perfected under subsection (2) at the earliest of:

(a) The date the foreign limited liability company receives the mail.

(b) The date shown on the return receipt, if signed on behalf of the foreign limited liability company.

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited liability company. Process against any foreign limited liability company may also be served in accordance with chapter 48 or chapter 49.

608.511 Withdrawal of foreign limited liability company.—

(1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Department of State.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Department of State for filing.

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The application shall be made on forms prescribed and furnished by the Department of State and shall set forth:

- (a) The name of the foreign limited liability company and the jurisdiction under the law of which it is organized.
 - (b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state.
 - (c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Department of State as its agent for service of process based on a cause of action arising during the time it was authorized to transact business in this state.
 - (d) A mailing address to which the Department of State may mail a copy of any process served on it under paragraph (c).
 - (e) A commitment to notify the Department of State in the future of any change in its mailing address.
- (3) After the withdrawal of the limited liability company is effective, service of process on the Department of State under this section is service on the foreign limited liability company. Upon receipt of the process, the Department of State shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

608.512 Grounds for revocation of authority to transact business.—The Department of State may commence a proceeding under s. 608.513 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

- (1) The foreign limited liability company has failed to file its annual report with the Department of State by 5 p.m. Eastern Time on the third Friday in September.
- (2) The foreign limited liability company does not pay, within the time required by this chapter, any fees, taxes, or penalties imposed by this chapter or other law.

- (3) The foreign limited liability company is without a registered agent or registered office in this state for 30 days or more.
- (4) The foreign limited liability company does not notify the Department of State under s. 608.508 or s. 608.509 that its registered agent has resigned or that its registered office has been discontinued within 30 days after the resignation or discontinuance.
- (5) The foreign limited liability company's period of duration has expired.
- (6) A member, manager, or agent of the foreign limited liability company signed a document the member, manager, or agent knew was false in any material respect with intent that the document be delivered to the Department of State for filing.
- (7) The Department of State receives a duly authenticated certificate from the other official having custody of records in the jurisdiction under the law of which the foreign limited liability company is incorporated stating that it has been dissolved or disappeared as a result of a merger.
- (8) The foreign limited liability company has failed to answer truthfully and fully, within the time prescribed in s. 608.448, interrogatories propounded by the Department of State.
- (9) The foreign limited liability company failed to amend its certificate of authority as required by s. 608.504.

608.513 Procedure for and effect of revocation.—

- (1) If the Department of State determines that one or more grounds exist under s. 608.512 for revocation of a certificate of authority, the Department of State shall serve the foreign limited liability company with notice of its intent to revoke the foreign limited liability company's certificate of authority. If the foreign limited liability company has provided the department with an electronic mail address, such notice shall be by electronic transmission. Revocation for failure to file an annual report shall occur on the fourth Friday in September of each year. The Department of State shall issue a certificate of revocation to each revoked foreign limited liability company. Issuance of the certificate of revocation may be by electronic

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transmission to any foreign limited liability company that has provided the department with an electronic mail address.

(2) If the foreign limited liability company does not correct each ground for revocation under s. 608.512(2)-(9) or demonstrate to the reasonable satisfaction of the Department of State that each ground determined by the Department of State does not exist within 60 days after issuance of notice, the Department of State shall revoke the foreign limited liability company's certificate of authority by issuing a certificate of revocation that recites the ground or grounds for revocation and its effective date. Issuance of the certificate of revocation may be by electronic transmission to any foreign limited liability company that has provided the department with an electronic mail address.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the limited liability company.

608.5135 Revocation; application for reinstatement.—

(1)(a) If the certificate of authority of a limited liability company has been revoked, the foreign limited liability company may apply to the Department of State for reinstatement at any time after the effective date of revocation of authority. The application must:

1. Recite the name of the foreign limited liability company and the effective date of its revocation of authority;
2. State that the ground or grounds for revocation of authority either did not exist or have been eliminated and that no further grounds currently exist for revocation of authority;
3. State that the foreign limited liability company's name satisfies the requirements of s. 608.506; and
4. State that all taxes, fees, and penalties owed by the limited liability company and computed at the rate provided by law at the time the foreign limited

liability company applies for reinstatement have been paid; or

(b) As an alternative, the foreign limited liability company may submit a current annual report, signed by the registered agent and a manager or managing member, which substantially complies with the requirements of paragraph (a).

(2) If the Department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall cancel the certificate of revocation of authority.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation of authority, and the foreign limited liability company resumes carrying on its business as if the revocation of authority had never occurred.

(4) The name of the foreign limited liability company the certificate of authority of which has been revoked is not available for assumption or use by another limited liability company until 1 year after the effective date of revocation of authority unless the limited liability company provides the Department of State with an affidavit executed as required by s. 608.408 permitting the immediate assumption or use of its name by another limited liability company.

(5) If the name of the foreign limited liability company has been lawfully assumed in this state by another limited liability company, the Department of State shall require the foreign limited liability company to comply with s. 608.506 before accepting its application for reinstatement.

608.514 Appeal from revocation.—

(1) If the Department of State revokes the authority of any foreign limited liability company to transact business in this state pursuant to the provisions of this chapter, such foreign limited liability company may likewise appeal to the circuit court of the county where the registered office of such limited liability company in this state is situated by filing with the clerk of such court a petition setting forth a copy of its application for authority to transact business in this state and a copy of the certificate of revocation given by the

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Department of State, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Department of State or direct the department to take such action as the court deems proper.

(2) Appeals from all final orders and judgments entered by the circuit court under this section in review of any ruling or decision of the Department of State may be taken as in other civil actions.

608.601 Member's derivative actions.—

(1) A person may not commence a proceeding in the right of a domestic or foreign limited liability company unless the person was a member of the limited liability company when the transaction complained of occurred or unless the person became a member through transfer by operation of law from one who was a member at that time.

(2) A complaint in a proceeding brought in the right of a limited liability company must be verified and allege with particularity the demand made to obtain action by the managing members of a member-managed company or the managers of a manager-managed company and that the demand was refused or ignored. If the limited liability company commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) The court may dismiss a derivative proceeding if, on motion by the limited liability company, the court finds that one of the groups specified in paragraphs (a)-(c) has made a determination in good faith after conducting a reasonable investigation upon which its conclusions are based that the maintenance of the derivative suit is not in the best interests of the limited liability company. The limited liability company shall have the burden of proving the independence and good faith of the group making the determination and the reasonableness of the investigation. The determination shall be made by:

(a) A majority vote of independent managing members of a member-managed company or of independent managers of a manager-managed company present at a meeting of the managing

members of a member-managed company or of managers of a manager-managed company, if the independent managing members or managers, as applicable, constitute a quorum;

(b) A majority vote of a committee consisting of two or more independent managing members of a member-managed company or of independent managers of a manager-managed company appointed by a majority vote of independent managing members or managers, as applicable, present at a meeting of the managing members of a member-managed company or of managers of a manager-managed company, whether or not such independent managing members or managers, as applicable, constitute a quorum; or

(c) A panel of one or more independent persons appointed by the court upon motion by the limited liability company.

(4) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the limited liability company's members or a class, series, or voting group of members, the court shall direct that notice be given to the members affected. The court may determine which party or parties to the proceeding shall bear the expense of giving the notice.

(5) On termination of the proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(6) The court may award reasonable expenses for maintaining the proceeding, including reasonable attorney's fees, to a successful plaintiff or to the person commencing the proceeding who receives any relief, whether by judgment, compromise, or settlement, and require that the person account for the remainder of any proceeds to the limited liability company; however, this subsection does not apply to any relief rendered for the benefit of injured members only and limited to a recovery of the loss or damage of the injured members.

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(7) For purposes of this section, “member” includes a beneficial owner whose limited liability company interests are held in a voting trust or held by a nominee on the member’s behalf.

608.701 Application of corporation case law to set aside limited liability.—In any case in which a party seeks to hold the members of a limited liability company personally responsible for the liabilities or alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under the law of this state.

608.702 Certificates and certified copies to be received in evidence.—All certificates issued by the Department of State in accordance with this chapter, and all copies of records filed in the Department of State in accordance with this chapter when certified by the Department of State, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate under the seal of the Department of State, as to the existence or nonexistence of the facts relating to a limited liability company or foreign limited liability company, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

608.703 Interrogatories by Department of State.—

(1) The Department of State may direct to any limited liability company or foreign limited liability company subject to this chapter, and to any member or manager of any limited liability company or foreign limited liability company subject to this chapter, any interrogatories reasonably necessary and proper to enable the Department of State to ascertain whether the limited liability company or foreign limited liability company has complied with all of the provisions of this chapter applicable to the limited liability company or foreign limited liability company. The interrogatories shall be answered

within 30 days after the date of mailing, or within such additional time as fixed by the Department of State. The answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to a limited liability company or foreign limited liability company, they shall be answered by a manager of a manager-managed company, a member of a member-managed company, or a fiduciary if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.

(2) The Department of State need not file any record in a court of competent jurisdiction to which the interrogatories relate until the interrogatories are answered as provided in this chapter, and not then if the answers thereto disclose that the record is not in conformity with the requirements of this chapter or if the Department of State has determined that the parties to such document have not paid all fees, taxes, and penalties due and owing this state. The Department of State shall certify to the Department of Legal Affairs, for such action as the Department of Legal Affairs may deem appropriate, all interrogatories and answers which disclose a violation of this chapter.

(3) The Department of State may, based upon its findings hereunder or as provided in s. 213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to be due and owing the state and to compel any filing, qualification, or registration required by law. In connection with such proceeding, the department may, without prior approval by the court, file a lis pendens against any property owned by the corporation and may further certify any findings to the Department of Legal Affairs for the initiation of any action permitted pursuant to this chapter which the Department of Legal Affairs may deem appropriate.

(4) The Department of State shall have the power and authority reasonably necessary to enable it to administer this chapter efficiently, to perform the duties herein imposed upon it, and to adopt

reasonable rules necessary to carry out its duties and functions under this chapter.

608.704 Reservation of power to amend or repeal.—The Legislature has the power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

608.705 Effect of repeal of prior acts.—

- (1) Except as provided in subsection (2), the repeal of a statute by this chapter does not affect:
 - (a) The operation of the statute or any action taken under it before its repeal, including, without limiting the generality of the foregoing, the continuing validity of any provision of the articles of organization, regulations, or operating agreements of a limited liability company authorized by the statute at the time of its adoption;
 - (b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
 - (c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
 - (d) Any proceeding, merger, sale of assets, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, merger, sale of assets, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.
- (2) If a penalty or punishment imposed for violation of a statute is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.



FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Attached are the forms and instructions to form a Florida Limited Liability Company pursuant to Chapter 608, Florida Statutes. All information included in the Articles of Organization must be in English and must be typewritten or printed legibly. If this requirement is not met, the document will be returned for correction(s). The Division of Corporations suggests using the sample articles merely as a guideline. Pursuant to s. 608.407, Florida Statutes, additional information may be contained in the Articles of Organization.

The name of a limited liability company must be distinguishable on the records of the Florida Department of State.

A preliminary search for name availability can be made on the Internet through the Division's records at www.sunbiz.org. Preliminary name searches and name reservations are no longer available from the Division of Corporations. You are responsible for any name infringement that may result from your name selection.

NOTE: This form for filing Articles of Organization is basic. Each limited liability company is a separate entity and as such has specific goals, needs, and requirements. Additionally, the tax consequences arising from the structure of a limited liability company can be significant. The Division of Corporations recommends that all documents be reviewed by your legal counsel. The Division is a filing agency and as such does not render any legal, accounting, or tax advice. The professional advice of your legal counsel to ascertain exact compliance with all statutory requirements is strongly recommended.

Pursuant to s. 608.407, Florida Statutes, the Articles of Organization must set forth the following:

ARTICLE I:

The name of the limited liability company, which **must** end with the words "Limited Liability Company," the abbreviation "L.L.C.," or the designation "LLC." (The word "limited" may be abbreviated as "Ltd." and the word "company" may be abbreviated as "Co.")

ARTICLE II:

The mailing address and the street address of the principal office of the limited liability company.

ARTICLE III:

The name and Florida street address of the limited liability company's registered agent. The registered agent must sign and state that he/she is familiar with and accepts the obligations of the position.

ARTICLE IV: The name and address of each Manager or Managing member. Insert "MGR" for each Manager. Insert "MGRM" for each Managing Member. **IMPORTANT: Most financial institutions require this information to be recorded with the Florida Department of State.**

ARTICLE V: If an effective date is listed, the date must be specific and cannot be more than five business days prior to or 90 days after the date of filing.

What is an effective date?

You may list an effective date if you would like the limited liability company's existence to become effective on a date other than the date it is filed by this office., The effective date can be up to 5 business days prior to the date of receipt or up to 90 days after the date of receipt.

The entity's first annual report form will be due January 1st of the calendar year following the year of formation. If a limited liability company is created late in the calendar year and it doesn't expect to commence business until on or after January 1st of the upcoming year, it should add an effective date of January 1 for the coming year.

If the effective date is in the next calendar year, it will delay the requirement to file an annual report until the following calendar year. Example: A limited liability company is formed December 1, 2007. if it added an effective date of January 1, 2008, the first annual report would not be due until January 1, 2009. If a 2008 effective was not listed, the first annual report would be due January 1, 2008.

Signature:

Articles of Organization must be executed by at least one member or authorized representative of a member, and the execution of the document constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

FILING FEES:

\$ 125.00 Filing Fee for Articles of Organization and Designation of Registered Agent

\$ 30.00 Certified Copy (OPTIONAL)

\$ 5.00 Certificate of Status (OPTIONAL)

A letter of acknowledgment will be issued free of charge upon registration. Please submit one check made payable to the Florida Department of State for the total amount of the filing fees and any optional certificate or copy.

A cover letter containing your name, address and daytime telephone number should be submitted along with the articles of organization and the check. The mailing address and courier address are:

| <u>Mailing Address</u> | <u>Street/Courier Address</u> |
|--------------------------|-------------------------------|
| Registration Section | Registration Section |
| Division of Corporations | Division of Corporations |
| P.O. Box 6327 | Clifton Building |
| Tallahassee, FL 32314 | 2661 Executive Center Circle |
| (850) 245-6051 | Tallahassee, FL 32301 |
| | (850) 245-6051 |

Important Information About the Requirement to File an Annual Report

All Florida Limited Liability Companies must file an Annual Report yearly to maintain "active" status. The first report is due in the year following formation. The report must be filed electronically online between January 1st and May 1st. The fee for the annual report is \$138.75. After May 1st a \$400 late fee is added to the annual report filing fee. "Annual Report Reminder Notices" are sent to the e-mail address you provide us when you submit this document for filing. To file any time after January 1st, go to our website at www.sunbiz.org. There is no provision to waive the late fee. Be sure to file before May 1st.

Any further inquiries concerning this matter should be directed to the Registration Section by calling (850) 245-6051.

COVER LETTER

**TO: Registration Section
Division of Corporations**

SUBJECT: _____
Name of Limited Liability Company

The enclosed Articles of Organization and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Name of Person

Firm/Company

Address

City/State and Zip Code

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

_____ at (_____) _____
Name of Person Area Code & Daytime Telephone Number

Enclosed is a check for the following amount:

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> \$125.00 Filing Fee | <input type="checkbox"/> \$130.00 Filing Fee & Certificate of Status | <input type="checkbox"/> \$155.00 Filing Fee & Certified Copy (additional copy is enclosed) | <input type="checkbox"/> \$160.00 Filing Fee, Certificate of Status & Certified Copy (additional copy is enclosed) |
|--|---|---|---|

Mailing Address
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street/Courier Address
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

ARTICLES OF ORGANIZATION FOR FLORIDA LIMITED LIABILITY COMPANY

ARTICLE I - Name:

The name of the Limited Liability Company is:

(Must end with the words "Limited Liability Company, "L.L.C.," or "LLC.")

ARTICLE II - Address:

The mailing address and street address of the principal office of the Limited Liability Company is:

Principal Office Address:

Mailing Address:

ARTICLE III - Registered Agent, Registered Office, & Registered Agent's Signature:

(The Limited Liability Company cannot serve as its own Registered Agent. You must designate an individual or another business entity with an active Florida registration.)

The name and the Florida street address of the registered agent are:

Name

Florida street address (P.O. Box **NOT** acceptable)

FL
City, State, and Zip

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, F.S..

Registered Agent's Signature (REQUIRED)

(CONTINUED)

ARTICLE IV- Manager(s) or Managing Member(s):

The name and address of each Manager or Managing Member is as follows:

Title:

"MGR" = Manager

"MGRM" = Managing Member

Name and Address:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

(Use attachment if necessary)

ARTICLE V: Effective date, if other than the date of filing: _____. (OPTIONAL)
(If an effective date is listed, the date must be specific and cannot be more than five business days prior to or 90 days after the date of filing.)

REQUIRED SIGNATURE:

Signature of a member or an authorized representative of a member.

(In accordance with section 608.408(3), Florida Statutes, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.)

Typed or printed name of signee

Filing Fees:

- \$125.00 Filing Fee for Articles of Organization and Designation of Registered Agent**
- \$ 30.00 Certified Copy (Optional)**
- \$ 5.00 Certificate of Status (Optional)**



FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Attached are the instructions to register a foreign limited liability company to transact business in Florida. The requirements are as follows:

- Pursuant to s. 608.503(1), Florida Statutes, the attached application must be completed in its entirety.
- The foreign limited liability company **must** submit an original certificate of existence, no more than 90 days old, duly authenticated by the official having custody of records in the jurisdiction under the law of which it is organized. A photocopy is not acceptable. If the certificate is in a foreign language, a translation of the certificate under oath of the translator must be submitted.
- The name of a limited liability company must be distinguishable on the records of the Florida Department of State. If the name of your limited liability company is not distinguishable on our records, you must adopt an alternative name to use in the state of Florida. To adopt an alternate name, you must submit a copy of the written consent of the managers or managing members adopting the alternate name. You may download a fill-in-the-blank consent from our website at www.sunbiz.org.
- The name of a limited liability company in the state of Florida must end with the words "Limited Liability Company," The abbreviation "L.L.C.," or the designation "LLC."

A preliminary search for name availability can be made on the Internet through the Division's records at www.sunbiz.org. Preliminary name searches and name reservations are no longer available from the Division of Corporations. You are responsible for any name infringement that may result from your name selection.

➤ **The fees to register are as follows:**

- \$ 100.00 Filing Fee for Application
- \$ 25.00 Designation of Registered Agent
- \$ 30.00 Certified Copy (optional)
- \$ 5.00 Certificate of Status (optional)

➤ **Important Information About the Requirement to File an Annual Report**

All Foreign Limited Liability Companies must file an Annual Report yearly to maintain "active" status. The first report is due in the year following formation. The report must be filed electronically online between January 1st and May 1st. The fee for the annual report is \$138.75. After May 1st a \$400 late fee is added to the annual report filing fee. "Annual Report Reminder Notices" are sent to the e-mail address you provide us when you submit this document for filing. To file any time after January 1st, go to our website at www.sunbiz.org. There is no provision to waive the late fee. Be sure to file before May 1st.

- A letter of acknowledgment will be issued free of charge upon registration. Please submit one check made payable to the Florida Department of State for the total amount of the filing fee and any optional certificate or copy.
- A COVER letter should be submitted along with the application, certificate, and check. The mailing address and courier address are noted below.

Any further inquiries concerning this matter should be directed to the Registration Section by calling (850) 245-6051.

MAILING ADDRESS:

Division of Corporations
Registration Section
P.O. Box 6327
Tallahassee, FL 32314

STREET ADDRESS:

Division of Corporations
Registration Section
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: _____
Name of Limited Liability Company

The enclosed "Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida," Certificate of Existence, and check are submitted to register the above referenced foreign limited liability company to transact business in Florida..

Please return all correspondence concerning this matter to the following:

Name of Person

Firm/Company

Address

City/State and Zip Code

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

_____ at (_____) _____
Name of Person Area Code & Daytime Telephone Number

MAILING ADDRESS:
Division of Corporations
Registration Section
P.O. Box 6327
Tallahassee, FL 32314

STREET ADDRESS:
Division of Corporations
Registration Section
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Enclosed is a check for the following amount:

- \$125.00 Filing Fee \$130.00 Filing Fee & Certificate of Status \$155.00 Filing Fee & Certified Copy \$160.00 Filing Fee, Certificate of Status & Certified Copy

**APPLICATION BY FOREIGN LIMITED LIABILITY COMPANY FOR AUTHORIZATION TO
TRANSACTION BUSINESS IN FLORIDA**

IN COMPLIANCE WITH SECTION 608.503, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO REGISTER A FOREIGN LIMITED LIABILITY COMPANY TO TRANSACTION BUSINESS IN THE STATE OF FLORIDA:

1. _____
(Name of Foreign Limited Liability Company; must include "Limited Liability Company," "L.L.C.," or "LLC.")

(If name unavailable, enter alternate name adopted for the purpose of transacting business in Florida and attach a copy of the written consent of the managers or managing members adopting the alternate name. The alternate name must include "Limited Liability Company," "L.L.C.," "LLC.")

2. _____ 3. _____
(Jurisdiction under the law of which foreign limited liability company is organized) (FEI number, if applicable)

4. _____ 5. _____
(Date of Organization) (Duration: Year limited liability company will cease to exist or "perpetual")

6. _____
(Date first transacted business in Florida, if prior to registration.)
(See sections 608.501 & 608.502 F.S. to determine penalty liability)

7. _____

(Street Address of Principal Office)

8. If limited liability company is a manager-managed company, check here

9. The name and usual business addresses of the managing members or managers are as follows:

10. Attached is an original certificate of existence, no more than 90 days old, duly authenticated by the official having custody of records in the jurisdiction under the law of which it is organized. (A photocopy is not acceptable. If the certificate is in a foreign language, a translation of the certificate under oath of the translator must be submitted.)

11. Nature of business or purposes to be conducted or promoted in Florida: _____

Signature of a member or an authorized representative of a member.

(In accordance with section 608.408(3), F.S., the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.)

Typed or printed name of signee

**CERTIFICATE OF DESIGNATION OF
REGISTERED AGENT/REGISTERED OFFICE**

PURSUANT TO THE PROVISIONS OF SECTION 608.415 or 608.507, FLORIDA STATUTES, THE UNDERSIGNED LIMITED LIABILITY COMPANY SUBMITS THE FOLLOWING STATEMENT TO DESIGNATE A REGISTERED OFFICE AND REGISTERED AGENT IN THE STATE OF FLORIDA.

1. The name of the Limited Liability Company is:

If unavailable, the alternate to be used in the state of Florida is:

2. The name and the Florida street address of the registered agent and office are:

(Name)

Florida Street Address (P.O. Box NOT ACCEPTABLE)

FL
City/State/Zip

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, Florida Statutes.

(Signature)

| | |
|------------------|---|
| \$ 100.00 | Filing Fee for Application |
| \$ 25.00 | Designation of Registered Agent |
| \$ 30.00 | Certified Copy (optional) |
| \$ 5.00 | Certificate of Status (optional) |

PROFESSIONAL SERVICE CORPORATIONS

- 621.01 Legislative intent.
- 621.02 Short title.
- 621.03 Definitions.
- 621.04 Exemptions.
- 621.05 Corporation organization.
- 621.051 Limited liability company organization.
- 621.06 Rendition of professional services, limitations.
- 621.07 Liability of officers, agents, employees, shareholders, members, and corporation or limited liability company.
- 621.08 Limitation on corporation's or limited liability company's business transactions; investment of funds.
- 621.09 Limitation on issuance and transfer of ownership.
- 621.10 Disqualification of member, shareholder, officer, agent, or employee; administrative dissolution.
- 621.11 Alienation of shares and ownership interests; restrictions.
- 621.12 Identification with individual shareholders or individual members.
- 621.13 Applicability of chapters 607 and 608.
- 621.14 Construction of law.

621.01 Legislative intent.—It is the legislative intent to provide for the incorporation or organization as a limited liability company of an individual or group of individuals, professional corporations, or professional limited liability companies to render the same professional service to the public for which such individuals, individual shareholders of professional corporations, or members of limited liability companies are required by law to be licensed or to obtain other legal authorization.

621.02 Short title.—This act may be cited as the “Professional Service Corporation and Limited Liability Company Act.”

621.03 Definitions.—As used in this act the following words shall have the meaning indicated:

(1) The term “professional service” means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, public accountants, chiropractic physicians, dentists, osteopathic physicians, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatric physicians, chiropractors, architects, veterinarians, attorneys at law, and life insurance agents.

(2) The term “professional corporation” means a corporation which is organized under this act for the sole and specific purpose of rendering professional service and which has as its shareholders only other professional corporations, professional limited liability companies, or individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the corporation.

(3) The term “professional limited liability company” means a limited liability company that is organized under this act for the sole and specific purpose of rendering professional service and that has as its members only other professional limited liability companies, professional corporations, or individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the limited liability company.

621.04 Exemptions.—This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation or limited liability company and perform personal services to the public by the means of a corporation or limited liability company, and this act shall not apply to any corporations or limited liability companies organized by such individual or group of individuals prior to the passage of this act; provided, however, an individual or group of

PROFESSIONAL SERVICE CORPORATIONS

individuals or any such corporation or limited liability company may bring themselves and such corporation or limited liability company within the provisions of this act by amending the articles of incorporation, if a corporation, or the articles of organization, if a limited liability company, in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles that the shareholders or members have elected to bring the corporation or limited liability company within the provisions of this act.

621.05 Corporation organization.—One or more individuals, professional corporations, or professional limited liability companies, in any combination, duly licensed or otherwise legally authorized to render the same professional services may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of chapter 607 for the sole and specific purpose of rendering the same and specific professional service.

621.051 Limited liability company organization.—A group of professional service corporations, professional limited liability companies, or individuals, in any combination, duly licensed or otherwise legally authorized to render the same professional services may organize and become members of a professional limited liability company for pecuniary profit under the provisions of chapter 608 for the sole and specific purpose of rendering the same and specific professional service.

621.06 Rendition of professional services, limitations.—No corporation or limited liability company organized under this act may render professional services except through its members, officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services; provided, however, this provision shall not be interpreted to include in the term “employee,” as used herein, clerks,

secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required; and provided further, that nothing contained in this act shall be interpreted to require that the right of an individual to be a shareholder of a corporation or a member of a limited liability company organized under this act, or to organize such a corporation or limited liability company, is dependent upon the present or future existence of an employment relationship between him or her and such corporation or limited liability company, or his or her present or future active participation in any capacity in the production of the income of such corporation or limited liability company or in the performance of the services rendered by such corporation or limited liability company.

621.07 Liability of officers, agents, employees, shareholders, members, and corporation or limited liability company.—Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct; provided, however, that any officer, agent, member, manager, or employee of a corporation or limited liability company organized under this act shall be personally liable and accountable only for negligent or wrongful acts or misconduct committed by that person, or by any person under that person’s direct supervision and control, while rendering professional service on behalf of the corporation or limited liability company to the person for whom such professional services were being rendered; and provided further that the personal liability of shareholders of a corporation, or members of a limited liability company, organized under this act, in their capacity as shareholders or members of such corporation or

PROFESSIONAL SERVICE CORPORATIONS

limited liability company, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under chapter 607 or a member-employee of a limited liability company organized under chapter 608. The corporation or limited liability company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents, members, managers, or employees while they are engaged on behalf of the corporation or limited liability company in the rendering of professional services.

621.08 Limitation on corporation's or limited liability company's business transactions; investment of funds.—No corporation or limited liability company organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically organized; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations or limited liability companies shall be interpreted to prohibit such corporation or limited liability company from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

621.09 Limitation on issuance and transfer of ownership.—

(1) No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than a professional corporation, a professional limited liability company, or an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of that person's stock.

(2) No person shall be admitted as a member of a limited liability company organized under this act, unless such person is a professional corporation, a professional limited liability company, or an individual, each of which must be duly licensed or otherwise legally authorized to render the same specific professional services as those for which the limited liability company is organized. No member of a limited liability company organized under this act shall enter into any type of agreement vesting another person with the authority to exercise any of that member's voting power in the limited liability company.

621.10 Disqualification of member, shareholder, officer, agent, or employee; administrative dissolution.—If any member, officer, shareholder, agent, or employee of a corporation or limited liability company organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services or accepts employment that, pursuant to existing law, places restrictions or limitations upon that person's continued rendering of such professional services, that person shall sever all employment with, and financial interests in, such corporation or limited liability company forthwith. A corporation's or limited liability company's failure to require compliance with this provision shall constitute a ground for the judicial dissolution of the corporation or limited liability company. When a corporation's or limited liability company's failure to comply with this provision is brought to the attention of the Department of State, the department forthwith shall certify that fact to the Department of Legal Affairs for appropriate action to dissolve the corporation or limited liability company.

PROFESSIONAL SERVICE CORPORATIONS

621.11 Alienation of shares and ownership interests; restrictions.—

- (1) No shareholder of a corporation organized under this act may sell or transfer her or his shares in such corporation except to another professional corporation, professional limited liability company, or individual, each of which must be eligible to be a shareholder of such corporation.
- (2) No member of a limited liability company organized under this act may sell or transfer ownership interest in the limited liability company except to another professional corporation, professional limited liability company, or individual, each of which must be eligible to be a member of the limited liability company.

621.12 Identification with individual shareholders or individual members.—

- (1) The name of a corporation or limited liability company organized under this act may contain the last names of some or all of the individual shareholders or individual members and may contain the last names of retired or deceased former individual shareholders or individual members of the corporation, limited liability company, a predecessor corporation or limited liability company, or partnership.
- (2) The name shall also contain:
 - (a) The word “chartered”; or
 - (b)1. In the case of a professional corporation, the words “professional association” or the abbreviation “P.A.”; or
 2. In the case of a professional limited liability company, the words “professional limited company” or the abbreviation “P.L.,” in lieu of the words “limited company” or the abbreviation “L.C.” as otherwise required under s. 608.406.
- (3) In the case of a corporation, the use of the word “company,” “corporation,” or “incorporated” or any other word, abbreviation, affix, or prefix indicating that it is a corporation in the corporate name of a corporation organized under this act, other than the word “chartered” or the words “professional association” or the abbreviation “P.A.,” is specifically prohibited.

(4) It shall be permissible, however, for the corporation or limited liability company to render professional services and to exercise its authorized powers under a name which is identical to its name except that the word “chartered,” the words “professional association” or “professional limited company,” or the abbreviations “P.A.” or “P.L.” may be omitted, provided that the corporation or limited liability company has first registered the name to be so used in the manner required for the registration of fictitious names.

621.13 Applicability of chapters 607 and 608.—

- (1) Chapter 607 is applicable to a corporation organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 607. In such event, the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act.
- (2) Chapter 608 is applicable to a limited liability company organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 608. In such event, the provisions and sections of this act shall take precedence with respect to a limited liability company organized pursuant to the provisions of this act.
- (3) A professional corporation or limited liability company heretofore or hereafter organized under this act may change its business purpose from the rendering of professional service to provide for any other lawful purpose by amending its certificate of incorporation in the manner required for an original incorporation under chapter 607 or by amending its certificate of organization in the manner required for an original organization under chapter 608. However, such an amendment, when filed with and accepted by the Department of State, shall remove such corporation or limited liability company from the provisions of this chapter including, but not limited to, the right to

PROFESSIONAL SERVICE CORPORATIONS

practice a profession. A change of business purpose shall not have any effect on the continued existence of the corporation or limited liability company.

621.14 Construction of law.—The provisions of this act shall not be construed as repealing, modifying, or restricting the applicable provisions of law relating to incorporations, organization of limited liability companies, sales of securities, or regulating the several professions enumerated in this act except insofar as such laws conflict with the provisions of this act.

**FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS**

www.sunbiz.org

| | |
|--|-----------------------|
| DIRECTOR'S OFFICE | (850) 245-6000 |
| BUREAU OF COMMERCIAL INFORMATION SERVICES | (850) 245-6862 |
| Certification Section <i>Function: Certified copies of all division records, certificates of status and service of process pursuant to Chapter 48, Florida Statutes.</i> | (850) 245-6053 |
| Public Access Area <i>Function: Walk-in filings</i> | (850) 245-6963 |
| Electronic Filing and Internet Support <i>Function: Information on electronic filing and on-line access systems maintained by the Division of Corporations.</i> | (850) 245-6939 |
| Apostille Section <i>Function: Certification of Notaries and public documents.</i> | (850) 245-6945 |
| BUREAU OF COMMERCIAL RECORDINGS | (850) 245-6900 |
| New Filing Section <i>Function: All new domestic and foreign profit and non-profit corporations.</i> | (850) 245-6052 |
| Amendment Section <i>Function: All amendments and mergers to domestic and foreign corporations; corporate dissolutions and withdrawals; resignation of officers, directors and registered agents; corporate registered agent changes.</i> | (850) 245-6050 |
| Partnership/Trademark/Limited Liability Company Registration Section <i>Function: All limited partnership, limited liability company, trademark/service mark, partnership, and registered limited liability partnership filings; limited partnership and limited liability company annual reports and reinstatements.</i> | (850) 245-6051 |
| Annual Report Section <i>Function: Corporation annual reports</i> | (850) 245-6056 |
| Reinstatement Section <i>Function: Corporation reinstatements</i> | (850) 245-6059 |
| Fictitious Name Section <i>Function: Fictitious name applications, re-registrations and cancellations</i> | (850) 245-6058 |
| Judgment Lien Section <i>Function: New and amended Judgment lien registrations and tax lien registrations</i> | (850) 245-6011 |
| Cable and/or Video Franchise Section <i>Function: New/Amended/Cancellation of Cable/ Video Franchise</i> | (850) 245-6010 |
| Notary Section <i>Function: Registration of new/cancelled Notaries</i> | (850) 245-6975 |

Florida Department of State
Division of Corporations
850-245-6051
www.sunbiz.org