



11/1/91 - TH says JS advised that X and Y should file for formation of LLC.
October 25, 1991

VIA FAX 202-326-2050

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Bureau of Competition
Room 303
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Washington, D.C. 20580

Section 74 (b) of the Clayton Act which restricts release under the Freedom of Information Act

RE: LIMITED LIABILITY COMPANIES

Dear Mr. Hancock:

I appreciated you taking the time to discuss our concern over filing the Premerger Notification Form in connection with the formation of a limited liability company. Because our clients are under a confidentiality agreement with respect to this transaction, I will not use the names of the parties involved. I will, however, outline the nature of the transaction.

Company X is a United States corporation with assets over \$100,000,000.00. Company Y is also a United States corporation with assets over \$100,000,000.00. Company X and Company Y desire to form a joint venture to conduct certain business operations. Company X and Company Y will each contribute one-half of the funds necessary to start the joint venture. It is estimated that the initial contributions by each company will be well over \$30,000,000.00.

Company X and Company Y desire to set the joint venture up as a limited liability company (hereinafter referred to as "Company A, Limited Liability Company"). I have attached a copy of the Utah statutes which discuss formation of a limited liability company. I have also attached a revenue ruling which classified a limited liability company as a partnership for federal tax purposes.

[REDACTED]

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Company X and Company Y will each be fifty percent owners of Company A, Limited Liability Company. Under the statute, Company X and Company Y are called "members." Under the proposed Articles of Incorporation for Company A, Limited Liability Company, each of the members, Company X and Company Y, have equal rights with respect to management of the limited liability company. Each of the members is entitled to one-half of the profits and each will bear one-half of the losses. Of particular note, no certificates evidencing the respective rights of a member need be issued. Instead of a board of directors, limited liability companies may be run by the members or managers.

As I indicated over the telephone, we are concerned that if we treat the formation of the limited liability company as an asset acquisition, then each time capital of over \$15,000,000.00 is contributed to the limited liability company, both Company X and Company Y will be required to file new Premerger Notification Forms. In contrast, if the formation of the limited liability company is treated as an acquisition of voting securities, the two participating companies will not need to file additional Premerger Notification Forms for additional capital contributions. Finally, if the limited liability company is treated as a partnership, it is my understanding that a Premerger Notification Form need not be filed.

I would appreciate your opinion as to how we should file the Premerger Notification Form if we do indeed need to file. I very much appreciate your help and, as I indicated, time is of the essence.

Very truly yours,

[REDACTED]

[REDACTED]

Enclosures

[REDACTED]

Section 6681

Chapter 68.—Additions to the Tax, Additional Accounts, and Assessable Penalties
Subchapter A.—Additions to the Tax and Additional Amounts

Section 6681.—Substantial Understatement of Liability

26 CFR 1.6601-4: Disclosure of certain information.

Guidance is provided as to when information provided on a return in accordance with the applicable forms and instructions will be adequate disclosure for purposes of reducing an understatement of income tax under section 6601 of the Code. See Rev. Proc. 88-37, page 560.

Chapter 76.—Judicial Proceedings
Subchapter A.—Civil Actions of the United States

Section 7405.—Action for Recovery of Erroneous Refunds

The Service may not determine a deficiency and thus mail a valid notice of deficiency to a taxpayer with respect to the amount attributable to the disallowance of a net operating loss carryback if a prior notice of deficiency for amounts unrelated to the carryback had previously been mailed and the taxpayer had petitioned the Tax Court for a redetermination of that deficiency. See Rev. Rul. 88-88, page 354.

Chapter 78.—Discovery of Liability and Enforcement of Title
Subchapter D.—Possessions

Section 7651.—Administration and Collection of Taxes in Possessions

The provision of section 28(a) of the Revised Organic Act of the Virgin Islands that requires inhabitants to satisfy their United States and Virgin Islands income tax obligations by paying tax on income from all sources to the Virgin Islands is now ineffective. See Rev. Rul. 88-61, page 257.

Chapter 79.—Definitions

Section 7701.—Definitions

26 CFR 301.7701-1: Classification of organizations for tax purposes.

Partnership classification. An unincorporated organization operating under the Wyoming Limited Liability Company Act is classified as a partnership for federal tax purposes under section 301.7701-2 of the regulations.

Rev. Rul. 88-76

ISSUE

Whether a Wyoming limited liability company, none of whose members or designated managers are personally liable for any debts of the company, is clas-

sified for federal tax purposes as an association or as a partnership.

FACTS

M was organized as a limited liability company pursuant to the provisions of the Wyoming Limited Liability Company Act (Act). The purpose of *M* is to acquire, own, and operate improved real property. *M* has 25 members, including A, B, and C.

The Act provides that a limited liability company may be managed by a designated manager or managers, or by its members. If the limited liability company is managed by its members, management authority is vested in its members in proportion to their capital contributions to the company. *M* is managed by its designated managers, A, B, and C.

Under the Act, neither the members nor the designated managers of a limited liability company are liable for any debts, obligations, or liabilities of the limited liability company.

The Act also provides that the interest of a member in a limited liability company is part of the personal estate of the member; however, each member can assign or transfer the member's respective interest in the limited liability company only upon the unanimous written consent of all the remaining members. In the event that the remaining members fail to approve the assignment or transfer, the assignee or transferee has no right to participate in the management or become a member of the limited liability company. However, the assignee or transferee is entitled to receive the share of profits or other compensation and the return of contributions to which the transferring member would otherwise be entitled.

A limited liability company formed under the Act is dissolved upon the occurrence of any of the following events: (1) when the period fixed for the duration of the company expires; (2) by the unanimous written consent of all the members; or (3) by the death, retirement, resignation, expulsion, bankruptcy, dissolution of a member or occurrence of any other event that terminates the continued membership of a member, unless the business of the company is continued by the consent of all the remaining members under a right to do so stated in the articles of organization of the company. Under *M*'s articles of organization, the business of *M* is continued by the consent of all the remaining members.

LAW AND ANALYSIS

Section 7701(a)(2) of the Internal Revenue Code provides that the term "partnership" includes a syndicate, group, pool, venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate or a corporation.

Section 7701(a)(3) of the Code provides that the term "corporation" includes associations, joint-stock companies, and insurance companies.

Section 301.7701-1(b) of the Procedure and Administration Regulations states that the Code prescribes certain categories, or classes, into which various organizations fall for purposes of taxation. These categories, or classes, include associations (which are taxable as corporations), partnerships, and trusts. The tests, or standards, that are to be applied in determining the classification of an organization are set forth in sections 301.7701-2 through 301.7701-4.

Section 301.7701-2(a)(1) of the regulations sets forth the following basic characteristics of a corporation: (1) associates, (2) an objective to carry on business and divide the gains therefrom, (3) continuity of life, (4) centralization of management, (5) liability for corporate debts limited to corporate property, and (6) free transferability of interests. Whether a particular organization is to be classified as an association must be determined by taking into account the presence or absence of each of these corporate characteristics. In addition to the six major characteristics, other factors may be found in some cases which may be significant in classifying an organization as an association, a partnership, or a trust.

Section 301.7701-2(a)(2) of the regulations further provides that characteristics common to partnerships and corporations are not material in attempting to distinguish between an association and a partnership. Since associates and an objective to carry on business and divide the gains therefrom are generally common to corporations and partnerships, the determination of whether an organization which has such characteristics is to be treated for tax purposes as a partnership or as an association depends on whether there exists centralization of management, continuity of life, free transferability of interests, and limited liability.

Section 301.7701-2(a)(3) of the regulations provides that if an unincorpo-

Section 7701

rated organization possesses more corporate characteristics than noncorporate characteristics, it constitutes an association taxable as a corporation.

In interpreting section 301.7701-2 of the regulations, the Tax Court, in *Larson v. Commissioner*, 66 T.C. 159 (1976), acq., 1979-1 C.B. 1, concluded that equal weight must be given to each of the four corporate characteristics of continuity of life, centralization of management, limited liability, and free transferability of interests.

In the present situation, *M* has associates and an objective to carry on business and divide the gains therefrom. Therefore, *M* must be classified as either an association or a partnership. *M* is classified as a partnership for federal tax purposes unless the organization has a preponderance of the remaining corporate characteristics of continuity of life, centralization of management, limited liability, and free transferability of interests.

Section 301.7701-2(b)(1) of the regulations provides that if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will cause a dissolution of the organization, continuity of life does not exist. Section 301.7701-2(b)(2) provides that an agreement by which an organization is established may provide that the business will be continued by the remaining members in the event of the death or withdrawal of any member, but such agreement does not establish continuity of life if under local law the death or withdrawal of any member causes a dissolution of the organization.

Under the Act, unless the business of *M* is continued by the consent of all the remaining members, *M* is dissolved upon the death, retirement, resignation, expulsion, bankruptcy, dissolution of a member or occurrence of any other event that terminates the continued membership of a member in the company. If a member of *M* ceases to be a member of *M* for any reason, the continuity of *M*'s not assured, because all remaining members must agree to continue the business. Consequently, *M* lacks the corporate characteristic of continuity of life.

Under section 301.7701-2(e)(1) of the regulations an organization has the corporate characteristic of centralized management if any person (or group of persons that does not include all the members) has continuing exclusive authority to make management decisions necessary to the conduct of the business for which the organization was formed.

Under the Act, a limited liability company has the discretion to be managed either by a designated manager or managers, or to be managed by its members. Because *M* is managed by its designated managers, *A*, *B*, and *C*, *M* possesses the corporate characteristic of centralized management.

Section 301.7701-2(d)(1) of the regulations provides that an organization has the corporate characteristic of limited liability if under local law there is no member who is personally liable for the debts of, or claims against, the organization. Personal liability means that a creditor of an organization may seek personal satisfaction from a member of the organization to the extent that the assets of such organization are insufficient to satisfy the creditor's claim.

Under the Act, neither the managers nor the members of *M* are personally liable for its debts and obligations. Consequently, *M* possesses the corporate characteristic of limited liability.

Under section 301.7701-2(e)(1) of the regulations, an organization has the corporate characteristic of free transferability of interests if each of the members or those members owning substantially all of the interests in the organization have the power, without the consent of other members, to substitute for themselves in the same organization a person who is not a member of the organization. In order for this power of substitution to exist in the corporate sense, the member must be able, without the consent of other members, to confer upon the member's substitute all the attributes of the member's interest in the organization. The characteristic of free transferability does not exist if each member can, without the consent of the other members, assign only the right to share in the profits but cannot assign the right to participate in the management of the organization.

Under the terms of the Act, a member of *M* can assign or transfer that member's interest to another who is not a member of the organization. However, the assignee or transferee does not become a substitute member and does not acquire all the attributes of the member's interest in *M* unless all the remaining members approve the assignment or transfer. Therefore, *M* lacks the corporate characteristic of free transferability of interests.

M has associates and an objective to carry on business and divide the gains therefrom. In addition, *M* possesses the

corporate characteristic of centralized management and limited liability. *M* does not, however, possess the corporate characteristics of continuity of life and free transferability of interests.

HOLDING

M has associates and an objective to carry on business and divide the gains therefrom, but lacks a preponderance of the four remaining corporate characteristics. Accordingly, *M* is classified as a partnership for federal tax purposes.

26 CFR 301.7701-2: Associations.

Partnerships: Missouri business trust classified as a partnership. An organization formed as a business trust under Missouri law is classified as a partnership for federal tax purposes because it has associates and a business objective but lacks at least two of the remaining four corporate characteristics.

Rev. Rul. 88-79

ISSUE

Is *O*, a trust formed under Missouri law by associates to carry on business, properly classified for federal tax purposes as an association or as a partnership under section 301.7701-2(a) of the Procedure and Administration Regulations?

FACTS

Six individuals formed an organization, *O*, in Missouri, under the terms of an Agreement styled "Royalty Trust Agreement" (Agreement). *O* was formed for the purpose of buying, holding, and selling oil and gas royalty interests. The six individuals, referred to in the Agreement as the managers, contributed cash to *O* in exchange for certificates of beneficial interest. The managers of *O* collectively have substantial assets other than their interests in *O*. Certificates of beneficial interest were sold also to members of the general public pursuant to a public offering registered with the Securities and Exchange Commission. The agreement refers to these public investors as participants. The certificates of beneficial interest represent the right to share in the profits and losses of *O* and the right to a share of the assets of *O* upon its liquidation. The managers own 10 percent of the certificates of beneficial interest, and the participants own the remaining 90 percent.

ARTICLE XI
MISCELLANEOUS

48-1101. Construction and application.
This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it. 1990

48-1102. Short title.
This chapter may be cited as the "Utah Revised Uniform Limited Partnership Act." 1990

48-1103. Severability.
If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. 1990

48-1104. Effective date - Extended effective date - Applicability of former law.
Except as set forth below, the effective date of this chapter is July 1, 1990.

(1) The existing provisions for execution and filing of certificates of limited partnerships continue in effect with respect to limited partnerships organized prior to the effective date of this chapter until January 1, 1991, the extended effective date, and Sections 48-2a-102, 48-2a-105, 48-2a-201, and 48-2a-210 are not effective with respect to such preexisting limited partnerships until January 1, 1991, the extended effective date.

(2) Sections 48-2a-210, 48-2a-901, 48-2a-902, 48-2a-903, 48-2a-904, 48-2a-905, 48-2a-906, 48-2a-907, and 48-2a-908, governing the registration of foreign limited partnerships are not effective until January 1, 1991, the extended effective date.

(3) Sections 48-2a-501, 48-2a-502, and 48-2a-508 apply only to contributions and distributions made after July 1, 1990, and Subsection 48-2a-102(1)(a) applies only to limited partnerships formed or qualified after July 1, 1990.

(4) Section 48-2a-704 applies only to assignments made after July 1, 1990.

(5) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses, rather than the provisions of Section 48-2a-503, sharing of distributions, rather than the provisions of Section 48-2a-504, interim distributions, rather than the provisions of Section 48-2a-601, distributions to a withdrawing partner, rather than the provisions of Section 48-2a-604, and distributions of assets upon the winding up of a limited partnership, rather than the provisions of Section 48-2a-804, govern limited partnerships formed before July 1, 1990.

(6) The county clerk in each county in this state shall transmit to the division by January 1, 1991, all certificates of limited partnership and certificates of amendment filed with them prior to July 1, 1990, by domestic limited partnerships whose existence has not terminated prior to July 1, 1990. 1991

48-1105. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the provisions of Chapter 1, Title 48, Uniform Partnership Act, govern. 1990

48-2a-1106. Savings clause.
The repeal of any statutory provision by this chapter does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing on July 1, 1990, nor does the repeal of any existing statutory provision by this chapter impair any contract or affect any right accrued before July 1, 1990. 1990

48-2a-1107. Fees.
The division may charge and collect fees in accordance with the provisions of Section 63-38-3. 1990

CHAPTER 2b

UTAH LIMITED LIABILITY COMPANY ACT

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48-2b-101. Short title.

This chapter shall be known as the "Utah Limited Liability Company Act." 1991

48-2b-102. Definitions.

- (1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah insolvency law.
- (2) "Business" includes every trade, occupation, or profession.
- (3) "Division" means the Division of Corporations and Commercial Code of the Department of Commerce.
- (4) "Foreign limited liability company" means a limited liability company organized under the laws of any other jurisdiction.
- (5) "Limited liability company" or "company" means a business entity organized under this chapter.
- (6) "Person" means an individual, general partnership, limited partnership, limited liability company, or foreign trust, estate, association, or corporation.
- (7) "Professional services" means personal services rendered by:
 - (a) an architect holding a license under Chapter 3, Title 58, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;
 - (b) an attorney granted the authority to practice law by the Supreme Court of the state of Utah as provided in Chapter 51, Title 78;
 - (c) a chiropractor holding a license under Part 7, Chapter 12, Title 58, Chiropractic Improvements Act, and any subsequent laws regulating the practice of chiropractic;
 - (d) a doctor of dentistry holding a license under Chapter 7, Title 58, Dentists and Dental Hygienists Act, and any subsequent laws regulating the practice of dentistry;
 - (e) a professional engineer registered under Chapter 22, Title 58, Professional Engineers and Land Surveyors Licensing Act;
 - (f) a naturopath holding a license under Chapter 12, Title 58, and any subsequent laws regulating the practice of naturopathy;
 - (g) a nurse whose professional nursing license designates him as a nurse anesthetist pursuant to Subsection 58-31-9.1(1);
 - (h) an optometrist holding a license under Chapter 16, Title 58, and any subsequent laws regulating the practice of optometry;

- (i) an osteopathic physician or surgeon holding a license under Part 1, Chapter 12, Title 58, Osteopathic Medicine Licensing Act, and any subsequent laws regulating the practice of osteopathy
- (j) a pharmacist holding a license under Chapter 17, Title 58, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;
- (k) a physician, surgeon, or doctor of medicine holding a license under Part 5, Chapter 12, Title 58, Medical Practice Act, and any subsequent laws regulating the practice of medicine;
- (l) a physical therapist holding a license under Chapter 24, Title 58, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;
- (m) a podiatrist holding a license under Chapter 5, Title 58, and any subsequent laws regulating the practice of chiropody;
- (n) a psychologist holding a license under Chapter 25a, Title 58, Psychologists Licensing Act, and any subsequent laws regulating the practice of psychology;
- (o) a public accountant holding a license under Chapter 26, Title 58, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;
- (p) a real estate broker or real estate agent holding a license under Chapter 2, Title 61, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;
- (q) a certified social worker holding a license under Chapter 35, Title 58, and any subsequent laws regulating the practice of social work; an
- (r) a veterinarian holding a license under Chapter 28, Title 58, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine.
- (8) "Regulating board" means the board organized by state law which is charged with the regulation of the practice of the profession in which a limited liability company is organized.
- (9) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (10) "Successor limited liability company" means the surviving or resulting limited liability company existing pursuant to a merger or consolidation of two or more limited liability companies.

48-2b-103. Formation.

Two or more persons may form a limited liability company by executing and delivering to the division articles of organization for the limited liability company. An interest of a member in a limited liability company is personal property.

48-2b-104. Scope.

Except as otherwise provided by the laws of the state, a limited liability company may conduct or promote any lawful business or purpose which a partnership, general corporation, or professional corporation may conduct or promote.

48-2b-105. Powers.

- (1) Each limited liability company organized existing under this chapter may:
 - (a) sue or be sued, or institute or defend action, arbitration, or proceeding, whether civil, administrative, or otherwise, in its name;

or surgeon holding under 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy, license under Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

doctor of medicine under Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

license under Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

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be board organized under Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

ry, or possession of Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

a limited liability company under Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

y the laws of this state under Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

ny organized and under Chapter 12, Title 58, Occupational Code Act, and any subsequent act of osteopathy.

(b) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;

(c) sell, convey, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets;

(d) lend money to and otherwise assist its employees and managers;

(e) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, otherwise dispose of, or otherwise use or deal in or with:

(i) shares or other interests in or obligations of other foreign or domestic limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals; or

(ii) direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality or of any instrumentality of them;

(f) make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(g) lend money for any lawful purpose, invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so loaned or invested;

(h) conduct its business and maintain offices and exercise the powers granted by this chapter within or without this state, in any state, territory, district, or possession of the United States or in any foreign country;

(i) elect or appoint managers and agents of the limited liability company, define their duties and fix their compensation;

(j) make and alter an operating agreement, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of its affairs;

(k) make donations for the public welfare or for charitable, scientific, religious, or educational purposes;

(l) indemnify a member or manager or any other person to the same extent that a partnership may indemnify any of the partners, managers, employees, or agents of the partnership against expenses actually and reasonably incurred by the member or manager in connection with the defense of an action, suit, or proceeding, whether civil or criminal, in which the member or manager is made a party;

(m) cease its activities and surrender its certificate of organization;

(n) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the company is organized;

(o) transact any lawful business which the members or the managers find to be in aid of governmental policy;

(p) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its managers and employees;

(q) be a promoter, incorporator, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise; and

(r) render professional services, if each member of a limited liability company who renders professional services in Utah is licensed or registered to render those professional services pursuant to applicable Utah law.

(2) A limited liability company organized to render professional services under this chapter may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them.

(3) A limited liability company organized to render professional services:

(a) may include members, managers, and employees authorized under the laws of the jurisdiction where they reside to provide similar services;

(b) may render professional services in Utah only through its members, managers, and employees who are licensed or registered by the state of Utah to render those professional services; and

(c) shall have all of the other powers provided under this section.

1991

48-2b-106. Name — Exclusive right.

(1) The name of each limited liability company as set forth in the articles of organization:

(a) shall contain the words "limited company" or "L.C.";

(b) may not contain the words "association", "corporation", "incorporated", "limited partnership", "limited", "L.P.", "Ltd.", or words or any abbreviation of these which are of like import in any other language;

(c) may not, without the written consent of the United States Olympic Committee, contain the words "Olympic", "Olympiad", or "Citius Altius Fortius";

(2) A person or entity other than a limited liability company formed or registered under this chapter may not use any of the words "limited liability company", "limited company", or "L.C." in its name in this state, except that any foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if "corporation", "incorporated", or any abbreviation of these is also used.

(3) Except as authorized by Subsection (4), the name of a limited liability company must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the name of any limited partnership formed or authorized to transact business in this state;

(b) the name of any limited liability company formed or authorized to transact business in this state;

(c) the corporate name of any corporation incorporated or authorized to transact business in the state;

(d) any limited partnership name reserved under this chapter;

(e) any limited liability company name reserved under this chapter;

(f) any corporate name reserved under the Utah Business Corporation Act;

(g) any fictitious name adopted by a foreign corporation, limited partnership, or limited liability company authorized to transact business in this state because its real name is unavailable;

(h) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(i) any assumed name, trademark, or service mark registered by the division.

(4) A limited liability company may apply to the division for approval to file its articles of organization under, or to reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3). The division shall approve of the name for which application is made if:

(a) the other person whose name is not distinguishable from the name under which the applicant desires to file consents to the filing in writing and submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name for which the application is made.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records. Differences between singular and plural forms of words are distinguishing.

(6) The following references are not distinguishing:

(a) the words "corporation," "incorporated," "company," "limited partnership," "limited," "L.P.," "Ltd.," "limited liability company," "limited company," "L.C.," "LLC," or any abbreviation of any of these words;

(b) the presence or absence of the words or symbols of the division and special characters.

(7) The division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

(8) A name that implies that the limited liability company is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(9) The exclusive right to a name may be reserved by:

(a) any person intending to organize a limited liability company under this chapter and to adopt that name;

(b) any limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited liability company intending to register in this state and intending to adopt that name; and

(d) any person intending to organize a foreign limited liability company and intending to have it register in this state and adopt that name.

(10) The reservation shall be made by filing with the division an application executed under penalty of perjury by the applicant, to reserve a specified name. If the division finds that the name is available for use by a limited liability company or a foreign limited liability company, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days. The exclusive right to a reserved name may be transferred to any other person by filing with the division a notice of the transfer executed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee. 1991

48-2b-107. Limited liability company name — Limited rights.

The authorization to file articles of organization under or to reserve or register a limited liability company name as granted by the division does not:

- (1) abrogate or limit the law governing unfair competition or unfair trade practices;
- (2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or
- (3) create an exclusive right in geographic or generic terms contained within a name. 1991

48-2b-108. Name — Omission

(1) The words "limited liability company" or their abbreviation "L.C." shall be the last words of the name of every limited liability company formed under this chapter. The name of a limited liability company shall be such as to distinguish it upon the records of the division from any corporation, business name, or trademark of record with the division.

(2) Omission of the words "limited company" or their abbreviation "L.C." in the commercial use of the name of the limited liability company shall render the person who neglects to use the words "limited company" or "L.C." liable for any indebtedness, damage or liability incurred by the company. 1991

48-2b-109. Liability of members, managers, and employees.

Except as otherwise specifically set forth in this chapter, neither the members, the managers, nor the employees of a limited liability company are personally liable for a judgment, decree, or order of a court or in any other manner, for a debt, obligation, or liability of the limited liability company. 1991

48-2b-110. Liability for acting without authority.

All persons who assume to act as a limited liability company without authority granted by the division to do so are jointly and severally liable for all debts and liabilities so incurred. 1991

48-2b-111. Professional relationship — Personal liability.

(1) This chapter does not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services.

(2) All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions. No member, manager, or employee of a limited liability company is personally liable for the acts or omissions of any other member, 1991

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anager, or employee of the limited liability com- 1991

2b-112. Member as a party to proceedings. 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 member's right against, or liability to, the limited liability company. 1991

2b-113. Service of process, notice, or demand.

(1) Process against a limited liability company may be served:

- (a) in accordance with Title 16, as if the company were a corporation; or
- (b) upon the registered agent at the business address of the registered agent.

(2) Any notice to or demand on a company organized under this chapter may be made:

- (a) by delivery to a manager of the company, if management is vested in a manager, or by delivery to any member, if management is vested in the members; or
- (b) by writing, which shall be mailed to the registered office of the company in this state or to another address in this state that is the principal office of the company.

(3) Nothing contained in this section limits or affects the right to serve, in any other manner permitted by law, any process, notice, or demand required or permitted by law to be served upon a limited liability company.

(4) (a) If a limited liability company fails to appoint or maintain a registered agent in this state, or if its registered agent cannot with reasonable diligence be found at the registered office, then the director of the division is the agent of the liability company upon whom any process, notice, or demand may be served.

(b) Service on the director of the division of any process, notice, or demand shall be made by delivering to and leaving with the director an original and one copy of the process, notice, or demand, together with any fee required by the division pursuant to Section 63-38-3.

(c) If any process, notice, or demand is served on the director of the division, the director shall immediately cause one of the copies to be forwarded, by registered or certified mail, addressed to the limited liability company at its registered office.

(d) Any service upon the director of the division may not be returnable in less than 30 days. 1991

2b-114. Waiver of notice.

If under the provisions of this chapter, the articles of organization, or the 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. 1991

2b-116. Regulating board authority - Prohibitions on individuals apply.

(1) Nothing in this chapter restricts or limits in any manner the authority and duty of the regulating board to license individual persons rendering professional services or the practice of the profession that is

within the jurisdiction of the regulating board, notwithstanding that the person is a member, manager, or employee of a limited liability company and rendering the professional services or engaging in the practice of the profession through the limited liability company.

(2) No limited liability company may do anything that is prohibited to be done by individual persons licensed to practice the profession that the limited liability company is organized to render. 1991

48-2b-116. Articles of organization.

(1) The articles of organization of a limited liability company shall set forth:

- (a) the name of the limited liability company;
- (b) the period of its duration;
- (c) the business purpose or purposes for which the limited liability company is organized;
- (d) the street address of its registered office in the state and the name, street address, and signature of its initial registered agent in the state;
- (e) a statement that the director of the division is appointed the agent of the limited liability company for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence;

(f) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in such fashion and the names and street addresses of such managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, the names and street addresses of the members; and

(g) any other provisions, not inconsistent with law, that the members elect to include in the articles of organization for the regulation of the limited liability company, including any provision that is permitted to be included in the operating agreement of the limited liability company under this chapter.

(2) It is necessary to include in the articles of organization any of the powers enumerated in this chapter. 1991

48-2b-117. Filing of articles.

(1) An original and one copy of the articles of organization and of any certificates of amendment, or of any judicial decree of amendment, shall be delivered to the division. A person who executes a certificate of amendment as an attorney-in-fact or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless it finds that the articles of organization do not conform to law as to their form, the division, upon receipt of all filing fees established under Section 63-38-3, shall:

- (a) place a stamp or seal on the original and the copy, indicating the time, day, month, and year of the filing, the name of the division, the signature of the division director, and the division's seal, or facsimiles of them;
- (b) file the signed original in its office; and
- (c) return the stamped copy to the person who filed it or as directed by the person who filed it.

(2) Upon the filing with the division of a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of amendment,

pany and each authorized to transact the division, date of formation, in utility companies, or any date of being business in this state, utility companies in this state, an annual

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registered agent Section 48-2b-123. made on forms provision, and the information shall be given report. The annual report notifying the failure to file the application and eventual organization, in the company, or of its registered agent in this state. The registered agent report, the annual report, the new registered

requirements of the report. If the report shall mail the report to the limited liability company set forth for its certificate of organization any necessary corporate penalties for failure to file the report as prescribed in the report is correct within 30 days report was mailed

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to fix a time, not less than 60 days before the dissolution of the limited liability company

to make a change in the articles of organization

tion in order for the articles to accurately represent the agreement among them. 1991

48-2b-122. Additional members.
After the filing of a limited liability company's articles of organization, additional members may be admitted as provided in the operating agreement or, if the operating agreement does not provide for the admission of additional members, with the written consent of all members, except that, notwithstanding any provision in the operating agreement, an additional member may be admitted without the written consent of the members entitled to receive a proportionate share of the profits of the company. 1991

48-2b-123. Registered agent.
(1) Each limited liability company shall continuously maintain an agent in this state for service of process on the limited liability company.
(2) This agent shall be an individual residing in this state, a domestic corporation, a foreign corporation authorized to do business in this state, or any member of the limited liability company.
(3) Failure to maintain a registered agent in this state shall be grounds for involuntary dissolution of the limited liability company by the division under Section 48-2b-142.
(4) The registered agent of a limited liability company may resign by filing an original and one copy of a signed written notice of resignation with the division. The division shall then mail a copy of the notice of resignation to the registered office of the limited liability company at the street address set forth in the limited liability company's articles of organization. The appointment of the registered agent ends 30 days after the division receives notice of the resignation. 1991

48-2b-124. Capital contributions.
The contributions to capital of a member to the limited liability company may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. 1991

48-2b-125. Management.
(1) The management of the limited liability company, unless otherwise provided in the articles of organization, shall be vested in its members in proportion to their interests in the profits of the limited liability company, as reflected in the operating agreement and as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members. If the management of the limited liability company is vested in the members, the members shall have the authority to bind the limited liability company.

(2) If the articles of organization provide for the management of the limited liability company by a manager or managers, the manager or managers shall be any person elected by the members in the manner prescribed by and provided in the operating agreement of the limited liability company. If the management of the limited liability company is vested in a manager or managers, the manager or managers shall have the authority to bind the limited liability company. This manager or managers shall be a manager for a term specified in the operating agreement. This term may not exceed the duration of the limited liability company as specified in the articles of organization.

(3) The manager or managers shall also hold the powers and have the responsibilities accorded to them

by the members and as provided for in the operating agreement of the limited liability company. 1991

48-2b-126. Operating agreements.
(1) (a) The power to adopt, alter, amend, or repeal the operating agreement of a limited liability company shall be vested in the members of the company unless otherwise vested in the manager or managers of the company by the articles of organization or by the operating agreement.
(b) Operating agreements adopted by the members or by the manager may be repealed or altered from time to time.
(c) New operating agreements may be adopted by the members and the members may prescribe in any operating agreements made by them that such operating agreements may not be altered, amended, or repealed by the manager.

(2) The operating agreements may provide for the regulation and management of the affairs of the limited liability company in any manner not inconsistent with law or the articles of organization.

(3) The operating agreement may also provide for the removal of a manager or managers and for the termination of a member's interest in the limited liability company. If a member's interest in the limited liability company is terminated pursuant to the operating agreement, the member may rightfully demand a return of the member's contribution pursuant to Section 48-2b-132. 1991

48-2b-127. Ownership and disposition of property.

(1) Real or personal property owned or purchased by a limited liability company may be held and owned, and conveyance shall be made, in the name of the limited liability company.

(2) 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 by one or more managers of a limited liability company having a manager or managers or if they are executed by one or more members of a limited liability company in which management has been retained by the members. 1991

48-2b-128. Conditions for property distribution.

From time to time, the limited liability company may distribute its property to the members of the limited liability company upon the basis stipulated in the operating agreement if, after distribution is made, the fair value of the assets of the limited liability company is in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions. 1991

48-2b-129. Assets distribution.

Distributions of cash or other assets of a limited liability company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, cash or other assets shall be allocated on the basis of value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. Value of the contributions made shall be determined as stated in the articles of organization or the records of the limited liability company as required by Section 48-2b-119. 1991

48-2b-130. Profits and losses.
The profits and losses of a limited liability company

and upon the effective date of a certificate of dissolution or of a judicial decree of cancellation, the articles of organization shall be canceled. 1991

48-2b-118. Effect of filing — Prefiling activities.

(1) Upon the placement of a stamp or seal, as provided in Subsection 48-2b-117(1)(a), on the articles of organization, the limited liability company shall be considered organized.

(2) Except as against the state of Utah in a proceeding to cancel or revoke the certificate of organization or in a proceeding for involuntary dissolution of the limited liability company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized under this chapter.

(3) A limited liability company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the articles of organization have been filed with the division. Persons engaged in prefiling activities other than those authorized by this section shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the limited liability company incurred on behalf of the limited liability company prior to the filing of its articles of organization with the division. 1991

48-2b-119. Records.

(1) Each limited liability company shall keep at its principal place of business the following:

(a) a current list in alphabetical order of the full name and last known business street address of each member;

(b) a copy of the stamped articles of organization and all certificates of amendment to them, collectively referred to as the "certificate of organization," together with executed copies of any powers of attorney pursuant to which any certificate of amendment has been executed;

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

(d) copies of any financial statements of the limited liability company, if any, for the three most recent years; and

(e) unless otherwise set forth in the articles of organization, a written statement setting forth:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute;

(ii) 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;

(iii) any right of a member to receive distributions which include a return of all or any of the member's contributions; and

(iv) any event upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(2) Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any member during ordinary business hours. 1991

48-2b-120. Annual report.

(1) Each limited liability company and each foreign limited liability company authorized to transact business in this state shall file with the division, during the month of its anniversary date of formation, in the case of domestic limited liability companies, or during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited liability companies authorized to transact business in this state, an annual report setting forth:

(a) the name of the limited liability company and the state or country under the laws of which it is formed;

(b) the name and street address of the agent for service of process required to be maintained under Section 48-2b-123; and

(c) there is a change of the registered agent required to be maintained by Section 48-2b-123.

(2) The annual report shall be made on forms prescribed and furnished by the division, and the information contained on the annual report shall be given as of the date of execution of the report. The annual report forms shall include a statement notifying the limited liability company that failure to file the annual report will result in the suspension and eventual cancellation of its certificate of organization, in the case of a domestic limited liability company, or of its registration, in the case of a foreign limited liability company authorized to transact business in this state.

(3) The annual report shall be signed by any member under penalty of perjury. If the registered agent has changed since the last annual report, the annual report shall also be signed by the new registered agent.

(4) If the report conforms to the requirements of this chapter, the division shall file the report. If the report does not conform, the division shall mail the report first class postage prepaid to the limited liability company at the street address set forth for its agent for service of process in the certificate of organization or most recent report, for any necessary corrections. If a report is returned, the penalties for failure to file the report within the time prescribed in this section do not apply, as long as the report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the limited liability company. 1991

48-2b-121. When amendments required.

The articles of organization of a limited liability company shall be amended when:

(1) there is a change in the name of the limited liability company;

(2) there is a change in the character of the business of the limited liability company specified in the articles of organization;

(3) there is a false or erroneous statement in the articles of organization;

(4) there is a change in the time, as stated in the articles of organization, for the dissolution of the limited liability company;

(5) there is a change in the names and street addresses of the managers of the limited liability company, or if the limited liability company is managed by its members, the names and street addresses of the members;

(6) the members determine to fix a time, not previously specified in the articles of organization, for the dissolution of the limited liability company; or

(7) the members desire to make a change in any other statement in the articles of organiza-

shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated on the basis of value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. Value of the contributions made shall be determined as stated in the articles of organization or the records of the limited liability company as required by Section 48-2b-119.

1991

48-2b-131. Transfer, adjustment, and assignment of member interests — Effect.

(1) An interest of a member in a limited liability company may be adjusted, transferred, or assigned as provided in the operating agreement. However, if the nontransferring members entitled to receive a majority of the nontransferred profits of the limited liability company, pursuant to Section 48-2b-130, do not consent to the proposed transfer or assignment, the transferee of the interest of the member has no right to participate in the management of the business and affairs of the limited liability company or to become a member. In that event, the transferee is entitled to receive only the share of profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.

(2) A member of a limited liability company organized to render professional services may voluntarily transfer his shares in a limited liability company only to a person who is licensed or registered by the jurisdiction in which the person resides to render the same type of professional services as those for which the company was organized. Any transfer of a member's interest in a limited liability company in violation of this section is void.

1991

48-2b-132. Conditions for distribution of property — Return of contribution.

(1) A member shall receive no distribution of limited liability company property on account of any member's contribution to capital until:

(a) all liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or sufficient property of the company remains to pay them; and

(b) the consent of all members is obtained, unless the return of the contribution to capital may be rightfully demanded as provided in this chapter, the articles of organization, or the operating agreement.

(2) Subject to Subsection (1), a member may rightfully demand the return of the member's contribution:

(a) upon the dissolution of the limited liability company;

(b) when the date an event specified in the articles of organization for the return of the contribution has arrived; or

(c) after the member has given all other members of the limited liability company six months' prior notice in writing, if no other time period is specified in the articles of organization for the dissolution of the limited liability company.

(3) In the absence of a statement in the articles of organization 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.

1991

48-2b-133. Member liabilities.

(1) A member of a limited liability company is liable to the company:

(a) for the difference between the amount of the member's contributions to capital which have been actually made and the amount which is stated in the operating agreement or other contract as having been made; and

(b) for any unpaid contribution to capital which the member, in the operating agreement or other contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other contract.

(2) A member holds as trustee for the limited liability company:

(a) specific property which is stated in the operating agreement or other contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or erroneously returned; and

(b) money or other property wrongfully paid or conveyed to the member on account of the member's contribution.

(3) The liabilities of a member as set out in this section may be waived or compromised upon the consent of all other members. This waiver or compromise does not affect the rights of a creditor of the limited liability company who extended credit or whose claim arose prior to the dissolution of the limited liability company.

(4) When a member has rightfully received the return, in whole or in part, of his or her capital contribution, the member remains liable to the limited liability company for any sum, not in excess of the return with interest, necessary to discharge the limited liability company's obligations to all creditors of the limited liability company who extended credit or whose claims arose before the return.

1991

48-2b-134. Execution of documents.

(1) Unless otherwise specified in this chapter, each certificate or report required by this chapter to be filed with the division shall be executed in the following manner:

(a) articles of organization shall be signed by all members;

(b) the certificate of amendment shall be signed under penalty of perjury by at least one member, as authorized pursuant to the operating agreement, and by each other member designated in the certificate of amendment as a new member;

(c) the annual report shall be signed under penalty of perjury by at least one member, as authorized pursuant to the operating agreement, and, if the registered agent has changed subsequent to the filing of the articles of organization or the last annual report, by the registered agent; and

(d) articles of dissolution shall be signed under penalty of perjury by at least one member, as authorized pursuant to the operating agreement.

(2) Any person may sign any certificate or articles by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a member shall specify the admission of the member. Powers of attorney relating to the signing of a certificate by an attorney-in-fact need not be filed with the division but shall be retained by the company.

(3) The execution of articles of organization or dissolution or of a certificate of amendment by a member constitutes an oath or affirmation, under the penal-

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of perjury, that the facts stated in the articles or certificate are true and that any power of attorney had in connection with the execution of the articles certificate is proper in form and substance. 1991

48-2b-135. Penalty for false execution.

Each member or manager of a limited liability company who signs any articles, certificate, statement, report, application, or other document filed with the division that is known to that member or manager to be false in any material respect is guilty of a class B misdemeanor. 1991

48-2b-136. Restated articles of organization.

(1) A limited liability company may integrate into a single instrument all of the provisions of its articles of organization and amendments to them, and it may at the same time also further amend its articles of organization by adopting restated articles of organization.

(2) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate or instrument that was executed and filed pursuant to this chapter, they shall be specifically designated in their heading as "Restated Articles of Organization", together with other words that the company considers appropriate, and shall be executed and filed with the division.

(3) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as "Amended and Restated Articles of Organization", together with other words that the company considers appropriate, and shall be executed and filed with the division.

(4) (a) Restated articles of organization shall state, either in their heading or in an introductory paragraph, the company's present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its original articles of organization with the division. Restated articles shall also state that they were duly executed and filed in accordance with this section.

(b) If the restated articles only restate and integrate and do not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, they shall so state.

(5) Upon the filing of the restated articles of organization with the division, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.

(6) Any amendment or change made in connection with the restatement and integration of the articles of organization shall be subject to any other provision of this chapter, not inconsistent with this section, that would apply if a separate certificate of amendment were filed to make the amendment or change. 1991

48-2b-137. Dissolution.

A limited liability company organized under this chapter shall be dissolved upon the occurrence of any

(1) when the period fixed for the duration of the limited liability company in its articles of organization or operating agreement expires;

(2) by written agreement signed by the members entitled to receive a majority of the profits of the limited liability company, unless otherwise provided in the operating agreement;

(3) upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or upon the occurrence of any other event that terminates the continued eligibility for membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of the remaining members entitled to receive a majority of the capital of the limited liability company under a right to do so stated in the articles of organization or operating agreement within 90 days after the event of termination; or

(4) when the limited liability company is not the successor limited liability company in the merger or consolidation of two or more limited liability companies. 1991

48-2b-138. Settlement upon dissolution.

(1) In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

(a) liabilities to creditors, in the order of priority as provided by law, except those liabilities to members of the limited liability company on account of their contributions;

(b) except as provided in the operating agreement, liabilities to members of the limited liability company in respect of their contributions to capital; and

(c) liabilities to members of the limited liability company in respect of their shares of the profits and other compensation by way of income on their contributions.

(2) Members shall share in the limited liability company assets as provided in the operating agreement, or if not so provided, in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of the claims. 1991

48-2b-139. Articles of dissolution.

When all debts, liabilities, and obligations of the limited liability company have been paid or discharged, or adequate provision has been made to do so, and all of the remaining property and assets of the limited liability company have been distributed to the members, articles of dissolution shall be executed. The articles shall set forth:

(1) the name of the limited liability company;

(2) that all state taxes payable, debts, obligations, and liabilities have been paid or discharged, or that adequate provision has been made to do so;

(3) that all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests; and

(4) that there are no suits pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit. 1991

48-2b-140. Filing of articles of dissolution — Effect.

company shall be filed with the division. If the articles of dissolution conform to law and all fees have been paid as prescribed in this chapter, the division shall file the articles of dissolution of the company and shall issue a certificate of dissolution and return it to the representative of the dissolved limited liability company.

(2) Upon the issuance of the certificate of dissolution, the existence of the company shall cease, except for the purpose of suits, other proceedings, and appropriate actions as provided in this chapter. The manager or managers in office at the time of dissolution, or the survivors of the managers, or, if none, the members, shall thereafter become trustees for the members and creditors of the dissolved limited liability company. In this capacity, the trustees may distribute any company property discovered after dissolution, convey real estate, and take other necessary action on behalf of and in the name of the dissolved limited liability company. 1991

48-2b-141. Cancellation of articles of organization.

The articles of organization of a limited liability company shall be canceled by the division upon issuance of the certificate of dissolution. 1991

48-2b-142. Involuntary dissolution.

(1) A limited liability company may be dissolved involuntarily by order of any court of competent jurisdiction in an action filed by the attorney general or the director of the division when it is established that the limited liability company:

(a) obtained the issuance of its certificate of organization or of its execution through fraud, in which case the certificate of organization shall be canceled as of the date of its filing;

(b) continually exceeded or abused the authority conferred upon it by law or by the operating agreement;

(c) committed a violation of any provision of law whereby it has forfeited its charter;

(d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;

(e) abused its powers contrary to the public policy of the state; or

(f) failed to amend its articles of organization as required by Section 48-2b-121.

(2) A limited liability company or a foreign liability company registered in this state is delinquent if:

(a) it does not file an annual report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) (a) Unless the limited liability company's certificate of organization is already suspended for any reason, the division shall mail a notice of delinquency of each delinquent limited liability company to the managers of the limited liability company at the addresses set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. The notice of delinquency shall state:

(i) the nature of the delinquency;

(ii) that the limited liability company shall be suspended, unless it corrects the delinquency and pays a notification fee within

30 days of the mailing of the notice of delinquency; and

(iii) that a suspended limited liability company may be reinstated only after payment of a reinstatement fee.

(c) A notice of delinquency shall be mailed first class, postage prepaid.

(d) The division shall include with the notice any forms necessary to correct the delinquency.

(e) The division shall assess the limited liability company a notification fee, as determined under Section 63-38-3.

(4) (a) A limited liability company, or a foreign limited liability company registered in this state, that remains delinquent for more than 30 days after the mailing of the notice of delinquency under this section shall be suspended.

(b) Unless the limited liability company's certificate of organization is already suspended for any reason, if a limited liability company is suspended under this section, the division shall mail a notice of suspension to the managers of the limited liability company at the addresses set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization.

(c) The notice of suspension shall state:

(i) that the certificate of organization has been suspended;

(ii) the reason for the suspension;

(iii) the date of the suspension;

(iv) that the limited liability company may remove the suspension by correcting the delinquency and paying a reinstatement fee determined by the division in accordance with Section 63-38-3, in addition to any fees required by Subsection (3); and

(v) that the limited liability company's certificate of organization will be canceled involuntarily one year after the date of mailing of the notice of suspension unless the limited liability company has removed the suspension before that time.

(5) The division shall include an annual report form in the notice of suspension if the suspension is due to failure to file an annual report.

(6) If the limited liability company does not remove the suspension within one year after the date of mailing of the notice of suspension, the limited liability company's certificate of organization may be canceled involuntarily by the director of the division. The division shall mail a certificate of cancellation to the managers of the limited liability company at the address set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. No canceled limited liability company may be reinstated, except as set forth in Subsection (7). Any assumed names filed on behalf of the canceled limited liability company under Section 48-2b-106 also are canceled. The name of a canceled limited liability company and any assumed names on its behalf are not available for one year from the date of cancellation for use by any other person transacting business in this state, or person doing business under an assumed name under Section 48-2b-106.

(7) Any limited liability company whose certificate of organization has been canceled under Section

48-2b-141 or Section 48-2b-142 may be reinstated
 within one year following cancellation upon applica-
 tion and payment of all penalties and reinstatement
 fees.
 (8) A member of a limited liability company has no
 personal liability solely by reason of the limited li-
 ability company having had its certificate of organiza-
 tion suspended or canceled.
 (9) A limited liability company that has had its
 certificate or registration suspended or canceled may
 not maintain any action, suit, or proceeding in any
 part of this state until it has removed the suspension
 or reinstated its certificate or registration following
 cancellation.

48-2b-143. Foreign limited liability companies.
 (1) This chapter does not govern the organization
 and internal affairs of a foreign limited liability com-
 pany.
 (2) A foreign limited liability company may not be
 denied registration by reason of any difference be-
 tween those laws and the laws of the state of Utah.

48-2b-144. Registration of foreign limited liabil-
 ity companies.
 (1) Before doing business in this state, a foreign
 limited liability company shall register with the divi-
 sion by submitting to the division:
 (a) the fee required by this chapter;
 (b) an original certificate of fact or good stand-
 ing from the office of the secretary of state or
 other responsible authority of the home state of

when made or any arrangements or other facts de-
 scribed have changed, making the application inaccur-
 ate in any respect, the foreign limited liability com-
 pany shall promptly file with the division a certifi-
 cate, executed by a member, correcting the state-
 ment, together with payment of any fee required by
 this chapter.

48-2b-145. Cancellation of foreign limited liabil-
 ity companies' registration.
 (1) A foreign limited liability company may cancel
 its registration by filing with the division a certifi-
 cate of cancellation of registration signed under pen-
 alty of perjury by a member.
 (2) A cancellation of registration does not termi-
 nate the authority of the director of the division to
 accept service of process on the foreign limited liabil-
 ity company with respect to claims for relief and
 causes of action against the foreign limited liability
 company arising before the cancellation of registra-
 tion.
 (3) The certificate of cancellation of registration
 shall be made on forms prescribed and furnished by
 the division, and the information contained on the
 certificate of cancellation of registration shall be
 given as of the date of execution of the certificate.

48-2b-146. Effect of registration.
 (1) A foreign limited liability company doing busi-
 ness in the state of Utah may not maintain any ac-
 tion, suit, or proceeding in this state until it has reg-
 istered in this state and has paid to the state all fees

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