

1 HB72
2 188769-4
3 By Representatives Poole and Daniels
4 RFD: Judiciary
5 First Read: 09-JAN-18
6 PFD: 01/04/2018

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2 ENROLLED, An Act,

3 Relating to business entities; to amend Sections
4 10A-1-1.02, 10A-1-1.03, 10A-1-1.06, 10A-1-1.08, 10A-1-1.12,
5 10A-1-2.02, 10A-1-2.11, 10A-1-3.04, 10A-1-3.05, 10A-1-3.06,
6 10A-1-3.17, 10A-1-3.32, 10A-1-3.33, 10A-1-3.41, 10A-1-3.42,
7 10A-1-4.01, 10A-1-4.02, 10A-1-4.12, 10A-1-4.25, 10A-1-4.31,
8 10A-1-5.01, 10A-1-5.02, 10A-1-5.03, 10A-1-5.04, 10A-1-5.05,
9 10A-1-5.06, 10A-1-5.07, and 10A-1-5.08; to add Section
10 10A-1-5.10; to amend Sections 10A-1-5.11, 10A-1-5.12,
11 10A-1-5.31, 10A-1-5.32, 10A-1-5.33, 10A-1-6.02, 10A-1-7.01,
12 10A-1-7.02, 10A-1-7.03, 10A-1-7.04, 10A-1-7.05, and
13 10A-1-7.06, 10A-1-7.07, 10A-1-7.11, 10A-1-7.12, 10A-1-7.13,
14 10A-1-7.14, 10A-1-7.22, 10A-1-7.23, 10A-1-7.24, 10A-1-7.31,
15 10A-1-7.32, 10A-1-7.34, 10A-1-7.36, 10A-1-7.37, 10A-1-8.01,
16 10A-1-8.02, and 10A-1-8.03, to amend and renumber Section
17 10A-1-9.01 as 10A-1-9.02, to add a new Section 10A-1-9.01, and
18 to amend Sections 10A-1-9.21, 10A-1-9.22, 10A-5A-1.02,
19 10A-5A-1.06, 10A-5A-4.09, 10A-5A-7.02, 10A-5A-10.08,
20 10A-9A-1.07, 10A-9A-10.09, and 10A-17-1.02 of the Code of
21 Alabama 1975, to revise and replace the Alabama Partnership
22 Act; and to provide that the procedures for formation, powers,
23 governance, and dissolution are applicable to limited
24 liability limited partnerships, limited liability
25 partnerships, foreign limited liability partnerships, and

1 foreign limited liability limited partnerships that function
2 in the state; to repeal Section 10A-1-7.33 and Chapter 8 of
3 Title 10A, comprised of Sections 10A-8-1.01 to 10A-8-11.04,
4 inclusive, Code of Alabama 1975; and to add Chapter 8A to
5 Title 10A of the Code of Alabama 1975.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 10A-1-1.02, 10A-1-1.03,
8 10A-1-1.06, 10A-1-1.08, 10A-1-1.12, 10A-1-2.02, 10A-1-2.11,
9 10A-1-3.04, 10A-1-3.05, 10A-1-3.06, 10A-1-3.17, 10A-1-3.32,
10 10A-1-3.33, 10A-1-3.41, 10A-1-3.42, 10A-1-4.01, 10A-1-4.02,
11 10A-1-4.12, 10A-1-4.25, 10A-1-4.31, 10A-1-5.01, 10A-1-5.02,
12 10A-1-5.03, 10A-1-5.04, 10A-1-5.05, 10A-1-5.06, 10A-1-5.07,
13 and 10A-1-5.08 of the Code of Alabama 1975, are amended to
14 read as follows:

15 "§10A-1-1.02.

16 "(a) All provisions of this chapter shall apply to
17 all entities formed under or governed by Chapters 2 to 11,
18 inclusive, except to the extent, if any, that any provision of
19 this chapter is inconsistent with or as otherwise provided by
20 the provisions of this title or other statutory or
21 constitutional provisions specifically applicable to the
22 entity.

23 "(b) The provisions of this chapter shall apply to
24 entities formed under or governed by Chapter 16, Chapter 17,

1 Chapter 20, and Chapter 30 only as provided therein or
2 expressly provided in this chapter.

3 "(c) If a provision of this chapter conflicts with a
4 provision in another chapter of this title, the provision of
5 the other chapter, to the extent of the conflict, supersedes
6 the provision of this chapter.

7 ~~"(d) Any section of any act enacted at the 2009 and
8 2010 Regular Sessions in substantive conflict with any
9 provision of Act 2009-513 shall prevail over Act 2009-513
10 whether enacted before or after Act 2009-513.~~

11 ~~"(e) When codifying Act 2009-513 and acts of the
12 2009 and 2010 Regular Sessions or any special session
13 occurring before the 2011 Regular Session, the Code
14 Commissioner shall place the provisions of other acts relating
15 to the subject of Act 2009-513 within the structure of Title
16 10A as specified by Act 2009-513. Actions taken by the Code
17 Commissioner in complying with this requirement shall include,
18 but not be limited to, placing a section that is amended and
19 renumbered by Act 2009-513 into the code in the substantive
20 form as amended by the other act but assigning it the code
21 section number contained in Act 2009-513 and assigning a
22 section number based on the numbering system contained in Act
23 2009-513 for any section amended by another act that is
24 repealed by Act 2009-513.~~

25 "§10A-1-1.03.

1 "As used in this title, unless the context otherwise
2 requires, the following terms mean:

3 "(1) AFFILIATE. A person who controls, is controlled
4 by, or is under common control with another person. An
5 affiliate of an individual includes the spouse, or a parent or
6 sibling thereof, of the individual, or a child, grandchild,
7 sibling, parent, or spouse of any thereof, of the individual,
8 or an individual having the same home as the individual, or a
9 trust or estate of which an individual specified in this
10 sentence is a substantial beneficiary; a trust, estate,
11 incompetent, conservatee, protected person, or minor of which
12 the individual is a fiduciary; or an entity of which the
13 individual is director, general partner, agent, employee or
14 the governing authority or member of the governing authority.

15 "(2) ASSOCIATE. When used to indicate a relationship
16 with:

17 "(A) a domestic or foreign entity or organization
18 for which the person is:

19 "(i) an officer or governing person; or

20 "(ii) a beneficial owner of 10 percent or more of a
21 class of voting ownership interests or similar securities of
22 the entity or organization;

23 "(B) a trust or estate in which the person has a
24 substantial beneficial interest or for which the person serves
25 as trustee or in a similar fiduciary capacity;

1 "(C) the person's spouse or a relative of the person
2 related by consanguinity or affinity within the fifth degree
3 who resides with the person; or

4 "(D) a governing person or an affiliate or officer
5 of the person.

6 "(3) ASSOCIATION. Includes, but is not limited to,
7 an unincorporated nonprofit association as defined in ~~Section~~
8 ~~10A-17-1.02(2)~~ Chapter 17 and an unincorporated professional
9 association as defined in ~~Section 10A-30-1.01(2)~~ Article 1 of
10 Chapter 30.

11 "(4) BUSINESS CORPORATION. A corporation or foreign
12 corporation within the meaning of Section 10A-2-1.40(3) or
13 Section 10A-2-1.40(9) as defined in Chapter 2.

14 "(5) BUSINESS TRUST. A business trust ~~within the~~
15 ~~meaning of Section 10A-16-1.01~~ as defined in Chapter 16.

16 "(6) CERTIFICATE OF DISSOLUTION. Any document such
17 as a certificate of dissolution, statement of dissolution, or
18 articles of dissolution, required or permitted to be filed
19 publicly with respect to an entity's dissolution and winding
20 up of its business, activity, activities, not for profit
21 activity, or affairs.

22 "~~(6)~~ (7) CERTIFICATE OF FORMATION.

23 "(A) the document required to be filed publicly
24 under Article 3, Chapter 5A or Chapter 9A to form a filing
25 entity; and

1 "(B) if appropriate, a restated certificate of
2 formation and all amendments of an original or restated
3 certificate of formation.

4 "~~(7)~~ (8) CERTIFICATE OF OWNERSHIP. An instrument
5 evidencing an ownership interest or membership interest in an
6 entity.

7 "~~(8)~~ CERTIFICATE OF TERMINATION. Any document, such
8 as articles of dissolution in the case of a corporation, or
9 certificate of cancellation, in the case of a limited
10 partnership, required by law to be filed publicly with respect
11 to an entity's dissolution and the winding up of its affairs
12 or the end of its existence. In the case of an entity whose
13 separate existence ceases as a result of a merger, the
14 articles of merger shall constitute the certificate of
15 termination.

16 "(9) CERTIFICATED OWNERSHIP INTEREST. An ownership
17 interest of a domestic entity represented by a certificate
18 ~~issued in bearer or registered form.~~

19 "(10) CERTIFICATION. Duly authenticated by the
20 proper officer ~~of the state or county under the laws of which~~
21 ~~a domestic or foreign entity is formed~~ or filing officer of
22 the jurisdiction the laws of which govern the internal affairs
23 of an entity.

24 "(11) CONTRIBUTION. A tangible or intangible benefit
25 that a person transfers to an entity in consideration for an

1 ownership interest in the entity or otherwise in the person's
2 capacity as an owner or a member. ~~In the case of an entity to~~
3 ~~which Section 234 of the Constitution of Alabama of 1901, now~~
4 ~~appearing as Section 234 of the Official Recompilation of the~~
5 ~~Constitution of Alabama of 1901, as amended, applies, the~~
6 ~~benefit that may constitute a contribution transferred in~~
7 ~~exchange for an ownership interest or transferred in the~~
8 ~~transferor's capacity as an owner or member shall be limited~~
9 ~~to money, work or labor done, or property actually received.~~
10 ~~For entities to which Section 234 does not apply, the A~~
11 benefit that may constitute a contribution transferred in
12 exchange for an ownership interest or transferred in the
13 transferor's capacity as an owner or member may include cash,
14 property, services rendered, a contract for services to be
15 performed, a promissory note or other obligation of a person
16 to pay cash or transfer property to the entity, or securities
17 or other interests in or obligations of an entity. In either
18 case, the benefit does not include cash or property received
19 by the entity:

20 "(A) with respect to a promissory note or other
21 obligation to the extent that the agreed value of the note or
22 obligation has previously been included as a contribution; or

23 "(B) that the person intends to be a loan to the
24 entity.

25 "(12) CONVERSION.

1 "(A) the continuance of a domestic entity as a
2 foreign entity of any type;

3 "(B) the continuance of a foreign entity as a
4 domestic entity of any type; or

5 "(C) the continuance of a domestic entity of one
6 type as a domestic entity of another type.

7 "(13) CONVERTED ENTITY. An entity resulting from a
8 conversion. ~~The term converted entity is synonymous with the~~
9 ~~term resulting entity.~~

10 "(14) CONVERTING ENTITY. An entity as the entity
11 existed before the entity's conversion.

12 "(15) COOPERATIVE. Includes an employee cooperative
13 ~~within the meaning of Section 10A-11-1.02(2)~~ as defined in
14 Chapter 11.

15 "(16) CORPORATION. Includes a domestic or foreign
16 business corporation ~~within the meaning of Section~~
17 ~~10A-2-1.40(3) or Section 10A-2-1.40(9), a~~ as defined in
18 Chapter 2, a domestic or foreign nonprofit corporation ~~within~~
19 ~~the meaning of Section 10A-3-1.02(7) or Section 10A-3-1.02(4),~~
20 ~~a~~ as defined in Chapter 3, a domestic or foreign professional
21 corporation ~~within the meaning of Section 10A-4-1.03(3) or~~
22 ~~Section 10A-4-1.03(4)~~ as defined in Chapter 4, and those
23 entities specified in Chapter 20 as corporate.

24 "(17) COURT. Every court and judge having
25 jurisdiction in a case.

1 "(18) DAY. When used in the computation of time
2 excludes the first day and includes the last day of the period
3 so computed, unless the last day is a Saturday, Sunday, or
4 legal holiday, in which event the period runs until the end of
5 the next day that is not a Saturday, a Sunday, or a legal
6 holiday. When the period of time to be computed is less than 7
7 days, intermediate Saturdays, Sundays, and legal holidays
8 shall be excluded.

9 "(19) DEBTOR IN BANKRUPTCY. A person who is the
10 subject of:

11 "(A) an order for relief under the United States
12 bankruptcy laws, Title 11, United States Code, or comparable
13 order under a successor statute of general application; or

14 "(B) a comparable order under federal, state, or
15 foreign law governing insolvency.

16 "(20) DIRECTOR. An individual who serves on the
17 board of directors, by whatever name known, of a foreign or
18 domestic corporation.

19 "(21) DISTRIBUTION. A transfer of property,
20 including cash, from an entity to an owner or member of the
21 entity in the owner's or member's capacity as an owner or
22 member. The term includes a dividend, a redemption or purchase
23 of an ownership interest, or a liquidating distribution.

24 "(22) DOMESTIC. With respect to an entity, that the
25 entity is formed and exists under this title.

1 "(23) DOMESTIC ENTITY. An organization formed and
2 existing under this title.

3 "(24) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

4 "(25) ELECTRONIC. Relating to technology having
5 electrical, digital, magnetic, wireless, optical,
6 electromagnetic, or similar capabilities.

7 "~~(25)~~ (26) ELECTRONIC SIGNATURE. An electronic
8 signature as that term is defined in the Alabama Electronic
9 Transactions Act, Chapter 1A of Title 8, or any successor
10 statute.

11 "(27) ELECTRONIC TRANSMISSION or ELECTRONICALLY
12 TRANSMITTED. Any form or process of communication not directly
13 involving the physical transfer of paper or another tangible
14 medium, which (i) is suitable for the retention, retrieval,
15 and reproduction of information by the recipient, and (ii) is
16 retrievable in paper form by the recipient through an
17 automated process used in conventional commercial practice.

18 "(28) ELECTRONIC WRITING. Information that is stored
19 in an electronic or other nontangible medium and is
20 retrievable in paper form through an automated process used in
21 conventional commercial practice.

22 "~~(26)~~ (29) ENTITY. A domestic entity or foreign
23 entity.

24 "~~(27)~~ (30) FILING ENTITY. A domestic entity that is a
25 corporation, limited partnership, including a limited

1 liability partnership, limited liability company, professional
2 association, employee cooperative corporation, or real estate
3 investment trust.

4 "~~(28)~~ (31) FILING INSTRUMENT. An instrument,
5 document, or statement that is required or authorized by this
6 title to be filed by or for an entity with the filing officer
7 in accordance with Article 4.

8 "~~(29)~~ (32) FILING OFFICER. The officer with whom a
9 filing instrument is required or permitted to be filed under
10 Article 4 or under any other provision of this title.

11 "~~(30)~~ (33) FOREIGN. With respect to an entity, that
12 the entity is formed and existing under the laws of a
13 jurisdiction other than this state.

14 "~~(31)~~ (34) FOREIGN ENTITY. An organization formed and
15 existing under the laws of a jurisdiction other than this
16 state.

17 "~~(32)~~ (35) FOREIGN FILING ENTITY. A foreign entity
18 that registers or is required to register as a foreign entity
19 under ~~Section 10A-1-7.01(a)(1)~~ Article 7.

20 "~~(33)~~ (36) FOREIGN GOVERNMENTAL AUTHORITY. A
21 governmental official, agency, or instrumentality of a
22 jurisdiction other than this state.

23 "(37) FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIP.
24 A foreign limited liability limited partnership as defined in
25 Chapter 9A.

1 "~~(38)~~ (39) FOREIGN LIMITED LIABILITY PARTNERSHIP. A
 2 foreign limited liability partnership as defined in Chapter
 3 8A.

4 "~~(34)~~ (39) FOREIGN LIMITED PARTNERSHIP. A foreign
 5 limited partnership ~~within the meaning of Section~~
 6 ~~10A-9A-1.02(4)~~ as defined in Chapter 9A.

7 "~~(35)~~ (40) FOREIGN NONFILING ENTITY. A foreign entity
 8 that is not a foreign filing entity.

9 "~~(36)~~ (41) FUNDAMENTAL BUSINESS TRANSACTION. A
 10 merger, interest exchange, conversion, or sale of all or
 11 substantially all of an entity's assets.

12 "~~(37)~~ (42) GENERAL PARTNER.

13 "(A) each partner in a general partnership; or

14 "(B) a person who is admitted to a limited
 15 partnership as a general partner in accordance with the
 16 governing documents of the limited partnership.

17 "~~(38)~~ (43) GENERAL PARTNERSHIP. A partnership ~~within~~
 18 ~~the meaning of Section 10A-8-1.02(3)~~ as defined in Chapter 8A.
 19 The term includes a registered limited liability partnership
 20 ~~within the meaning of Section 10A-8-1.02(7)~~ as defined in
 21 Chapter 8A.

22 "~~(39)~~ (44) GOVERNING AUTHORITY. A person or group of
 23 persons who are entitled to manage and direct the affairs of
 24 an entity under this title and the governing documents of the
 25 entity, except that if the governing documents of the entity

1 or this title divide the authority to manage and direct the
2 affairs of the entity among different persons or groups of
3 persons according to different matters, governing authority
4 means the person or group of persons entitled to manage and
5 direct the affairs of the entity with respect to a matter
6 under the governing documents of the entity or this title. The
7 term includes the board of directors of a corporation, by
8 whatever name known, or other persons authorized to perform
9 the functions of the board of directors of a corporation, the
10 general partners of a general partnership or limited
11 partnership, ~~the managers of a limited liability company that~~
12 ~~is managed by managers, the members~~ the persons who have
13 direction and oversight of a limited liability company, ~~that~~
14 ~~is managed by members who are entitled to manage the company,~~
15 and the trust managers of a real estate investment trust. The
16 term does not include an officer who is acting in the capacity
17 of an officer.

18 ~~"(40)~~ (45) GOVERNING DOCUMENTS.

19 "(A) in the case of a domestic entity:

20 "(i) the certificate of formation for a domestic
21 filing entity or the document or agreement under which a
22 domestic nonfiling entity is formed; and

23 "(ii) the other documents or agreements, including
24 bylaws, partnership agreements of ~~limited~~ partnerships,
25 ~~operating~~ limited liability company agreements of limited

1 liability companies, or similar documents, adopted by the
2 entity under this title to govern the formation or the
3 internal affairs of the entity; or

4 "(B) in the case of a foreign entity, the
5 instruments, documents, or agreements adopted under the law of
6 its jurisdiction of formation to govern the formation or the
7 internal affairs of the entity.

8 "~~(41)~~ (46) GOVERNING PERSON. A person serving as part
9 of the governing authority of an entity.

10 "~~(42)~~ (47) INDIVIDUAL. A natural person and the
11 estate of an incompetent or deceased natural person.

12 "~~(43)~~ (48) INSOLVENCY. The inability of a person to
13 pay the person's debts as they become due in the usual course
14 of business or affairs.

15 "~~(44)~~ (49) INSOLVENT. A person who is unable to pay
16 the person's debts as they become due in the usual course of
17 business or affairs.

18 "~~(45)~~ (50) JUDGE OF PROBATE. The judge of probate of
19 the county in which a domestic entity's certificate of
20 formation is filed, or, with respect to ~~partnership statements~~
21 ~~provided for in Section 10A-8-1.06~~ a statement of authority
22 under Chapter 8A, which is to be filed in the real property
23 records of a particular county, the judge of probate of the
24 county in which ~~a~~ that statement is filed.

25 "~~(46)~~ (51) JURISDICTION OF FORMATION.

1 "(A) in the case of a domestic filing entity, this
2 state;

3 "(B) in the case of a foreign ~~filing~~ entity, the
4 jurisdiction in which the entity's certificate of formation or
5 similar organizational instrument is filed; ~~or~~ , or if no
6 certificate of formation or similar organizational instrument
7 is filed, then the laws of the jurisdiction which govern the
8 initial affairs of the foreign entity;

9 "(C) in the case of a general partnership which has
10 filed a statement of partnership, a statement of not for
11 profit partnership, or a statement of limited liability
12 partnership in accordance with Chapter 8A, in this state;

13 "(D) in the case of a foreign limited liability
14 partnership, the laws of the jurisdiction which govern the
15 filing of the foreign limited liability partnership's
16 statement of limited liability partnership or such filing in
17 that jurisdiction; and

18 "(E) in the case of a foreign or domestic nonfiling
19 entity other than those entities described in subsection (C)
20 or (D):

21 ~~"(C) in the case of a foreign or domestic nonfiling~~
22 ~~entity:~~

23 "(i) the jurisdiction the laws of which are chosen
24 in the entity's governing documents to govern its internal
25 affairs if that jurisdiction bears a reasonable relation to

1 the owners or members or to the domestic or foreign nonfiling
2 entity's business and affairs under the principles of this
3 state that otherwise would apply to a contract among the
4 owners or members; or

5 "(ii) if subparagraph (i) does not apply, the
6 jurisdiction in which the entity has its principal place of
7 business.

8 "~~(47)~~ (52) LAW. Unless the context requires
9 otherwise, both statutory and common law.

10 "~~(48)~~ (53) LICENSE. A license, certificate of
11 registration, or other legal authorization.

12 "~~(49)~~ (54) LICENSING AUTHORITY. The state court,
13 state regulatory licensing board, or other like agency which
14 has the power to issue a license or other legal authorization
15 to render professional services.

16 "~~(50)~~ (55) LIMITED LIABILITY COMPANY. A limited
17 liability company ~~within the meaning of~~ as defined in Chapter
18 5A.

19 "(56) LIMITED LIABILITY LIMITED PARTNERSHIP. A
20 limited liability limited partnership as defined in Chapter
21 9A.

22 "(57) LIMITED LIABILITY PARTNERSHIP. A limited
23 liability partnership as defined in Chapter 8A.

1 "~~(51)~~ (58) LIMITED PARTNER. A person who has been
2 admitted to a limited partnership as a limited partner as
3 provided by:

4 "(A) in the case of a domestic limited partnership,
5 ~~Section 10A-9-3.01 or Section 10A-9A-3.01, as applicable~~
6 Chapter 9A; or

7 "(B) in the case of a foreign limited partnership,
8 the laws of its jurisdiction of formation.

9 "~~(52)~~ (59) LIMITED PARTNERSHIP. A limited partnership
10 ~~within the meaning of Section 10A-9-1.02(11) or~~
11 ~~10A-9A-1.02(8), as applicable~~ as defined in Chapter 9A. The
12 term includes a limited liability limited partnership as
13 defined in Chapter 9A.

14 "~~(53)~~ (60) MANAGERIAL OFFICIAL. An officer or a
15 governing person.

16 "~~(54)~~ (61) MEMBER.

17 "(A) a person defined as a member under Chapter 5A;

18 "(B) in the case of a nonprofit corporation governed
19 by ~~Article~~ Chapter 3, a person having membership rights in a
20 corporation in accordance with its governing documents as
21 provided in ~~Section 10A-3-1.02(5)~~ Chapter 3;

22 "(C) in the case of an employee cooperative
23 corporation governed by Chapter 11, a natural person who, as
24 provided in ~~Section 10A-11-1.02(5)~~ Chapter 11, has been

1 accepted for membership in and owns a membership share in an
 2 employee cooperative;

3 "(D) in the case of a nonprofit association, a
 4 person who, as provided in ~~Section 10A-17-1.02(1)~~ Chapter 17,
 5 may participate in the selection of persons authorized to
 6 manage the affairs of the nonprofit association or in the
 7 development of its policy.

8 "~~(55)~~ (62) MERGER.

9 "~~(A) the division of a domestic entity into two or
 10 more new domestic entities or other organizations or into a
 11 surviving domestic entity and one or more new domestic or
 12 foreign entities or non-code organizations; or~~

13 "~~(B) the~~ The combination of one or more domestic
 14 entities with one or more domestic entities or non-code
 15 organizations resulting in:

16 "~~(i)~~ (A) one or more surviving domestic entities or
 17 non-code organizations;

18 "~~(ii)~~ (B) the creation of one or more new domestic
 19 entities or non-code organizations, or one or more surviving
 20 domestic entities or non-code organizations; or

21 "~~(iii)~~ (C) one or more surviving domestic entities or
 22 non-code organizations and the creation of one or more new
 23 domestic entities or non-code organizations.

24 "~~(56)~~ (63) NON-CODE ORGANIZATION. An organization
 25 other than a domestic entity.

1 "~~(57)~~ (64) NONFILING ENTITY. A domestic entity that
2 is not a filing entity. The term includes a domestic general
3 partnership, a ~~registered~~ limited liability partnership, and a
4 nonprofit association.

5 "~~(58)~~ (65) NONPROFIT ASSOCIATION. An unincorporated
6 nonprofit association ~~within the meaning of Section~~
7 ~~10A-17-1.02(2)~~ as defined in Chapter 17. The term does not
8 include a general partnership which has filed a statement of
9 not for profit partnership in accordance with Chapter 8A, a
10 limited partnership which is carrying on a not for profit
11 purpose, or a limited liability company which is carrying on a
12 not for profit purpose.

13 "~~(59)~~ (66) NONPROFIT CORPORATION. A domestic or
14 foreign nonprofit corporation ~~within the meaning of Section~~
15 ~~10A-3-1.02(7) or Section 10A-3-1.02(4)~~ as defined in Chapter
16 3.

17 "~~(60)~~ (67) NONPROFIT ENTITY. An entity that is a
18 nonprofit corporation, nonprofit association, or other entity
19 that is organized solely for one or more nonprofit purposes.

20 "~~(61)~~ (68) OFFICER. An individual elected, appointed,
21 or designated as an officer of an entity by the entity's
22 governing authority or under the entity's governing documents.

23 "~~(62)~~ (69) ORGANIZATION. A corporation, limited
24 partnership, or general partnership, limited liability
25 company, business trust, real estate investment trust, joint

1 venture, joint stock company, cooperative, association, bank,
2 insurance company, credit union, savings and loan association,
3 or other organization, regardless of whether the organization
4 is for profit, not for profit, nonprofit, domestic, or
5 foreign.

6 "~~(63)~~ (70) ORGANIZER. A person, who need not be an
7 owner or member of the entity, who, having the capacity to
8 contract, is authorized to execute documents in connection
9 with the formation of the entity. The term includes an
10 incorporator.

11 "~~(64)~~ (71) OWNER.

12 "(A) with respect to a foreign or domestic business
13 corporation or real estate investment trust, a shareholder;

14 "(B) with respect to a foreign or domestic
15 partnership, a partner;

16 "(C) with respect to a foreign or domestic limited
17 liability company or association, a member; and

18 "(D) with respect to another foreign or domestic
19 entity, an owner of an equity interest in that entity.

20 "~~(65)~~ (72) OWNERSHIP INTEREST. An owner's interest in
21 an entity. The term includes the owner's share of profits and
22 losses or similar items and the right to receive
23 distributions. The term does not include an owner's right to
24 participate in management or participate in the direction or

1 oversight of the entity. An ownership interest is personal
2 property.

3 "~~(66)~~ (73) PARENT ENTITY or PARENT ORGANIZATION. An
4 entity or organization that:

5 "(A) owns at least 50 percent of the ownership or
6 membership interest of a subsidiary; or

7 "(B) possesses at least 50 percent of the voting
8 power of the owners or members of a subsidiary.

9 "~~(67)~~ (74) PARTNER. A limited partner or general
10 partner.

11 "~~(68)~~ (75) PARTNERSHIP. Includes a general
12 partnership, a ~~registered~~ limited liability partnership, a
13 foreign ~~registered~~ limited liability partnership, a limited
14 partnership, a foreign limited partnership, a limited
15 liability limited partnership ~~within the meaning of Section~~
16 ~~10A-9-1.02(9) and Section 10A-9A-1.02(6)~~, and a foreign
17 limited liability limited partnership ~~within the meaning of~~
18 ~~Section 10A-9-1.02(6) and Section 10A-9A-1.02(3)~~.

19 "~~(69)~~ (76) PARTNERSHIP AGREEMENT. Any agreement
20 (whether referred to as a partnership agreement or otherwise),
21 written, oral or implied, of the partners as to the activities
22 and affairs of a general partnership or a limited partnership.
23 The partnership agreement includes any amendments to the
24 partnership agreement. In the case of limited partnerships

1 formed prior to October 1, 1998, partnership agreement
2 includes the certificate of partnership.

3 "~~(70)~~ PARTNERSHIP INTEREST. In the case of a general
4 partnership the meaning set forth in Section 10A-8-1.02(5).

5 "~~(71)~~ (77) PARTY TO THE MERGER. A domestic entity or
6 non-code organization that under a plan of merger is ~~divided~~
7 ~~or~~ combined by a merger. The term does not include a domestic
8 entity or non-code organization that is not to be ~~divided or~~
9 combined into or with one or more domestic entities or
10 non-code organizations, regardless of whether ownership
11 interests of the entity are to be issued under the plan of
12 merger.

13 "~~(72)~~ (78) PERSON. An individual ~~or,~~ including the
14 estate of an incompetent or deceased individual, or an
15 organization, whether created by the laws of this state or
16 another state or foreign country, including, without
17 limitation, a general partnership, ~~registered~~ limited
18 liability partnership, limited partnership, limited liability
19 limited partnership, limited liability company, corporation,
20 professional corporation, professional association, trustee,
21 personal representative, fiduciary, as defined in Section
22 19-3-150 or person performing in any similar capacity,
23 business trust, estate, trust, association, joint venture,
24 government, governmental subdivision, agency, or
25 instrumentality, or any other legal or commercial entity.

1 "~~(73)~~ (79) PRESIDENT.

2 "(A) the individual designated as president of an
3 entity under the entity's governing documents; or

4 "(B) the officer or committee of persons authorized
5 to perform the functions of the principal executive officer of
6 an entity without regard to the designated name of the officer
7 or committee.

8 "~~(74)~~ (80) PROFESSIONAL ASSOCIATION. A professional
9 association ~~within the meaning of Section 10A-30-1.01~~ as
10 defined in Chapter 30.

11 "~~(75)~~ (81) PROFESSIONAL CORPORATION. A domestic or
12 foreign professional corporation ~~within the meaning of Section~~
13 ~~10A-4-1.03(2) or Section 10A-4-1.03(3)~~ as defined in Chapter
14 4.

15 "~~(76)~~ (82) PROFESSIONAL ENTITY. A professional
16 association ~~or~~ and a professional corporation.

17 "~~(77)~~ (83) PROFESSIONAL SERVICE. Any type of service
18 that may lawfully be performed only pursuant to a license
19 issued by a state court, state regulatory licensing board, or
20 other like agency pursuant to state laws.

21 "~~(78)~~ (84) PROPERTY. Includes all property, whether
22 real, personal, or mixed, or tangible and or intangible
23 ~~property and an~~ , or any right or interest in that property
24 therein.

1 "~~(79)~~ (85) REAL ESTATE INVESTMENT TRUST. An
2 unincorporated trust, association, or other entity ~~within the~~
3 ~~meaning of Section 10A-10-1.02(1)~~ as defined in Chapter 10.

4 "~~(80)~~ REGISTERED LIMITED LIABILITY PARTNERSHIP. A
5 ~~registered limited liability partnership within the meaning of~~
6 ~~Section 10A-8-1.02(7).~~

7 "~~(81)~~ (86) SECRETARY.

8 "(A) the individual designated as secretary of an
9 entity under the entity's governing documents; or

10 "(B) the officer or committee of persons authorized
11 to perform the functions of secretary of an entity without
12 regard to the designated name of the officer or committee.

13 "~~(82)~~ (87) SECRETARY OF STATE. The Secretary of State
14 of the State of Alabama.

15 "~~(83)~~ SIGNATURE. ~~Any symbol executed or adopted by a~~
16 ~~person with present intention to authenticate a writing.~~
17 ~~Unless the context requires otherwise, the term includes an~~
18 ~~electronic signature and a facsimile of a signature.~~

19 "(88) SIGN or SIGNATURE. With the present intent to
20 authenticate or adopt a writing:

21 "(A) to execute or adopt a tangible symbol to a
22 writing, and includes any manual, facsimile, or conformed
23 signature; or

24 "(B) to attach to or logically associate with an
25 electronic transmission an electronic sound, symbol, or

1 process, and includes an electronic signature in an electronic
2 transmission.

3 "~~(84)~~ (89) STATE. Includes, when referring to a part
4 of the United States, a state or commonwealth, and its
5 agencies and governmental subdivisions, and a territory or
6 possession, and its agencies and governmental subdivisions, of
7 the United States.

8 "~~(85)~~ (90) SUBSCRIBER. A person who agrees with or
9 makes an offer to an entity to purchase by subscription an
10 ownership interest in the entity.

11 "~~(86)~~ (91) SUBSCRIPTION. An agreement between a
12 subscriber and an entity, or a written offer made by a
13 subscriber to an entity before or after the entity's
14 formation, in which the subscriber agrees or offers to
15 purchase a specified ownership interest in the entity.

16 "~~(87)~~ (92) SUBSIDIARY. An entity or organization at
17 least 50 percent of:

18 "(A) the ownership or membership interest of which
19 is owned by a parent entity or parent organization; or

20 "(B) the voting power of which is possessed by a
21 parent entity or parent organization.

22 "~~(88)~~ (93) TREASURER.

23 "(A) the individual designated as treasurer of an
24 entity under the entity's governing documents; or

1 "(B) the officer or committee of persons authorized
2 to perform the functions of treasurer of an entity without
3 regard to the designated name of the officer or committee.

4 "~~(89)~~ (94) TRUSTEE. A person who serves as a trustee
5 of a trust, including a real estate investment trust.

6 "~~(90)~~ (95) UNCERTIFICATED OWNERSHIP INTEREST. An
7 ownership interest in a domestic entity that is not
8 represented by a certificate ~~in bearer or registered form.~~

9 "~~(91)~~ (96) VICE PRESIDENT.

10 "(A) the individual designated as vice president of
11 an entity under the governing documents of the entity; or

12 "(B) the officer or committee of persons authorized
13 to perform the functions of the president of the entity on the
14 death, absence, or resignation of the president or on the
15 inability of the president to perform the functions of office
16 without regard to the designated name of the officer or
17 committee.

18 "~~(92)~~ (97) WRITING or WRITTEN. Information that is
19 inscribed on a tangible medium or that is stored in an
20 electronic or other medium and is retrievable in perceivable
21 form.

22 "§10A-1-1.06.

23 "To the extent not inconsistent with the
24 Constitution of Alabama of 1901, and other statutes of this

1 state wherein the terms may be found, and as the context
2 requires, in this title or any other statute of this state:

3 "(1) a reference to certificate of formation
4 includes, in the case of a corporation, articles of
5 incorporation, certificate of incorporation, and charter; in
6 the case of limited partnership, a certificate of limited
7 partnership and a certificate of formation; in the case of a
8 limited liability company, certificate of formation and
9 articles of organization; and in the case of a business trust
10 or a real estate investment trust, declaration of trust and,
11 similarly, a reference to articles of incorporation,
12 certificate of incorporation, charter, certificate of limited
13 partnership, or articles of organization includes a
14 certificate of formation;

15 "~~(2) a reference to certificate of termination~~
16 ~~includes, in the case of a corporation or a limited liability~~
17 ~~company, articles of dissolution and statement of dissolution,~~
18 ~~and in the case of a limited partnership, a certificate of~~
19 ~~cancellation and a statement of dissolution; similarly, a~~
20 reference to articles of dissolution, includes statement of
21 dissolution, ~~or certificate of cancellation includes~~
22 ~~certificate of termination~~ and certificate of dissolution,
23 and, similarly, a reference to ~~certificate of termination~~
24 statement of dissolution includes articles of dissolution,
25 ~~statement of dissolution,~~ and certificate of dissolution, and

1 similarly, a reference to ~~a statement~~ certificate of
2 dissolution includes articles of dissolution, ~~certificate of~~
3 ~~termination, and certificate~~ and statement of dissolution;

4 "(3) a reference to certificate of merger includes
5 articles of merger and statement of merger and similarly, a
6 reference to articles of merger includes certificate of merger
7 and statement of merger, and similarly, a reference to
8 statement of merger includes certificate of merger and
9 articles of merger;

10 "(4) a reference to authorized capital stock
11 includes authorized shares;

12 "(5) a reference to capital stock includes
13 authorized and issued shares, issued shares, and stated
14 capital;

15 "(6) a reference to a certificate of registration,
16 certificate of authority, statement of foreign limited
17 liability partnership, and permit to ~~do~~ transact business
18 includes registration;

19 "(7) a reference to stock and shares of stock
20 includes shares;

21 "(8) a reference to stockholder includes
22 shareholder; and

23 "(9) a reference to no par stock includes shares
24 without par value.

25 "§10A-1-1.08.

1 "(a) The provisions of this title as described by
2 this section may be cited as provided by this section.

3 "(b) Chapter 2 and the provisions of Chapter 1 to
4 the extent applicable to business corporations may be cited as
5 the Alabama Business Corporation Law.

6 "(c) Chapter 3 and the provisions of Chapter 1 to
7 the extent applicable to nonprofit corporations may be cited
8 as the Alabama Nonprofit Corporation Law.

9 "(d) Chapter 4 and the provisions of Chapter 1 to
10 the extent applicable to professional corporations may be
11 cited as the Alabama Professional Corporation Law.

12 "(e) Chapter 5A and the provisions of Chapter 1 to
13 the extent applicable to limited liability companies may be
14 cited as the Alabama Limited Liability Company Law ~~of 2014~~.

15 "(f) Chapter ~~8~~ 8A and the provisions of Chapter 1 to
16 the extent applicable to general partnerships may be cited as
17 the Alabama ~~Uniform~~ Partnership Law.

18 "~~(g) Chapter 9 and the provisions of Chapter 1 to~~
19 ~~the extent applicable to limited partnerships may be cited as~~
20 ~~the Alabama Uniform Limited Partnership Law.~~ Chapter 9A and
21 the provisions of Chapter 1 to the extent applicable to
22 limited partnerships may be cited as the Alabama Limited
23 Partnership Law.

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

4 "(i) Chapter 11 and the provisions of Chapter 1 and
5 Chapter 2 to the extent applicable to employee cooperative
6 corporations may be cited as the Alabama Employee Cooperative
7 Corporations Law.

8 "(j) Chapter 17 may be cited as the Alabama
9 Unincorporated Nonprofit Association Law.

10 "§10A-1-1.12.

11 "~~If~~ For entities other than general partnerships, if
12 the formation of an entity does not occur when a certificate
13 of formation or similar instrument filed with the Secretary of
14 State or the judge of probate, as the case may be, or with a
15 foreign governmental authority takes effect, the law governing
16 the entity's formation and internal affairs is the law of the
17 entity's jurisdiction of formation.

18 "§10A-1-2.02.

19 "A domestic entity may not engage in a business, ~~or~~
20 activity, not for profit activity, or any other activity,
21 whether or not for profit, that:

22 "(A) is expressly unlawful or prohibited by a law of
23 this state;

24 "(B) cannot lawfully be engaged in by that entity
25 under a law of this state; or

1 "(C) may not be engaged in by an entity without
2 first obtaining a license under the laws of this state to
3 engage in that business, or activity, not for profit activity,
4 or any other activity, whether or not for profit, and a
5 license cannot lawfully be granted to the entity.

6 "§10A-1-2.11.

7 "Except as otherwise provided by this title, and
8 whether or not expressly stated in its governing documents, a
9 domestic entity has the same powers as an individual to take
10 action necessary or convenient to carry out its business and
11 affairs. Except as otherwise provided by this title or the
12 governing documents of the entity, the powers of a domestic
13 entity include the power to:

14 "(1) sue, be sued, complain, and defend suit in its
15 entity name;

16 "(2) have and alter a seal and use the seal or a
17 facsimile of it by impressing, affixing, or reproducing it;

18 "(3) purchase, lease, or otherwise acquire, receive,
19 own, hold, improve, use, and deal in and with property or an
20 interest in property;

21 "(4) sell, convey, mortgage, pledge, lease,
22 exchange, and otherwise dispose of property;

23 "(5) make contracts and guaranties;

24 "(6) incur liabilities, borrow money, issue notes,
25 bonds, and other obligations which may be convertible into or

1 include the option to purchase other securities or ownership
2 interests in the entity, and secure any obligations, or the
3 obligations of others for whom it can make guarantees, whether
4 or not a guarantee is made, by mortgaging or pledging its
5 property, franchises, or income;

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

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

10 "(9) acquire its own ownership interests, regardless
11 of whether redeemable, and hold the ownership interests as
12 treasury ownership interests or cancel or dispose of the
13 ownership interests;

14 "(10) be a promoter, organizer, owner, partner,
15 member, associate, or manager of an organization;

16 "(11) acquire, receive, own, hold, vote, use,
17 pledge, and dispose of ownership interests in or securities
18 issued by another person;

19 "(12) conduct its business, locate its offices, and
20 exercise the powers granted by this title to further its
21 purposes, in or out of this state;

22 "(13) lend money to, and otherwise assist, its
23 managerial officials, owners, members, or employees as
24 necessary or appropriate, provided, however, a nonprofit

1 entity shall not have the power to lend money to its officers
2 or directors;

3 "(14) elect or appoint governing persons, officers,
4 and agents of the entity, establish the length of their terms,
5 define their duties, and fix their compensation;

6 "(15) pay pensions and establish pension plans,
7 pension trusts, profit sharing plans, share bonus plans, and
8 incentive plans for managerial officials, owners, members, or
9 employees or former managerial officials, owners, members, or
10 employees;

11 "(16) indemnify and maintain liability insurance for
12 managerial officials, owners, members, employees, and agents
13 of the entity or the entity's affiliate;

14 "(17) adopt and amend governing documents for
15 managing the affairs of the entity subject to applicable law;

16 "(18) make donations for the public welfare or for
17 charitable, scientific, or educational purposes;

18 "(19) voluntarily wind up its business and
19 activities and terminate its existence;

20 "(20) transact business or take action that will aid
21 governmental policy; and

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

24 "§10A-1-3.04.

1 ~~One~~ Unless provided otherwise in a chapter of this
2 title governing a filing entity, one or more organizers of a
3 filing entity must sign the certificate of formation of the
4 filing entity, ~~except that each general partner must sign the~~
5 ~~certificate of formation of a domestic limited partnership.~~

6 "§10A-1-3.05.

7 "Unless provided otherwise in a chapter of this
8 title governing a filing entity:

9 "(a) The certificate of formation must state:

10 "(1) the name of the filing entity being formed;

11 "(2) the type of filing entity being formed;

12 "(3) for filing entities other than limited
13 partnerships, the purpose or purposes for which the filing
14 entity is formed, which may be stated to be or include any
15 lawful purpose for that type of entity;

16 "(4) the period of duration, if the entity is not
17 formed to exist perpetually;

18 "(5) the street address and, if different, the
19 mailing address of the initial registered office of the filing
20 entity and the name of the initial registered agent of the
21 filing entity at the office;

22 "(6) the name and address of each:

23 "(A) organizer for the filing entity, unless the
24 entity is formed under a plan of conversion or merger; or

1 "(B) general partner, if the filing entity is a
2 limited partnership;

3 "(7) if the filing entity is formed under a plan of
4 conversion or merger, a statement to that effect and, if
5 formed under a plan of conversion, the name, address, date of
6 formation, prior form of organization, and jurisdiction of
7 formation of the converting entity; and

8 "(8) any other information required by this title
9 including, without limitation, any information required by the
10 specific chapter of this title governing the filing entity or
11 by Article 8 to be included in the certificate of formation
12 for the filing entity.

13 "(b) The certificate of formation may contain other
14 provisions not inconsistent with law relating to the
15 organization, ownership, governance, business, or affairs of
16 the filing entity.

17 "(c) Except as provided by Section 10A-1-3.04,
18 Article 4 governs the signing and filing of a certificate of
19 formation for a domestic entity.

20 "§10A-1-3.06.

21 "The formation and existence of a domestic ~~filing~~
22 entity that is a converted entity in a conversion or that is
23 to be created under a plan of merger takes effect and
24 commences on the effectiveness of the conversion or merger, as
25 appropriate.

1 "§10A-1-3.17.

2 "(a) A restated certificate of formation must
3 accurately state the text of the previous certificate of
4 formation, regardless of whether the certificate of formation
5 is an original, corrected, or restated certificate, and
6 include:

7 "(1) each previous amendment to the certificate
8 being restated that is carried forward; and

9 "(2) each new amendment to the certificate being
10 restated.

11 "(b) A restated certificate of formation may omit:

12 "(1) the name and address of each organizer other
13 than the name and address of each general partner of a limited
14 partnership; and

15 "(2) any other information that may be omitted under
16 the provisions of this title applicable to the filing entity.

17 "(c) A restated certificate of formation that does
18 not make new amendments requiring owner approval to the
19 certificate of formation being restated must be accompanied
20 by:

21 "(1) a statement that (i) the restated certificate
22 of formation accurately states the text of the certificate of
23 formation being restated, as amended, restated, and corrected,
24 except for information omitted under subsection (b) ~~and that~~ ,
25 (ii) the restated certificate does not make new amendments

1 requiring owner approval, and, ~~if it does not, that~~ (iii) the
2 governing persons have adopted the restatement in the manner
3 required by this title and the governing documents of the
4 entity; and

5 "(2) any other information required by other
6 provisions of this title applicable to the filing entity.

7 "(d) A restated certificate of formation that makes
8 new amendments requiring owner approval to the certificate of
9 formation being restated must:

10 "(1) be accompanied by a statement that each new
11 amendment has been made in accordance with this title;

12 "(2) identify by reference or description each
13 added, altered, or deleted provision;

14 "(3) be accompanied by a statement that each
15 amendment has been approved in the manner required by this
16 title and the governing documents of the entity, including any
17 information required by this article to be set forth in an
18 amendment to the certificate of formation as to the owner
19 approval of the amendment;

20 "(4) be accompanied by a statement that the restated
21 certificate of formation:

22 "(A) accurately states the text of the certificate
23 of formation being restated and each amendment to the
24 certificate of formation being restated that is in effect, as
25 further amended by the restated certificate of formation; and

1 "(B) does not contain any other change in the
2 certificate of formation being restated except for information
3 omitted under subsection (b); and

4 "(5) include any other information required by the
5 chapter of this title applicable to the entity.

6 "§10A-1-3.32.

7 "(a) This section applies to entities other than (i)
8 corporations formed under Chapter 2 ~~and~~, professional
9 corporations formed under Chapter 4, and real estate
10 investment trusts governed by Chapter 10, each of which is
11 governed by the separate recordkeeping requirements and record
12 inspections provisions of Chapter 2, and (ii) limited
13 liability companies formed under Chapter 5A, partnerships
14 governed by Chapter 8A, and limited partnerships formed under
15 Chapter 9A, each of which are governed by the separate
16 recordkeeping requirements and record inspection provisions ~~of~~
17 ~~Chapter 2 rather than by this section~~ set forth in each
18 entity's respective chapter governing that entity.

19 "(b) With respect to an entity covered by this
20 section, the books and records maintained under the chapter of
21 this title applicable to the entity and any other books and
22 records of the entity, wherever situated, are subject to
23 inspection and copying at the reasonable request, and at the
24 expense of, any owner or member or the owner's or member's
25 agent or attorney during regular business hours. The right of

1 access extends to the legal representative of a deceased owner
2 or member or owner or member under legal disability. The
3 entity shall also provide former owners and members with
4 access to its books and records pertaining to the period
5 during which they were owners or members.

6 "(c) The governing documents of the entity may not
7 unreasonably restrict an owner's or member's right to
8 information or access to books and records.

9 "(d) Any agent or governing person of an entity who,
10 without reasonable cause, refuses to allow any owner or member
11 or the owner's or member's agent or legal counsel to inspect
12 any books or records of the entity shall be personally liable
13 to the agent or member for a penalty in an amount not to
14 exceed 10 percent of the fair market value of the ownership
15 interest of the owner or member, in addition to any other
16 damages or remedy.

17 "§10A-1-3.33.

18 "(a) An entity covered by Section 10A-1-3.32 shall
19 provide governing persons and their agents and attorneys
20 access to its books and records, including the books and
21 records required to be maintained under the chapter of this
22 title applicable to the entity and other books and records of
23 the entity for any purpose reasonably related to the governing
24 person's service as a governing person. The right of access
25 shall include the right to inspect and copy books and records

1 during ordinary business hours. An entity may impose a
2 reasonable charge covering the costs of labor and material for
3 copies of documents furnished.

4 "(b) An entity covered by Section 10A-1-3.32 shall
5 furnish to a governing person:

6 "(1) Without demand, any information concerning the
7 entity's business and affairs reasonably required for the
8 proper exercise of the governing person's rights and duties
9 under the entity's governing documents or this title; and

10 "(2) On demand, any other information concerning the
11 entity's business and affairs, except to the extent the demand
12 or the information demanded is unreasonable or otherwise
13 improper under the circumstances.

14 "(c) A court may require an entity covered by
15 Section 10A-1-3.32 to open the books and records of the
16 entity, including the books and records required to be
17 maintained by the entity under the chapter of this title
18 applicable to the entity, to permit a governing person to
19 inspect, make copies of, or take extracts from the books and
20 records or may require an entity to furnish the governing
21 person with information concerning the entity's business and
22 affairs on a showing by the governing person that:

23 "(1) the person is a governing person of the entity;

24 "(2) the person's purpose for inspecting the
25 entity's books and records under subsection (a) or in

1 obtaining information as to the entity's business and affairs
2 under subsection (b) (1) is reasonably related to the person's
3 service as a governing person or, in the case of information
4 as to the entity's business and affairs demanded under
5 subsection (b) (2), that neither the demand nor the information
6 demanded is unreasonable or otherwise improper under the
7 circumstances;

8 "(3) in the case of information as to the entity's
9 business and affairs described in subsection (b) (2), the
10 person has made demand for the information; and

11 "(4) the entity refused the person's access to the
12 books and records or to furnish information as to the entity's
13 business and affairs.

14 "(d) A court may award a governing person attorney
15 fees and any other proper relief in a suit under subsection
16 (c) to require an entity to open its books and records.

17 "§10A-1-3.41.

18 "(a) Ownership interests in a domestic entity may be
19 certificated or uncertificated.

20 "(b) The ownership interests in a business
21 corporation, real estate investment trust, or professional
22 corporation must be certificated unless the governing
23 documents of the entity or a resolution adopted by the
24 governing authority of the entity states that the ownership
25 interests are uncertificated. If a domestic entity changes the

1 form of its ownership interests from certificated to
2 uncertificated, a certificated ownership interest subject to
3 the change becomes an uncertificated ownership interest only
4 after the certificate is surrendered to the domestic entity.

5 "(c) Ownership interests in a domestic entity, other
6 than a domestic entity described in subsection (b), are
7 uncertificated unless this title or the governing documents of
8 the domestic entity state that the interests are certificated.

9 "(d) Unless an entity's chapter specifically
10 provides otherwise, no certificate of a certificated ownership
11 interest shall be issued in bearer form.

12 "§10A-1-3.42.

13 "(a) A certificated ownership interest in a domestic
14 entity may contain an impression of the seal of the entity, if
15 any. A facsimile of the entity's seal may be printed or
16 lithographed on the certificate.

17 "(b) If a domestic entity is authorized to issue
18 ownership interests of more than one class or series, each
19 certificate representing ownership interests that is issued by
20 the entity must conspicuously state on the front or back of
21 the certificate:

22 "(1) the designations, preferences, limitations, and
23 relative rights of the ownership interests of each class or
24 series to the extent they have been determined and the

1 authority of the governing authority to make those
2 determinations as to subsequent classes or series; or

3 "(2) that the information required by subsection (1)
4 is stated in the domestic entity's governing documents and
5 that the domestic entity, on written request to the entity's
6 principal place of business or registered office, will provide
7 a free copy of that information to the record holder of the
8 certificate.

9 "(c) A certificate representing ownership interests
10 must state on the front of the certificate:

11 "(1) that the domestic entity is organized under the
12 laws of this state;

13 "(2) the name of the person to whom the certificate
14 is issued;

15 "(3) the number and class of ownership interests and
16 the designation of the series, if any, represented by the
17 certificate; and

18 "(4) if the ownership interests are shares, the par
19 value of each share represented by the certificate, or a
20 statement that the shares are without par value.

21 "(d) A certificate representing ownership interests
22 that is subject to a restriction, placed by or agreed to by
23 the domestic entity under this title on the transfer or
24 registration of the transfer of the ownership interests must
25 conspicuously note the existence of the restriction on the

1 front or back of the certificate. Even if not so noted, a
2 restriction is enforceable against a person with actual
3 knowledge of the restriction.

4 "(e) Abbreviations may be used in the inscribing of
5 certificates representing ownership interests. Without
6 limiting the use of other abbreviations, however, the
7 following or substantially similar abbreviations may be used
8 in the inscribing of such certificates, and shall be construed
9 as though they were written out in full and shall be accorded
10 the meaning ascribed herein.

11 "Abbreviation: _____ Meaning:

12 TEN COM _____ As tenants in common.

13 "JTWROS _____ As joint

14 tenants with rights of
15 survivorship and not as tenants
16 in common.

17 "JT TEN _____ As joint

18 "tenants with rights of survivorship and not as
19 tenants in common.

20 "CUSTODIAN FOR, UTMA _____ As custodian for

21 _____ (name of minor) under
22 the Uniform Transfers to Minor
23 Act.

24 "§10A-1-4.01.

25 "(a) A filing instrument must be:

1 "(1) signed by the person or persons required by
2 this title or the applicable chapter to execute, and to
3 verify, if required by the applicable chapter, the filing
4 instrument; and

5 "(2) delivered, together with one exact or conformed
6 copy and the additional exact or conformed copies as required
7 by Section 10A-1-4.02(b) or (e) or other provision of this
8 title, to the judge of probate or Secretary of State, as the
9 case may be under the provisions of Section 10A-1-4.02, in
10 person or by mail or courier, or, if permitted by the
11 respective filing officer, by facsimile or electronic
12 transmission or any other comparable form of delivery.

13 "(b) A person authorized by this title to sign a
14 filing instrument for an entity is not required to show
15 evidence of the person's authority as a requirement for
16 filing.

17 "(c) The execution of a filing instrument
18 constitutes an affirmation by each person executing the
19 instrument that the facts therein are true, under penalties
20 for perjury prescribed by Section 13A-10-103 or its successor.

21 "(d) If a person required by this title to execute
22 any filing instrument fails or refuses to do so, any person
23 who is adversely affected by the failure or refusal may
24 petition the circuit court for the judicial circuit in which
25 the county is located where under this title the filing

1 instrument would be filed, or if it would be filed with the
2 Secretary of State, in the circuit court in the county in
3 which the registered agent is located, and if no registered
4 agent is required, in the circuit court in the county in which
5 the entity has its principal place of business in this state,
6 and if the entity does not have a place of business in this
7 state, in the Circuit Court of Montgomery County, to direct
8 the execution of the filing instrument. If the court finds
9 that it is proper for the filing instrument to be executed and
10 that any person so designated has failed or refused to execute
11 the filing instrument, it shall order the judge of probate of
12 the county or the Secretary of State, as the case may be, to
13 record an appropriate filing instrument.

14 "§10A-1-4.02.

15 "(a) The following filing instruments shall be
16 delivered to the judge of probate for filing, except as the
17 chapter applicable to an entity or other provision of this
18 title provides for filing by the Secretary of State or another
19 filing officer:

20 "(1) certificates of formation ~~on~~ or any amendments
21 or restatements thereof;

22 "(2) certificates of ~~termination~~ dissolution, other
23 than a statement of dissolution of a general partnership or a
24 statement of cancellation by a limited liability partnership;

25 "(3) certificates of revocation ~~of termination;~~

1 "(4) certificates of correction to any filing
2 instrument required to be delivered to the office of the judge
3 of probate for filing; and

4 "(5) any other filing instrument required or
5 permitted under this title to be delivered to the judge of
6 probate for filing.

7 "(b) Any of the following filing instruments
8 delivered to the office of the judge of probate for filing
9 shall be accompanied by an additional exact or conformed copy
10 to permit the judge of probate to transmit to the Secretary of
11 State a certified copy thereof as required by subsection (g):

12 "(1) certificates of formation;

13 "(2) amendments to certificates of formation that
14 alter the name of any entity;

15 "(3) restated certificates of formation;

16 "(4) certificates of ~~termination~~ dissolution;

17 "(5) certificates of revocation ~~of termination~~; and

18 "(6) certificates of correction correcting any of
19 the foregoing filing instruments.

20 "(c) The following filing instruments shall be
21 delivered to the Secretary of State for filing:

22 "(1) certificates, ~~or~~ articles, or statements of
23 merger, statements of conversion, and articles of share
24 exchange;

1 "(2) ~~registration~~ statements or registrations of a
2 foreign entity for authority to transact business in this
3 state and any statements, notices, or certificates of
4 withdrawal or termination or statements, notices, or
5 certificates evidencing the same or required or authorized
6 under Article 7 of this chapter;

7 "(3) the annual report of a business corporation,
8 which may be made as provided in Section 10A-2-16.22 by filing
9 with the Department of Revenue the public record information
10 required by Chapter 14A of Title 40, together with the
11 prescribed fee for the annual report;

12 "(4) for corporations created by an act of the
13 Legislature prior to the adoption of the Constitution of
14 Alabama of 1901, or for entities which have resulted from a
15 merger, share exchange, or conversion, all filing instruments
16 required by this title to be delivered to the judge of probate
17 for filing shall be delivered to the Secretary of State for
18 filing;

19 "(5) any other filing instrument required or
20 permitted under this title to be delivered to the Secretary of
21 State for filing;

22 "(6) articles of correction of any filing instrument
23 required or permitted to be delivered to the Secretary of
24 State for filing; ~~and~~

1 "(7) statements and any other document required or
2 permitted to be delivered to the Secretary of State for filing
3 under Chapter 8A; and

4 "~~(7)~~ (8) any other filing instrument required or
5 permitted to be filed under this title and not expressly
6 required or permitted to be delivered to the Secretary of
7 State or judge of probate or other designated filing office
8 for filing.

9 "~~(d)~~ The filing of partnership statements shall be
10 ~~as provided in Section 10A-8-1.06.~~

11 "~~(e)~~ (d) Certificates of merger, articles, or
12 statements of merger or articles of share exchange, and
13 statements of conversion delivered to the Secretary of State
14 for filing shall be accompanied by the additional number of
15 exact or conformed copies of articles as may be required for
16 purposes of subsection ~~(g)~~ (f) hereof.

17 "~~(f)~~ (e) If the judge of probate or Secretary of
18 State, as the case may be, finds that a filing instrument
19 delivered under this section and Section 10A-1-4.01
20 substantially conforms to the provisions of this title that
21 apply to the entity and that all required fees have been paid,
22 and if, in the case of a certificate of formation or an
23 amendment to a certificate of formation that would change the
24 name of the entity, the judge of probate finds that the name
25 of the entity has been reserved under ~~Section 10A-1-5.11~~

1 Article 5 of this chapter, the judge of probate or Secretary
2 of State, as the case may be, shall file it immediately upon
3 delivery by:

4 "(1) endorsing "filed," together with his or her
5 name and official title and the date and time of receipt on
6 the instrument and all copies required hereunder and on the
7 receipt for the filing fee;

8 "(2) accepting it into the filing system adopted by
9 the judge of probate or Secretary of State and assigning the
10 instrument a date of filing; and

11 "(3) delivering a copy thereof, endorsed as provided
12 in subdivision (1), with the filing fee receipt, or
13 acknowledgment of receipt of the instrument if no filing fee
14 is required, to the entity or its representative.

15 "~~(g)~~ (f) In the case of any of the filing
16 instruments described in subsection (b), the judge of probate
17 shall within 10 days transmit a certified copy of the filing
18 instrument to the Secretary of State. In the case of
19 certificates, or articles, or statements of merger, statements
20 of conversion, or articles of share exchange, the Secretary of
21 State shall promptly transmit a certified copy thereof to the
22 office of the judge of probate of the county in which each
23 domestic entity's certificate of formation, if any, is filed.

24 "~~(h)~~ (g) If the judge of probate or Secretary of
25 State, as the case may be, refuses to file a filing

1 instrument, he or she shall return it to the domestic or
2 foreign entity or its representative within seven days after
3 the filing instrument was delivered, together with a brief,
4 written explanation of the reason for his or her refusal.

5 ~~"(i)~~ (h) The judge of probate's or Secretary of
6 State's duty to file filing instruments under this title is
7 ministerial. His or her filing or refusing to file a filing
8 instrument does not:

9 "(1) affect the validity or invalidity of the filing
10 instrument in whole or in part;

11 "(2) relate to the correctness or incorrectness of
12 information contained in the filing instrument; or

13 "(3) create a presumption that the filing instrument
14 is valid or invalid or that information contained in the
15 filing instrument is correct or incorrect.

16 ~~"(j)~~ (i) The Secretary of State shall keep an
17 alphabetical list of domestic and foreign entities, the
18 certificates of formation, the statements under Chapter 8A, or
19 statements or registrations for authority to transact business
20 in this state, for which are filed in his or her office,
21 together with the data contained in the filing instruments.

22 "§10A-1-4.12.

23 "(a) Except as otherwise provided by Section
24 10A-1-4.14, a filing instrument may take effect at a specified
25 date and time after the time the instrument would otherwise

1 take effect as provided by this title for the entity filing
2 the instrument.

3 "(b) If a filing instrument is to take effect on a
4 specific date and time other than that provided by this title:

5 "(1) the date may not be later than the 90th day
6 after the date the instrument is delivered to the filing
7 officer for filing; signed and

8 "(2) the specific time at which the instrument is to
9 take effect may not be specified as "12:00 a.m." or "12:00
10 p.m."; and

11 "(3) if a delayed effective date is specified, but
12 no time is specified, at 12:01 a.m. on the date specified,
13 which may not be more than 90 days after the date the
14 instrument is delivered to the filing officer for filing.

15 "(c) If a filing instrument does not specify the
16 time zone or the place at which a date or time, or both, is to
17 be determined, the date or time, or both, at which it becomes
18 effective shall be those prevailing at the place of filing in
19 this state.

20 "(d) If a filing instrument is required to, or may
21 be, delivered to two or more filing officers, the date that
22 the filing instrument is delivered to the first filing officer
23 shall be deemed to be the date the instrument was delivered to
24 the filing officer for filing for the purpose of determining
25 the 90 days in subsection (b) of this section.

1 "§10A-1-4.25.

2 "(a) After the Secretary of State or the judge of
3 probate, as the case may be, files the certificate of
4 correction, the filing instrument is considered to have been
5 corrected on the date the filing instrument was originally
6 filed, except as otherwise provided by subsection (b).

7 "(b) As to a person who acted in reliance on the
8 filing instrument prior to its correction and who is adversely
9 affected by ~~the~~ that correction, the filing instrument is
10 considered to have been corrected on the date the certificate
11 of correction is filed.

12 "(c) An acknowledgment of filing or a similar
13 instrument issued by the Secretary of State or judge of
14 probate, as the case may be, before a filing instrument is
15 corrected, with respect to the effect of filing the original
16 filing instrument, applies to the corrected filing instrument
17 as of the date the corrected filing instrument is considered
18 to have been filed under this section.

19 "§10A-1-4.31.

20 "(a) The judge of probate or the Secretary of State,
21 as the case may be, shall collect the following fees when the
22 filing instruments described in this title are delivered to
23 him or her for filing:

FEE FOR STATE OF ALABAMA FEE FOR THE JUDGE OF PROBATE

| | | | |
|----|-------------------------------------|-------|--------|
| 1 | "FILING INSTRUMENT | | |
| 2 | "(1) Certificate of for- | | |
| 3 | mation and restated cer- | | |
| 4 | tificate of formation | \$100 | \$50 |
| 5 | "(2) Amendment to cer- | | |
| 6 | tificate of formation | \$50 | \$25 |
| 7 | "(3) Name reservations | | |
| 8 | "A. less than 24 hours | \$25 | No fee |
| 9 | "B. 24 hours or more | \$10 | No fee |
| 10 | "(4) Certificate of ter- | | |
| 11 | <u>mination dissolution</u> | | |
| 12 | <u>(other than a statement</u> | | |
| 13 | <u>of dissolution or can-</u> | | |
| 14 | <u>cellation under Chapter</u> | | |
| 15 | <u>8A)</u> | \$100 | \$50 |
| 16 | "(5) Certificate, <u>arti-</u> | | |
| 17 | <u>cles, or statement of</u> | | |
| 18 | <u>merger; statement of</u> | | |
| 19 | <u>conversion,</u> articles of | | |
| 20 | consolidation or share | | |
| 21 | exchange | \$100 | \$50 |
| 22 | "(6) Foreign entity reg- | \$150 | No fee |

| | | | |
|----|--|-------|-------------------|
| 1 | istration including | | |
| 2 | registration a statement | | |
| 3 | of foreign limited lia- | | |
| 4 | bility partnership | | |
| 5 | "(7) Certificate of ex- | | |
| 6 | istence | | |
| 7 | "A. Less than 24 hours | \$25 | No fee |
| 8 | "B. 24 hours or more | \$10 | No fee |
| 9 | " (8) Registered limited | | |
| 10 | liability partnership | | |
| 11 | registration | \$100 | \$50 |
| 12 | " (9) Registered limited | | |
| 13 | liability partnership | | |
| 14 | annual report <u>(8) State-</u> | | |
| 15 | <u>ments and any document</u> | | |
| 16 | <u>required or permitted to</u> | | |
| 17 | <u>be filed with the Secre-</u> | | |
| 18 | <u>tary of State under</u> | | |
| 19 | <u>Chapter 8A</u> | \$100 | No fee |
| 20 | " (10) Partnership state- | | |
| 21 | ment (filing or certi- | | |
| 22 | fying) <u>(9) Certified</u> | | |
| 23 | <u>statements and any docu-</u> | | |
| 24 | <u>ment required or permit-</u> | \$25 | \$25 <u>\$100</u> |

1 ted to be filed with the
 2 judge of probate under
 3 Chapter 8A

4 "~~(11)~~ (10) Any other
 5 filing instrument re-
 6 quired or permitted to
 7 be filed under this ti-
 8 tle

\$25

\$25

9 "(b) When appropriate, two checks shall accompany a
 10 filing instrument delivered to the judge of probate or the
 11 Secretary of State for filing, one payable to the judge of
 12 probate for all charges for the judge of probate, and one
 13 payable to the State of Alabama covering all charges for the
 14 Secretary of State. In the case of any filing instrument
 15 delivered for filing to the judge of probate accompanied by a
 16 check for the charges for the Secretary of State, the check
 17 for the Secretary of State shall be forwarded by the judge of
 18 probate to the Secretary of State. In the case of any filing
 19 instrument delivered for filing to the Secretary of State
 20 accompanied by a check for the judge of probate, the check for
 21 the judge of probate shall be forwarded by the Secretary of
 22 State to the judge of probate.

23 "(c) There is hereby established in the State
 24 Treasury a fund to be known and designated as the Secretary of

1 State Entity Fund. All funds, fees, charges, costs, and
2 collections accruing to or collected by the Secretary of State
3 under the foregoing provisions of this section or any other
4 fees collected by the Secretary of State relating to entities
5 shall be deposited into the State Treasury to the credit of
6 the Secretary of State Entity Fund except as so provided in
7 subsection (e).

8 "(d) All funds now or hereafter deposited in the
9 State Treasury to the credit of the Secretary of State Entity
10 Fund shall not be expended for any purpose whatsoever unless
11 the same shall have been allotted and budgeted in accordance
12 with the provisions of Article 4 of Chapter 4 of Title 41, and
13 only in the amounts and for the purposes provided by the
14 Legislature in the general appropriation bill or this section.

15 "(e) Seventy percent of funds collected by the
16 Secretary of State in relation to entities during the fiscal
17 year shall be deposited to the credit of the State General
18 Fund.

19 "(f) The fees herein imposed for the office of the
20 judge of probate shall be charged and paid into the
21 appropriate county treasury or to the judge of probate as may
22 be authorized or required by law.

23 "(g) The Secretary of State shall collect the
24 following fees for copying and certifying the copy of any
25 filing instrument relating to a domestic or foreign entity:

1 "~~1) One dollar fifty cents (\$1.50)~~ Two dollars (\$2)
2 a page for copying; and

3 "~~2) Five dollars (\$5)~~ Ten dollars (\$10) for the
4 certificate.

5 "(h) The judge of probate shall collect the
6 following fees for copying and certifying the copy of any
7 filing instrument relating to an entity:

8 "~~1) One dollar fifty cents (\$1.50)~~ Two dollars (\$2)
9 a page for copying; and

10 "~~2) Five dollars (\$5)~~ Ten dollars (\$10) for the
11 certificate.

12 "(i) For requests of immediate expedition of
13 documents to be obtained in less than 24 hours, other than
14 name reservations and certificates of existence, by the
15 Secretary of State regarding document filings, certifications,
16 and certificates in addition to required fees, a one hundred
17 dollar (\$100) surcharge shall be imposed.

18 "§10A-1-5.01.

19 "The filing of a certificate of formation by a
20 filing entity under this title, an application for
21 registration or statement of foreign limited liability
22 partnership by a foreign filing entity under this title, or an
23 application for reservation or registration of a name under
24 this article does not authorize the use of a name in this
25 state in violation of a right of another under:

1 "(1) the Trademark Act of 1946, as amended, 15
2 U.S.C. Section 1051 et seq.; or

3 "(2) Chapter 12 of Title 8; or

4 "(3) Common law.

5 "§10A-1-5.02.

6 "~~A filing domestic entity, and or~~ a foreign filing
7 entity ~~registered to transact business in this state with~~
8 registration under Article 7, may not have a name that
9 contains any word phrase that indicates or implies that the
10 entity is engaged in a business that the entity is not
11 authorized by law to pursue.

12 "§10A-1-5.03.

13 "(a) A ~~filing domestic~~ entity may not have a name
14 and a foreign filing entity may not register to transact
15 business in this state under a name that is the same as or not
16 distinguishable on the records of the Secretary of State from:

17 "(1) the name of another existing filing entity or
18 ~~registered~~ a general partnership that has an effective
19 statement of partnership, statement of not for profit
20 partnership, or limited liability partnership ~~with an~~
21 ~~effective current registration~~ under Chapter 8A;

22 "(2) the name of a foreign filing entity that ~~is~~
23 ~~registered~~ has a registration under Article 7;

24 "(3) a name that is reserved under Division B.

1 "(b) Subsection (a) does not apply if the other
 2 entity or the person for whom the name is reserved consents in
 3 writing to the use of a name not distinguishable on the
 4 records of the Secretary of State, and submits an undertaking
 5 in form satisfactory to the Secretary of State to change its
 6 name to a name that is distinguishable on the records of the
 7 Secretary of State from the name for which application was
 8 made.

9 "(c) In determining whether a name is the same as or
 10 not distinguishable on the records of the Secretary of State
 11 from the name of another entity, words, phrases, or
 12 abbreviations indicating the type of entity, such as
 13 "corporation," "corp.," "general partnership," "GP," "G.P.,"
 14 "not for profit general partnership," "NGP," "N.G.P.,"
 15 "incorporated," "Inc.," "limited liability company," "LLC,"
 16 "L.L.C.," "limited partnership," "LP," "L.P.," "Ltd.,"
 17 "limited liability limited partnership," "LLLP," "L.L.L.P.,"
 18 "limited liability partnership," "LLP," or "L.L.P."
 19 ~~"registered limited liability partnership," "RLLP," "limited~~
 20 ~~liability company," or "LLC"~~ shall not be taken into account
 21 unless waived in writing by the incumbent holder of the name.

22 "§10A-1-5.04.

23 "(a) The name of a corporation or foreign
 24 corporation registered to transact business in this state must
 25 contain:

1 "(1) the word "corporation" or "incorporated"; or

2 "(2) an abbreviation of one of those words.

3 "(b) Subsection (a) does not apply to a nonprofit
4 corporation or foreign nonprofit corporation, or to banks,
5 trust companies, savings and loan associations, or insurance
6 companies.

7 "(c) In lieu of a word or abbreviation required by
8 subsection (a), the name of a professional corporation must
9 comply with the requirements of Section 10A-1-5.08.

10 "(d) The requirements of subsection (a) do not apply
11 to any corporation organized before January 1, 1981.

12 "§10A-1-5.05.

13 "(a) The name of a limited partnership or a foreign
14 limited partnership registered to transact business in this
15 state may contain the name of any partner.

16 "(b) The name of a limited partnership that is not a
17 limited liability limited partnership must contain the phrase
18 "limited partnership" or "Limited," or the abbreviation
19 "L.P.," "LP," or "Ltd." and must not contain the phrase
20 "limited liability limited partnership" or the abbreviation
21 "LLLP" or "L.L.L.P."

22 "(c) The name of a limited liability limited
23 partnership must contain the phrase "limited liability limited
24 partnership" or the abbreviation "LLLP" or "L.L.L.P." and must
25 not contain the abbreviation "L.P.," "LP," or "Ltd."

1 "(d) Subject to Section 10A-1-7.07, this section
2 applies to any foreign limited partnership transacting
3 business in this state, having a certificate of authority to
4 transact business in this state, or applying for a certificate
5 of authority.

6 "(e) The name of a limited partnership may not
7 contain the following words: "bank," "banking," "banker,"
8 "trust," "insurance," "insurer," "corporation,"
9 "incorporated," or any abbreviation of such words.

10 "§10A-1-5.06.

11 "The name of a limited liability company or a
12 foreign limited liability company ~~doing~~ registered to transact
13 business in this state must contain the words "Limited
14 Liability Company" or the abbreviation "L.L.C." or "LLC".

15 "§10A-1-5.07.

16 "~~(a)~~ The name of a ~~registered~~ limited liability
17 partnership or a foreign limited liability partnership
18 registered to transact business in this state shall contain
19 the words "~~Registered~~ Limited Liability Partnership" or the
20 abbreviation "L.L.P." or "LLP".

21 "~~(b) If a person purports to enter into a contract~~
22 ~~or other undertaking on behalf of a partnership that is a~~
23 ~~registered limited liability partnership and does not disclose~~
24 ~~to the other party that part of the registered limited~~
25 ~~liability partnership's name that complies with subsection~~

1 ~~(a), then that person is personally liable on the contract or~~
2 ~~undertaking, unless that person can show that in making the~~
3 ~~contract or accepting the undertaking the other party did not~~
4 ~~rely on the partnership being a partnership without registered~~
5 ~~limited liability partnership status. Any partner of a~~
6 ~~registered limited liability partnership who consents to a~~
7 ~~person not making the disclosure described in this subsection~~
8 ~~is also personally liable on the contract or undertaking,~~
9 ~~unless that partner can make the showing described in this~~
10 ~~subsection."~~

11 "§10A-1-5.08.

12 "The name of a domestic professional corporation or
13 of a foreign professional corporation registered to transact
14 business in ~~Alabama~~ this state must contain the words
15 "professional corporation" or the abbreviation "P.C." or "PC"
16 and shall otherwise conform to any rule promulgated by a
17 licensing authority having jurisdiction of a professional
18 service described in the certificate of formation of the
19 corporation."

20 Section 2. Section 10A-1-5.10 is added to the Code
21 of Alabama 1975, to read as follows:

22 (a) The name of a general partnership that has filed
23 a statement of partnership in accordance with Section
24 10A-8A-2.02 must include the words "general partnership" or
25 the abbreviation "G.P." or "GP."

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

5 Section 3. Sections 10A-1-5.11, 10A-1-5.12,
6 10A-1-5.31, 10A-1-5.32, 10A-1-5.33, 10A-1-6.02, 10A-1-7.01,
7 10A-1-7.02, 10A-1-7.03, 10A-1-7.04, 10A-1-7.05, and
8 10A-1-7.06, 10A-1-7.07, 10A-1-7.11, 10A-1-7.12, 10A-1-7.13,
9 10A-1-7.14, 10A-1-7.22, 10A-1-7.23, 10A-1-7.24, 10A-1-7.31,
10 10A-1-7.32, 10A-1-7.34, 10A-1-7.36, 10A-1-7.37, 10A-1-8.01,
11 10A-1-8.02, 10A-1-8.03, 10A-1-9.01, and 10A-1-9.02, of the
12 Code of Alabama 1975, are amended to read as follows:

13 "§10A-1-5.11.

14 "(a) ~~A person shall~~ To reserve the exclusive use of
15 an entity name, including a fictitious name for a foreign
16 entity whose name is not available, ~~by delivering a person~~
17 must deliver an application to the Secretary of State for
18 filing. Any person may file an application with the Secretary
19 of State to reserve the exclusive use of a name under this
20 article.

21 "(b) The application must set forth the name and
22 address of the applicant and the name proposed to be reserved
23 and must be:

24 "(1) accompanied by any required filing fee; and

1 "(2) signed by the applicant or by the agent or
2 attorney of the applicant.

3 "(c) The name may also be reserved by electronic
4 means, subject to the requirements as the Secretary of State
5 may establish for reservation of names by any means, including
6 requirements for payment of the fee for name reservation.

7 "§10A-1-5.12.

8 "(a) The Secretary of State may not reserve a name
9 that is the same as, or not distinguishable on the records of
10 the Secretary of State from:

11 "(1) the name of an existing filing entity ~~or~~
12 ~~registered~~; the name of a general partnership that has an
13 effective statement of partnership, statement of not for
14 profit partnership, or statement of limited liability
15 partnership with an effective registration on file with the
16 Secretary of State under Chapter 8A;

17 "(2) the name of a foreign filing entity that ~~is~~
18 ~~registered~~ has a registration under Article 7; or

19 "(3) a name that is reserved under this division.

20 "(b) Subsection (a) does not apply if the other
21 entity or the person for whom the name is reserved consents in
22 writing to the subsequent reservation of a name not
23 distinguishable on the records of the Secretary of State, and
24 submits an undertaking in form satisfactory to the Secretary
25 of State to change its name to a name that is distinguishable

1 on the records of the Secretary of State from the name applied
2 for or, if the conflict is with a reserved or registered name,
3 transfers its reservation to the applicant pursuant to Section
4 10A-1-5.16.

5 "§10A-1-5.31.

6 "(a) Each filing entity, and each foreign filing
7 ~~entity, each foreign registered limited liability partnership~~
8 ~~registered pursuant to Article 7, and any registered with a~~
9 registration under Article 7, and each general partnership
10 that has an effective statement of partnership, statement of
11 not for profit partnership, or statement of limited liability
12 ~~partnership that does not maintain a place of business in this~~
13 ~~state~~ on file with the Secretary of State in accordance with
14 Chapter 8A, shall designate and continuously maintain in this
15 state:

16 "(1) a registered agent; and

17 "(2) a registered office.

18 "(b) A registered agent:

19 "(1) is an agent of the entity on which may be
20 served any process, notice, or demand required or permitted by
21 law to be served on the entity;

22 "(2) may be:

23 "(A) an individual who is a resident of this state;

24 or

1 "(B) a domestic entity or a foreign entity that is
2 registered to ~~do~~ transact business in this state; and

3 "(3) must maintain a business office at the same
4 address as the entity's registered office.

5 "(c) The registered office:

6 "(1) must be located at a street address where
7 process may be personally served on the entity's registered
8 agent;

9 "(2) is not required to be a place of business of
10 the filing entity or foreign filing entity; and

11 "(3) may not be solely a mailbox service or a
12 telephone answering service.

13 "§10A-1-5.32.

14 "~~(a) A filing An entity, registered limited~~
15 ~~liability partnership~~ required to maintain a registered office
16 and registered agent under Section 10A-1-5.31(a), ~~or foreign~~
17 ~~filing entity or other foreign entity required to register in~~
18 ~~this state pursuant to Section 10A-1-7.01,~~ may change its
19 registered office, its registered agent, or both, by
20 delivering to the Secretary of State for filing a statement of
21 the change in accordance with the procedures in Article 4.

22 "(b) The statement must contain:

23 "(1) the name of the entity;

24 "(2) the name of the entity's registered agent;

1 "(3) the street address of the entity's registered
2 agent;

3 "(4) if the change relates to the registered agent,
4 the name of the entity's new registered agent and the new
5 registered agent's written consent to the appointment, either
6 on the statement or attached to it;

7 "(5) if the change relates to the registered office,
8 the street address of the entity's new registered office;

9 "(6) a recitation that the change specified in the
10 statement is authorized by the entity; and

11 "(7) a recitation that the street address of the
12 registered office and the street address of the registered
13 agent's business are the same.

14 "(c) On acceptance of the statement by the Secretary
15 of State, the statement is:

16 "(1) in the case of a domestic filing entity,
17 effective to change the designation of the entity's registered
18 agent or registered office, or both, without the necessity of
19 amending the entity's certificate of formation;

20 "(2) in the case of a ~~domestic registered~~ general
21 partnership with an effective statement of partnership,
22 statement of not for profit partnership, or statement of
23 limited liability partnership on file with the Secretary of
24 State under Chapter 8A, effective to change its registered
25 agent or registered office, or both, without the necessity of

1 amending its ~~registration as a~~ statement of partnership,
2 statement of not for profit partnership, or statement of
3 limited liability partnership ~~filed under Section 10A-8-10.01~~
4 Chapter 8A;

5 "(3) in the case of a foreign filing entity other
6 than a foreign limited liability partnership, effective to
7 change the designation of the entity's registered agent or
8 registered office, or both, and effective as an amendment of
9 its application for registration as a foreign entity under
10 Article 7; or

11 "(4) in the case of a foreign ~~registered~~ limited
12 liability partnership, effective to change the designation of
13 its registered agent or registered office, or both, without
14 the necessity of amending its ~~registration as a~~ statement of
15 foreign limited liability partnership ~~filed under Section~~
16 ~~10A-8-10.01, and effective as an amendment to its application~~
17 ~~for registration as a foreign entity~~ under Article 7.

18 "§10A-1-5.33.

19 "(a) The registered agent of any entity required by
20 Section 10A-1-5.31 to designate and maintain a registered
21 agent or registered office may change its name, its address as
22 the address of the entity's registered office, or both, by
23 delivering to the Secretary of State for filing a statement of
24 the change in accordance with the procedures in Article 4.

1 "(b) The statement must be signed by the registered
2 agent, or a person authorized to sign the statement on behalf
3 of the registered agent, and must contain:

4 "(1) the name of the entity represented by the
5 registered agent;

6 "(2) the name of the entity's registered agent and
7 the address at which the registered agent maintained the
8 entity's registered office;

9 "(3) if the change relates to the name of the
10 registered agent, the new name of that agent;

11 "(4) if the change relates to the address of the
12 registered office, the new address of that office; and

13 "(5) a recitation that written notice of the change
14 was given to the entity at least 10 days before the date the
15 statement is filed.

16 "(c) On acceptance of the statement by the Secretary
17 of State, the statement is:

18 "(1) in the case of a domestic filing entity,
19 effective to make the change set forth in the statement
20 without the necessity of amending the entity's certificate of
21 formation;

22 "(2) in the case of a ~~domestic registered~~ general
23 partnership with an effective statement of partnership,
24 statement of not for profit partnership, or statement of
25 limited liability partnership on file with the Secretary of

1 State, effective to ~~make the change set forth in the statement~~
 2 its registered agent or registered office, or both, without
 3 the necessity of amending its ~~registration as a~~ statement of
 4 partnership, statement of not for profit partnership, or
 5 statement of limited liability partnership ~~filed under Section~~
 6 ~~10A-8-10.01~~ Chapter 8A;

7 "(3) in the case of a foreign filing entity,
 8 effective to make the change set forth in the statement, and
 9 effective as an amendment of its application for registration
 10 as a foreign entity under Article 7; or

11 "(4) in the case of a foreign ~~registered~~ limited
 12 liability partnership, effective to make the change set forth
 13 in the statement, and effective as an amendment to its
 14 ~~application for registration as a~~ statement of foreign entity
 15 limited liability partnership under Article 7.

16 "(d) A registered agent may file a statement under
 17 this section that applies to more than one entity.

18 "§10A-1-6.02.

19 "(a) Except as provided by subsection (b), this
 20 article does not apply to a:

21 "(1) general partnership;

22 "(2) limited liability company;

23 "(3) limited partnership; ~~and~~

24 "(4) nonprofit corporation; ~~and~~

25 "(5) business corporation.

1 "(b) The governing documents of a general
2 partnership, ~~or~~ limited liability company, limited
3 partnership, ~~or~~ nonprofit corporation, or business corporation
4 may adopt provisions of this article or may contain
5 enforceable provisions relating to:

6 "(1) indemnification;

7 "(2) advancement or reimbursement of expenses;

8 "(3) insurance; or

9 "(4) other arrangements.

10 "§10A-1-7.01.

11 "(a) (1) For purposes of this Article 7, the terms
12 register, registering, and registered include (i) a foreign
13 entity other than a foreign limited liability partnership
14 delivering to the Secretary of State for filing an application
15 for registration and the Secretary of State filing the
16 application for registration, and (ii) a foreign limited
17 liability partnership delivering to the Secretary of State for
18 filing a statement of foreign limited liability partnership
19 and the Secretary of State filing the statement of foreign
20 limited liability partnership.

21 "(2) For purposes of this Article 7, the term
22 registration includes (i) a filed application for registration
23 and (ii) a filed statement of foreign limited liability
24 partnership.

1 "(b) For purposes of this Article 7, the terms
 2 transact business and transacting business shall include
 3 conducting a business, activity, not for profit activity, and
 4 any other activity, whether or not for profit.

5 "~~(a)~~ (c) To transact business in this state, a
 6 foreign entity must register under this chapter if the foreign
 7 entity:

8 "(1) is a foreign entity, the formation of which, if
 9 formed in this state, would require the filing under Article 3
 10 of a certificate of formation; ~~or~~

11 "(2) is a foreign limited liability partnership; or

12 "~~(2)~~ (3) affords limited liability under the law of
 13 its jurisdiction of formation for any owner or member.

14 "~~(b)~~ (d) A foreign entity described by subsection
 15 ~~(a)~~ (b) must maintain the entity's registration while
 16 transacting business in this state.

17 "§10A-1-7.02.

18 "(a) A foreign entity not described by Section
 19 10A-1-7.01~~(a)~~ (c) may transact business in this state without
 20 registering under this chapter.

21 "(b) Subsection (a) does not relieve a foreign
 22 entity from the duty to comply with applicable requirements
 23 under other law to file or register.

24 "(c) A foreign entity is not required to register
 25 under this chapter if other law of this state or of federal

1 law authorizes the foreign entity to transact the particular
2 business authorized by law in this state.

3 "(d) A foreign unincorporated nonprofit association
4 is not required to register under this chapter.

5 "(e) A foreign entity which is exempt from the
6 requirements of Chapter 46 of Title 16, is not required to
7 register under this chapter.

8 "§10A-1-7.03.

9 "A foreign entity that is eligible under other law
10 of this state to register to transact business in this state,
11 but that is not registered under that law, may register under
12 this chapter unless that ~~registration~~ registering is
13 prohibited by the other law. ~~The~~ A registration under this
14 chapter confers only the authority provided by this chapter.

15 "§10A-1-7.04.

16 "~~(a) A foreign filing entity registers by filing an~~
17 ~~application for registration as provided by Article 4. (1) A~~
18 foreign entity described in Section 10A-1-7.01(b), other than
19 a foreign limited liability partnership, registers by
20 delivering to the Secretary of State for filing an application
21 for registration in accordance with the procedures in Article
22 4.

23 "(2) A foreign limited liability partnership
24 registers by delivering to the Secretary of State for filing a

1 statement of foreign limited liability partnership in
2 accordance with the procedures in Article 4.

3 "(b) The application for registration of a foreign
4 entity described in Section 10A-1-7.01(b) other than a foreign
5 limited liability partnership must state:

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

11 "(2) the foreign entity's type;

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

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

14 "(5) that the foreign entity exists as a valid
15 foreign ~~filing~~ entity of the stated type under the laws of the
16 foreign entity's jurisdiction of formation;

17 "(6) the date the foreign entity began or will begin
18 to transact business in this state;

19 "(7) the street address and mailing address, if
20 different, of the principal office of the foreign ~~filing~~
21 entity and;

22 "(8) the street address and mailing address, if
23 different, of the initial registered office and the name of
24 the initial registered agent for service of process which
25 Article 5 requires to be maintained at that office.

1 ~~"(c) A foreign filing entity may register regardless~~
2 ~~of any differences between the law of the entity's~~
3 ~~jurisdiction and of this state applicable to the governing of~~
4 ~~the internal affairs or to the liability of an owner, member,~~
5 ~~or managerial official. Notwithstanding the foregoing, no~~
6 ~~foreign filing entity may carry on in this state any business~~
7 ~~of a character that may not lawfully be carried on by a~~
8 ~~domestic filing entity of the same type.~~

9 ~~"(d) In the case of a foreign corporation filing an~~
10 ~~application pursuant to this section, the foreign corporation~~
11 ~~shall also, to the extent required by the Constitution of~~
12 ~~Alabama of 1901, file a copy of its articles or certificate of~~
13 ~~incorporation or association or other certificate of formation~~
14 ~~and all amendments thereto duly certified by the Secretary of~~
15 ~~State or other official having custody of corporate records in~~
16 ~~the state or other jurisdiction under whose law it is~~
17 ~~incorporated.~~

18 "(c) The statement of foreign limited liability
19 partnership must state:

20 "(1) the foreign limited partnership's name or, if
21 that name is not available for use in this state or otherwise
22 would not comply with Article 5, a name that satisfies the
23 requirements of Section 10A-1-7.07 under which the foreign
24 entity will transact business in this state;

1 "(2) the jurisdiction which governs the foreign
2 limited liability partnership's partnership agreement and
3 under which it is a limited liability partnership;

4 "(3) the date of the foreign limited liability
5 partnership's formation;

6 "(4) that the foreign limited liability partnership
7 exists as a valid foreign limited liability partnership under
8 the laws of the jurisdiction which governs the foreign limited
9 liability partnership's partnership agreement and under which
10 it is a limited liability partnership;

11 "(5) the date the foreign limited liability
12 partnership will begin to transact business in this state;

13 "(6) the street address and mailing address, if
14 different, of the principal office of the foreign limited
15 liability partnership;

16 "(7) the street address and mailing address, if
17 different, of the initial registered office and the name of
18 the initial registered agent for service of process which
19 Article 5 requires to be maintained at that office;

20 "(d) The application for registration of a foreign
21 entity described in Section 10A-1-7.01(b) other than a foreign
22 limited liability partnership shall be executed by one or more
23 persons authorized to execute an application for registration.
24 The statement of foreign limited liability partnership shall

1 be executed by one or more partners authorized to execute a
2 statement of foreign limited liability partnership.

3 "(e) The status of the foreign entity after
4 registration and the liability of its owners, managers,
5 members, or managerial officials shall not be adversely
6 affected by error or subsequent changes in the information
7 stated in the application for registration or statement of
8 foreign limited liability partnership, as applicable.

9 "(f) The fact that an application for registration
10 or a statement of foreign limited liability partnership, as
11 applicable, is on file with the Secretary of State is notice
12 that the foreign entity is authorized to transact business in
13 this state and as notice of all facts required to be set forth
14 in the application for registration or the statement of
15 foreign limited liability partnership, as applicable.

16 "(g) A foreign entity may register regardless of any
17 differences between the law of the foreign entity's
18 jurisdiction and of this state applicable to the governing of
19 the internal affairs or to the liability of an owner, member,
20 or managerial official. Notwithstanding the foregoing, no
21 foreign entity may carry on in this state any business of a
22 character that may not lawfully be carried on by a domestic
23 entity of the same type.

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

1 "§10A-1-7.05.

2 "(a) The application for registration of a foreign
3 entity and the statement of foreign limited liability
4 partnership takes effect in accordance with Article 4 of this
5 chapter. The registration of a foreign entity ~~is effective~~
6 ~~when the application filed under Article 4 takes effect.~~ The
7 ~~registration~~ remains in effect until the registration
8 terminates, is withdrawn, or is revoked.

9 "(b) Except in a proceeding to revoke the
10 registration of a foreign entity or as otherwise provided by
11 the law of Alabama, the Secretary of State's issuance of an
12 acknowledgment that the foreign entity has filed an
13 application for registration or a statement of foreign limited
14 liability partnership, as applicable, is conclusive evidence
15 of the authority of the foreign ~~filing~~ entity to transact
16 business in this state under the foreign entity's name or
17 under another name stated in the application, for registration
18 in accordance with Section 10A-1-7.04(b) (1) or stated in the
19 statement of foreign limited liability partnership in
20 accordance with Section 10A-1-7.04(c) (1), as applicable.

21 "§10A-1-7.06.

22 "(a) If any statement in ~~the~~ an application for
23 registration ~~of a~~ or a statement of foreign ~~entity~~ limited
24 liability partnership was false when made or any arrangements
25 or other facts described have changed, making the application

1 for registration or statement of foreign limited liability
2 partnership, as applicable, inaccurate in any respect, the
3 foreign entity shall file with the Secretary of State an
4 amendment correcting the false or inaccurate statement. A
5 foreign ~~filing~~ entity must amend its registration to change
6 its name if the name has changed. If the ~~entity's~~ name of a
7 foreign entity as changed is not available in this state or
8 otherwise does not satisfy the requirements of Article 5, the
9 foreign entity, pursuant to the requirements of Section
10 10A-1-7.07, must adopt a name that complies with Article 5
11 under which it will transact business in this state.

12 "(b) A foreign ~~filing~~ entity may amend its
13 application for registration or statement of foreign limited
14 liability partnership by filing an application for amendment
15 of registration as provided by Article 4.

16 "(c) The application for amendment must be filed
17 promptly on the discovery that any statement in the
18 application for registration or statement of foreign limited
19 liability partnership, as applicable, was false when made, but
20 not later than 60 days after the discovery. The application
21 for amendment must be filed promptly after any arrangements
22 other facts described in the application have changed, making
23 the application inaccurate in any respect, but not later than
24 90 days after the change.

25 "§10A-1-7.07.

1 "If the name of a foreign entity does not satisfy
2 the requirements of Article 5, the foreign entity, for use in
3 this state, may:

4 "(1) if a corporation, add to its corporate name the
5 word "corporation" or "incorporated" or an abbreviation of one
6 of the words;

7 "(2) if a banking corporation, add to its corporate
8 name the words "bank," "banking," or "bankers";

9 "(3) if a limited partnership that is not a limited
10 liability limited partnership, add to its partnership name the
11 word "limited" or the abbreviation "Ltd." or the phrase
12 "limited partnership" or the abbreviation "L.P." or "LP" but
13 its name must not contain the phrase "limited liability
14 limited partnership" or the abbreviation "LLLP" or "L.L.L.P.";

15 "(4) if a limited partnership that is a limited
16 liability limited partnership, add to its partnership name the
17 phrase "limited liability limited partnership" or the
18 abbreviation "LLLP" or "L.L.L.P." and must not contain the
19 abbreviation "Ltd.," "L.P.," or "LP."

20 "(5) if a limited liability company, add to its
21 company name the phrase "limited liability company" or the
22 abbreviation "L.L.C." or "LLC";

23 "(6) if a professional corporation, add to its
24 corporate name the phrase "professional corporation" or the
25 abbreviation "P.C." or "PC";

1 "(7) if a ~~registered~~ limited liability partnership,
2 add to its partnership name the phrase "~~registered~~ limited
3 liability partnership" or the abbreviation "L.L.P." or "LLP";
4 and

5 "(8) if a general partnership that is authorized by
6 the laws of the jurisdiction that govern its partnership
7 agreement to file the equivalent of a statement of partnership
8 as provided under Chapter 8A, add to its name the phrase
9 "general partnership" or the abbreviation "G.P." or "GP";

10 "(9) if a general partnership that is authorized by
11 the laws of the jurisdiction that govern its partnership
12 agreement to file the equivalent of a statement of not for
13 profit partnership as provided under Chapter 8A, add to its
14 name the phrase "not for profit general partnership" or the
15 abbreviation "N.G.P." or "NGP"; and

16 "~~(8)~~ (10) use a fictitious name available for use in
17 this state that satisfies the requirements of Article 5, if it
18 delivers to the Secretary of State for filing a copy of the
19 resolution of its governing authority, certified by its
20 secretary, adopting the fictitious name.

21 "§10A-1-7.11.

22 "(a) A foreign ~~filing~~ entity registered in this
23 state may withdraw the foreign entity's registration at any
24 time by filing a certificate of withdrawal as provided in
25 Article 4.

1 "(b) A certificate of withdrawal for a foreign
2 entity described must state:

3 "(1) the name of the foreign ~~filing~~ entity as
4 ~~registered in this state~~ set forth on its registration;

5 "(2) the type of entity and the entity's
6 jurisdiction of formation and, in the case of a foreign
7 limited liability partnership, the jurisdiction which laws
8 govern the foreign limited liability partnership and its
9 partnership agreement;

10 "(3) the street address and mailing address, if
11 different, of the principal office of the foreign ~~filing~~
12 entity;

13 "(4) that the foreign ~~filing~~ entity no longer is
14 transacting business in this state;

15 "(5) that the foreign ~~filing~~ entity:

16 "(A) revokes the authority of the foreign entity's
17 registered agent in this state to accept service of process;
18 and

19 "(B) consents that service of process in any action,
20 suit, or proceeding stating a cause of action arising in this
21 state during the time the foreign ~~filing~~ entity was authorized
22 to transact business in this state may be made on the foreign
23 ~~filing~~ entity in accordance with the Alabama Rules of Civil
24 Procedure and any other notice or demand required or permitted
25 by law to be served on the foreign entity may be served in a

1 manner similar to the procedure provided for the service of
2 process by the Alabama Rules of Civil Procedure;

3 "(6) (A) a mailing address to which process may be
4 mailed pursuant to the applicable service of process
5 procedures of the Alabama Rules of Civil Procedure and to
6 which any notice or demand required or permitted by law to be
7 served on the foreign entity may be mailed; and

8 "(B) a commitment by the foreign entity that if the
9 mailing address stated in the certificate of withdrawal under
10 paragraph (A) changes, the foreign entity will promptly amend
11 the certificate of withdrawal to update the address; and

12 "(7) that any money due or accrued to the state has
13 been paid or describes the provisions that have been made for
14 the payment of that money.

15 "(c) A certificate from the Alabama Department of
16 Revenue that all applicable taxes and fees have been paid must
17 be filed with the certificate of withdrawal.

18 "(d) If the existence or separate existence of a
19 foreign ~~filing~~ entity registered in this state terminates
20 ~~because of dissolution, termination, merger, conversion, or~~
21 ~~other circumstances~~, a certificate by an authorized
22 governmental official of the entity's jurisdiction of
23 formation that evidences the termination shall be filed with
24 the Secretary of State.

1 "(e) The registration of the foreign ~~filing~~ entity
2 ~~in this state~~ terminates when a certificate of withdrawal
3 under this section or a certificate evidencing termination
4 under subsection (d) is filed.

5 "§10A-1-7.12.

6 "The Secretary of State may commence a proceeding
7 under Section 10A-1-7.13 to revoke the registration of a
8 foreign entity authorized to transact business in this state
9 if:

10 "(1) the foreign entity does not deliver its annual
11 report, if required by law, to the Secretary of State within
12 180 days after it is due;

13 "(2) the foreign entity does not pay within 180 days
14 after they are due any applicable privilege or corporation
15 share tax, qualification fee or admission tax, or interest or
16 penalties imposed by this title or other law;

17 "(3) the foreign entity is without a registered
18 agent or registered office in this state for 60 days or more;

19 "(4) the foreign entity does not file a statement of
20 change of registered agent or registered office with the
21 Secretary of State under Section 10A-1-5.32 within 60 days of
22 the change or its registered agent does not file a change of
23 name or change of address of the registered office with the
24 Secretary of State under Section 10A-1-5.33 within 60 days of
25 the change;

1 "(5) an organizer, governing person, or agent of the
2 foreign entity signed a document he or she knew was false in
3 any material respect with intent that the document be
4 delivered to the Secretary of State for filing; or

5 "(6) the Secretary of State receives a duly
6 authenticated certificate from the Secretary of State or other
7 official having custody of entity records in the state or
8 country under whose laws the foreign entity is formed or is
9 governed stating that ~~it~~ the foreign entity has been ~~dissolved~~
10 ~~or disappeared as the result of a merger~~ terminated.

11 "§10A-1-7.13.

12 "(a) If the Secretary of State determines that one
13 or more grounds exist under Section 10A-1-7.12 for revocation
14 of a registration, ~~he or she~~ the Secretary of State shall
15 serve the foreign entity with written notice of ~~his or her~~ the
16 determination of the Secretary of State by serving ~~its~~ the
17 foreign entity's registered agent, which service may be by
18 registered mail, or, if the foreign entity has no registered
19 agent or its registered agent cannot with reasonable diligence
20 be served, by serving the foreign entity by any method
21 permitted under Sections 10A-1-5.35 and 10A-1-5.36.

22 "(b) If the foreign entity does not correct each
23 ground for revocation or demonstrate to the reasonable
24 satisfaction of the Secretary of State that each ground
25 determined by the Secretary of State does not exist within 60

1 days after service of the notice is perfected under subsection
2 (a), the Secretary of State may revoke the foreign entity's
3 registration by signing a certificate of revocation that
4 recites the ground or grounds for revocation and its effective
5 date. The Secretary of State shall file the original of the
6 certificate and serve a copy on the foreign entity by serving
7 its registered agent, which service may be by registered mail,
8 or, if the foreign entity has no registered agent or its
9 registered agent cannot with reasonable diligence be served,
10 by serving the foreign entity by any method permitted under
11 Sections 10A-1-5.35 and 10A-1-5.36.

12 "(c) The authority of a foreign entity to transact
13 business in this state ceases on the date shown on the
14 certificate revoking its ~~certificate of authority~~
15 registration.

16 "(d) Revocation of a foreign entity's registration
17 does not terminate the authority of the registered agent of
18 the foreign entity. Service of process in any action, suit, or
19 proceeding stating a cause of action arising in this state
20 during the time the foreign entity was authorized to transact
21 business in this state may be made on the foreign entity whose
22 registration has been suspended by service on the registered
23 agent or by serving the entity by any method permitted under
24 Sections 10A-1-5.35 and 10A-1-5.36.

25 "§10A-1-7.14.

1 "(a) A foreign entity may appeal the Secretary of
2 State's revocation of its registration to the Circuit Court of
3 Montgomery County within 30 days after service of the
4 certificate of revocation is perfected under Section
5 10A-1-7.13. The foreign entity appeals by petitioning the
6 court to set aside the revocation and attaching to the
7 petition copies of the Secretary of State's acknowledgment of
8 its application for registration, ~~if any,~~ or statement of
9 foreign limited liability partnership, as applicable, and the
10 Secretary of State's certificate of revocation.

11 "(b) The court may summarily order the Secretary of
12 State to reinstate the ~~certificate of authority~~ registration,
13 may order a trial de novo, or may take any other action the
14 court considers appropriate.

15 "(c) The court's final decision may be appealed as
16 in other civil proceedings.

17 "§10A-1-7.22.

18 "(a) The failure of a foreign filing entity to
19 register to transact business in this state or to appoint and
20 maintain a registered agent in this state shall not impair the
21 validity of any contract or act of the foreign entity and
22 shall not prevent the foreign entity from defending any action
23 or proceeding in any court of this state, but the foreign
24 entity shall not maintain any action or proceeding in any
25 court of this state until it has delivered to the Secretary of

1 State for filing an application for registration or a
2 statement of foreign limited liability partnership, as
3 applicable, in accordance with Section 10A-1-7.04. A foreign
4 filing entity, by transacting business in this state without
5 filing an application for registration or a statement of
6 foreign limited liability partnership, as applicable, appoints
7 the Secretary of State as its agent for service of process
8 with respect to causes of action arising out of the
9 transaction of business or activities in this state. The
10 liability of the owners, members, and managerial officials of
11 a foreign filing entity is governed by the laws of the
12 jurisdiction under whose laws it was formed or under which it
13 is governed, and any limitations on that liability are not
14 waived solely by reason of having transacted business in this
15 state without filing an application for registration or a
16 statement of foreign limited liability partnership, as
17 applicable.

18 " (b) The Attorney General may bring an action to
19 restrain a foreign entity from transacting business in this
20 state in violation of this title.

21 "§10A-1-7.23.

22 "The Secretary of State may collect from a foreign
23 filing entity a late filing fee equal to the application for
24 registration fee ~~for the~~ or the statement of foreign limited
25 liability partnership fee, as applicable, for the foreign

1 filing entity for each year of delinquency if the foreign
2 filing entity has transacted business in this state for more
3 than 90 days. The Secretary of State may condition the
4 effectiveness of a registration on the payment of the late
5 filing fee.

6 "§10A-1-7.24.

7 "This article does not excuse a foreign filing
8 entity from complying with duties imposed under other law,
9 including other chapters of this title, relating to filing or
10 ~~registration~~ registering requirements.

11 "§10A-1-7.31.

12 "A foreign entity may not conduct in this state a
13 business, ~~or activity,~~ not for profit activity, or any other
14 activity, whether or not for profit, that is not permitted by
15 this title to be transacted by the domestic entity to which it
16 most closely corresponds, unless other law of this state
17 authorizes the entity to conduct the business, ~~or activity,~~
18 not for profit activity, or any other activity, whether or not
19 for profit.

20 "§10A-1-7.32.

21 "A foreign ~~nonfiling entity or a foreign filing~~
22 ~~entity registered~~ entity with a registration under this
23 article enjoys the same but no greater rights and privileges
24 as the domestic entity to which it most closely corresponds.

25 "§10A-1-7.34.

1 "A vote cast or consent provided by a foreign ~~filing~~
2 entity with respect to its ownership or membership interest in
3 a domestic entity of which the foreign ~~filing~~ entity is a
4 lawful owner or member, and the foreign ~~filing~~ entity's
5 participation in the management and control of the business
6 and affairs of the domestic entity to the extent of the
7 participation of other owners or members, are not invalidated
8 if the foreign ~~filing~~ entity does not register to transact
9 business in this state, subject to all law governing a
10 domestic entity, including the antitrust law of this state.

11 "§10A-1-7.36.

12 "Foreign entities that have complied with the
13 constitution and laws of this state as to ~~doing~~ transacting
14 business ~~herein~~ in this state shall have the same right of
15 eminent domain and the same remedies for enforcing the rights
16 as domestic entities of like kind and character possess.

17 "§10A-1-7.37.

18 "Any foreign entity which has complied with the
19 constitution and laws of this state for ~~doing~~ transacting
20 business ~~herein~~ in this state and which is engaged in
21 constructing or operating a streetcar, electric light,
22 telegraph, telephone or power lines, pipelines, or works in an
23 adjoining state may extend its lines, tracks, ways, pipelines,
24 or works into this state and connect with other lines,
25 pipelines, ways or works of similar or like character and, for

1 that purpose, may have and exercise the same rights,
2 privileges, immunities and remedies as to right of eminent
3 domain and condemnation proceedings as are had and exercised
4 by domestic entities engaged in like or similar business.

5 "§10A-1-8.01.

6 "(a) A conversion of an entity may be accomplished
7 as provided in this section:

8 "(1) CORPORATIONS.

9 "a. The terms and conditions of a conversion of a
10 corporation other than a nonprofit corporation must be
11 approved by all of the corporation's shareholders ~~except or~~ as
12 otherwise provided in the corporation's governing documents;
13 but in no case may the vote required for shareholder approval
14 be set at less than a majority of the votes entitled to be
15 cast by each voting group entitled by law to vote separately
16 on the conversion. If the governing documents provide for
17 approval of a conversion by less than all of a corporation's
18 shareholders, approval of the conversion shall constitute
19 corporate action subject to dissenter's rights pursuant to
20 Article 13 of Chapter 2 of the Alabama Business Corporation
21 Law. No conversion of a corporation to a general or limited
22 partnership may be effected without the consent in writing of
23 each shareholder who will have personal liability with respect
24 to the converted entity, notwithstanding any provision in the
25 governing documents of the converting corporation providing

1 for less than unanimous shareholder approval for the
2 conversion.

3 "b. The terms and conditions of a conversion of a
4 nonprofit corporation must be approved by all the
5 corporation's members entitled to vote thereon, if it is a
6 nonprofit corporation with members with voting rights, ~~except~~
7 or as otherwise provided in the corporation's governing
8 documents; but in no case may the governing documents provide
9 for approval by less than a majority of the members entitled
10 to vote thereon. If the converting nonprofit corporation has
11 no members, or no members entitled to vote thereon, the terms
12 and conditions of the conversion must be approved by a
13 unanimous vote of the board of directors of the converting
14 nonprofit corporation, ~~except~~ or as otherwise provided in the
15 governing documents; but in no case may the governing
16 documents provide for approval by less than a majority of the
17 board of directors.

18 "(2) LIMITED PARTNERSHIPS. The terms and conditions
19 of a conversion of a limited partnership must be approved by
20 all of the partners or as otherwise provided in the
21 partnership agreement. No conversion of a limited partnership
22 to a general partnership may be effected without the consent
23 in writing of each limited partner who will have personal
24 liability with respect to the converted entity,
25 notwithstanding any provision in the limited partnership

1 agreement of the converting limited partnership providing for
2 approval of the conversion by less than all partners.

3 "(3) LIMITED LIABILITY COMPANIES. The terms and
4 conditions of a conversion of a limited liability company must
5 be approved by all of the limited liability company's members
6 or as otherwise provided in the limited liability company's
7 governing documents. No conversion of a limited liability
8 company to a general or limited partnership may be effected
9 without the consent in writing of each member who will have
10 personal liability with respect to the converted entity,
11 notwithstanding any provision in the governing documents of
12 the converting limited liability company providing for less
13 than unanimous member approval for the conversion.

14 "(4) GENERAL PARTNERSHIPS, INCLUDING ~~REGISTERED~~
15 LIMITED LIABILITY PARTNERSHIPS. The terms and conditions of a
16 conversion of a general partnership must be approved by all of
17 the partners or as otherwise provided in the partnership
18 agreement. No conversion of a ~~registered~~ limited liability
19 partnership to a general or limited partnership may be
20 effected without the consent in writing of each partner who
21 will have personal liability with respect to the converted
22 entity, notwithstanding any provision in the partnership
23 agreement of the converting ~~registered~~ limited liability
24 partnership providing for less than unanimous partner approval
25 for the conversion.

1 "(5) REAL ESTATE INVESTMENT TRUST. The terms and
2 conditions of a conversion of a real estate investment trust
3 must be approved by all of the trust's shareholders ~~except~~ or
4 as otherwise provided in the trust's declaration of trust; but
5 in no case may the vote required for shareholder approval be
6 set at less than a majority of all the votes entitled to be
7 cast. No conversion of a real estate investment trust to a
8 general or limited partnership may be effected without the
9 consent in writing of each shareholder who will have personal
10 liability with respect to the converted entity,
11 notwithstanding any provision in the declaration of trust of
12 the converting real estate investment trust providing for less
13 than unanimous shareholder approval for the conversion.

14 "(6) OTHER ENTITY. The terms and conditions of a
15 conversion of any entity not specified above must be approved
16 by all owners of the converting entity. No conversion of any
17 entity shall be effected without the consent in writing of any
18 owner of the converting entity who has limited liability and
19 who shall become an owner without limited liability protection
20 of the converted entity.

21 "(7) ENTITY WITHOUT OWNERS. If the converting entity
22 does not have owners, the terms and conditions of the
23 conversion must be unanimously approved by the governing
24 authority of the converting entity.

1 "(b) After the conversion is approved pursuant to
2 subsection (a), the following documentation and filing
3 requirements apply:

4 "(1) If the conversion is to a corporation, limited
5 liability company, limited partnership, real estate investment
6 trust, or other entity required to file a certificate of
7 formation, the statement of conversion, when filed in
8 accordance with Section 10A-1-4.02(c)(1), shall be deemed to:

9 "a. constitute a certificate of formation or amended
10 and restated certificate of formation, as the case may be, for
11 the converted entity; and

12 "b. shall satisfy the requirements of Section
13 10A-1-4.02(a).

14 "(2) In addition to any information or statements
15 otherwise required by law to be included in a certificate of
16 formation for a filing entity, a statement of conversion shall
17 include the following:

18 "a. The name and type of entity of the converted
19 entity and the jurisdiction of its governing statute and its
20 unique identifying number or other designation as assigned by
21 the Secretary of State, if any.

22 "b. The former name of the converting entity.

23 "c. A statement that the converting entity has been
24 converted into the converted entity.

1 "d. The public office where the certificate of
2 formation, if any, of the converting entity is filed and the
3 date of the filing thereof.

4 "e. If the converted entity is one in which one or
5 more owners lack limited liability protection, a statement
6 that each owner of the converting entity who is to become an
7 owner without limited liability protection of the ~~resulting~~
8 converted entity has consented in writing to the conversion as
9 required by this section.

10 "f. A statement that the conversion was approved
11 pursuant to this section and, if either the converting entity
12 or the converted entity is a foreign entity, that the
13 conversion was approved as required by the governing statute
14 of such foreign entity.

15 "(3) After the conversion has become effective in
16 accordance with subsection (c), then, as provided in Section
17 10A-1-4.02(c)(4), all filing instruments with respect to the
18 converted entity that would otherwise be required by this
19 title to be delivered to the judge of probate for filing shall
20 instead be delivered to the Secretary of State for filing.

21 "(c) A conversion takes effect as follows:

22 "(1) Upon the filing of the statement of conversion
23 in accordance with Section 10A-1-4.02(c)(1), except as
24 otherwise provided in subdivision (2).

1 "(2) Upon any delayed effective date if, but only
2 if, each of the following requirements is satisfied:

3 "a. A delayed effective date is specified in the
4 statement of conversion; and

5 "b. If either the converted entity or the converting
6 entity is a foreign entity, then any filing required under the
7 governing statute of such foreign entity to effectuate the
8 conversion is filed before the effective date specified in the
9 statement of conversion.

10 "(3) If a delayed effective date is specified, and
11 the conditions of subdivision (2) are met, the conversion is
12 effective at the close of business, unless a different hour is
13 specified, on that date.

14 "(d) Conversion has the following effects:

15 "(1)a. Any ~~other~~ entity that has been converted
16 pursuant to this article is for all purposes the same entity
17 that existed before the conversion and the conversion shall
18 constitute a continuation of the existence of the converting
19 entity in the form of the converted entity. The conversion
20 shall not be deemed to constitute a dissolution or termination
21 of the converting entity.

22 "b. If the Secretary of State has assigned a unique
23 identifying number or other designation to the converting
24 entity, that number or designation shall continue to be
25 assigned to the converted entity.

1 "(2)a. All property, real, personal, and mixed owned
2 by the converting entity; all rights, immunities, and
3 franchises of the converting entity, of a public as well as a
4 private nature; and all debts or obligations due the
5 converting entity, shall remain owned and held by, vested in,
6 and due to, the converted entity, shall not be deemed to have
7 been transferred to the converted entity as a consequence of
8 the conversion, and shall not revert or be in any way impaired
9 by reason of the conversion.

10 "b. A certified copy of the statement of conversion
11 may be filed in the office of the judge of probate in any
12 county in which the converting entity owned real property, to
13 be recorded without payment and without collection by the
14 judge of probate of any deed or other transfer tax or fee. The
15 judge of probate shall, however, be entitled to collect the
16 filing fees prescribed by Section 12-19-90. Any filing shall
17 evidence chain of title, but lack of filing shall not affect
18 the converted entity's title to the real property.

19 "(3) All debts, obligations, and other liabilities
20 of the converting entity shall continue as the debts,
21 obligations, and liabilities of the converted entity and the
22 converted entity shall continue to be responsible and liable
23 for all the liabilities and obligations of the converting
24 entity. Neither the rights of creditors, nor any liens upon
25 the property of the converting entity, shall be impaired by

1 the conversion, and an owner of the converted entity shall
2 continue to be liable for all obligations of the converting
3 entity for which the owner was personally liable before the
4 conversion.

5 "(4) Any claim existing or any action or proceeding
6 of any kind pending by or against the converting entity shall
7 be prosecuted or continued as if the conversion had not
8 occurred.

9 "(5) a. An owner with limited liability protection
10 remains liable, if at all, for an obligation incurred by the
11 converting entity before the conversion takes effect only to
12 the extent, if any, the owner would have been liable if the
13 conversion had not occurred.

14 "b. An owner with limited liability protection who
15 becomes an owner without limited liability protection is
16 liable for an obligation of the converted entity incurred
17 after conversion to the extent provided for by the laws
18 applicable to the converted entity.

19 "(6) An owner without limited liability protection
20 who as a result of a conversion becomes an owner of a
21 converted entity with limited liability protection remains
22 liable for an obligation incurred by the converting entity
23 before the conversion takes effect only to the extent, if any,
24 the owner would have been liable if the conversion had not
25 occurred.

1 "§10A-1-8.02.

2 "(a) Pursuant to an approved plan of merger, a
3 corporation, limited partnership, limited liability company,
4 general partnership, real estate investment trust, or any
5 other entity may merge with any other entity or entities,
6 whether the other entity or entities are the same or another
7 form of entity, as provided in this section.

8 "(b) A plan of merger shall include the following:

9 "(1) The name of each entity that is a party to the
10 merger.

11 "(2) The name of the surviving entity into which the
12 other entity or entities will merge.

13 "(3) The form of the surviving entity and the status
14 in the surviving entity of each owner of an entity that is a
15 party to the merger.

16 "(4) The terms and conditions of the merger.

17 "(5) The manner and basis of converting the
18 interests of each party to the merger into interests or
19 obligations of the surviving entity, or into money or other
20 property in whole or part.

21 "(c) A plan of merger may set forth:

22 "(1) Amendments to the certificate of formation of
23 the surviving entity.

24 "(2) Other provisions relating to the merger.

25 "(d) A plan of merger shall be approved as follows:

1 "(1) CORPORATIONS.

2 a. In the case of a corporation, other than a
3 nonprofit corporation, that is a party to a merger, the plan
4 of merger must be approved in accordance with the procedures
5 and by the shareholder vote required by Section 10A-2-11.03 or
6 Section 10A-2-11.04. If the governing documents of the
7 corporation provide for approval of a merger by less than all
8 of the corporation's shareholders, approval of the merger
9 shall constitute corporate action subject to dissenter's
10 rights pursuant to Article 13 of Chapter 2. No merger of a
11 corporation into a general or limited partnership may be
12 effected without the consent in writing of each shareholder
13 who will have personal liability with respect to the resulting
14 or surviving entity, notwithstanding any provision in the
15 governing documents of the corporation that is a party to the
16 merger providing for less than unanimous shareholder approval
17 for the conversion.

18 "b. In the case of a nonprofit corporation, the plan
19 of merger must be approved by all the corporation's members
20 entitled to vote thereon, if it is a nonprofit corporation
21 with members with voting rights, ~~except~~ or as otherwise
22 provided in the corporation's governing documents; but in no
23 case may the governing documents provide for approval by less
24 than a majority of the members entitled to vote thereon. If
25 the nonprofit corporation has no members, or no members

1 entitled to vote thereon, the plan of merger must be approved
2 by a unanimous vote of the board of directors of the nonprofit
3 corporation, except as otherwise provided in the governing
4 documents; but in no case may the governing documents provide
5 for approval by less than a majority of the board of
6 directors.

7 "(2) LIMITED PARTNERSHIPS. In the case of a limited
8 partnership that is a party to the merger, the plan of merger
9 must be approved in writing by all of the partners or as
10 otherwise provided in the partnership agreement. No merger of
11 a limited partnership with a general partnership in which the
12 general partnership is the surviving or resulting entity may
13 be effected without the consent in writing of each limited
14 partner who will have personal liability with respect to the
15 surviving or resulting entity, notwithstanding any provision
16 in the limited partnership agreement of the merging limited
17 partnership providing for approval of the merger by less than
18 all partners.

19 "(3) LIMITED LIABILITY COMPANIES. In the case of a
20 limited liability company that is a party to the merger, the
21 plan of merger must be approved in writing by all of the
22 limited liability company's members or as otherwise provided
23 in the limited liability company's governing documents. No
24 merger of a limited liability company with a general or
25 limited partnership that is the surviving or resulting entity

1 may be effected without the consent in writing of each member
2 who will have personal liability with respect to the surviving
3 or resulting entity, notwithstanding any provision in the
4 governing documents of the merging limited liability company
5 providing for less than unanimous shareholder approval for a
6 merger.

7 "(4) GENERAL PARTNERSHIPS, INCLUDING ~~REGISTERED~~
8 LIMITED LIABILITY PARTNERSHIPS. In the case of a general
9 partnership that is a party to the merger, the plan of merger
10 must be approved in writing by all of the partners or as
11 otherwise provided in the partnership agreement. No merger of
12 a ~~registered~~ limited liability partnership into a general or
13 limited partnership may be effected without the consent in
14 writing of each partner who will have personal liability with
15 respect to the surviving or resulting entity, notwithstanding
16 any provision in the partnership agreement of the ~~registered~~
17 limited liability partnership providing for less than
18 unanimous partner approval for a merger.

19 "(5) REAL ESTATE INVESTMENT TRUST. In the case of a
20 real estate investment trust that is a party to the merger,
21 the plan of merger must be approved in writing by all of the
22 trust's shareholders ~~except~~ or as otherwise provided in the
23 trust's declaration of trust, but in no case may the vote
24 required for shareholder approval be set at less than a
25 majority of all the votes entitled to be cast. No merger of a

1 real estate investment trust with a general or limited
2 partnership that is to be the surviving or resulting entity
3 may be effected without the consent in writing of each
4 shareholder who will have personal liability with respect to
5 the surviving or resulting business entity.

6 "(6) OTHER ENTITY. In the case of an entity other
7 than a corporation, limited partnership, limited liability
8 company, general partnership, or real estate investment trust
9 that is a party to the merger, by approval in writing of all
10 owners of the entity. No merger of any entity shall be
11 effected without the consent in writing of any owner who has
12 limited liability as an owner of an entity party to the
13 merger, and who will have personal liability with respect to
14 the surviving or resulting entity.

15 "(e) After a plan of merger is approved and before
16 the merger takes effect, the plan may be amended or abandoned
17 as provided in the plan, or if the plan does not provide for
18 amendment or abandonment, in the same manner as required for
19 the approval of the plan of merger originally.

20 "(f) The merger takes effect as follows:

21 "(1) Upon the filing of the statement of merger in
22 accordance with Section 10A-1-4.02(c)(1), except as otherwise
23 provided in subdivision (2).

24 "(2) Upon any delayed effective date if, but only
25 if, each of the following requirements is satisfied:

1 "a. A delayed effective date is specified in the
2 statement of merger.

3 "b. If either the converted entity or the merging
4 entity is a foreign entity, then any filing required under the
5 governing statute of such foreign entity to effectuate the
6 merger is filed before the effective date specified in the
7 statement of merger.

8 "(3) If a delayed effective date is specified and
9 the conditions of subdivision (2) are met, the merger is
10 effective at the close of business, unless a different hour is
11 specified, on that date in accordance with and subject to
12 Section 10A-1-4.12.

13 "(g) The certificate of merger shall include the
14 following:

15 "(1) The names of each of the entities which are to
16 merge and their respective unique identifying numbers or other
17 designations as assigned by the Secretary of State, if any.

18 "(2) The public office where the certificate of
19 formation, if any, of each of the parties to the merger is
20 filed.

21 "(3) A statement that a plan of merger has been
22 approved by each of the entities which are to merge in the
23 manner set forth in this article.

24 "(4) If the surviving or resulting entity is one in
25 which one or more owners lack limited liability protection, a

1 statement that each owner of an entity party to the merger who
2 is to be an owner of the surviving or resulting entity without
3 limited liability protection has consented in writing to the
4 merger as required by this article.

5 "(5) The name of the surviving or resulting entity.

6 "(6) The date, or date and time, on which the merger
7 becomes effective if it is not to be effective upon the filing
8 of the certificate of merger.

9 "(7) That the plan of merger is on file at a place
10 of business of the surviving or resulting entity, and shall
11 state the address thereof.

12 "(8) That a copy of the plan of merger will be
13 furnished by the surviving or resulting entity, on request and
14 without cost, to any owner of any entity which is a party to
15 the merger.

16 "(9) If the plan of merger includes any amendments
17 to the certificate of formation of the surviving or resulting
18 entity, a statement of all such amendments.

19 "(h) The certificate of merger shall be filed with
20 the Secretary of State in accordance with Section 10A-1-4.02.

21 "(i) The merger shall have the following effects:

22 "(1) Every other entity party to the merger merges
23 into the surviving entity which shall be deemed to be the
24 resulting entity of the merger and the separate existence of

1 every entity, other than the surviving or resulting entity,
2 ceases.

3 "(2) All property, real, personal, and mixed owned
4 by each of the merged entities; all rights, immunities, and
5 franchises of the merged entities, of a public as well as a
6 private nature; and all debts and obligations due the merged
7 entities, are taken and deemed to be transferred and vested in
8 the surviving or resulting entity without the necessity of any
9 deed or other instrument of conveyance to the surviving or
10 resulting entity and without payment and without collection by
11 any filing officer of any deed or other transfer tax or fee. A
12 certified copy of the certificate of merger may be filed in
13 the real estate records in the office of the judge of probate
14 in any county in which any entity a party to the merger owned
15 real property, to be recorded without payment and without
16 collection by the judge of probate of any deed or other
17 transfer tax or fee. The judge of probate shall, however, be
18 entitled to collect the filing fees prescribed by Section
19 12-19-90. Any filing shall evidence chain of title, but lack
20 of filing does not affect the resulting entity's title to any
21 real property.

22 "(3) The surviving or resulting entity shall be
23 responsible and liable for all the liabilities and obligations
24 of the entities that are parties to the merger; however,
25 neither the rights of creditors nor any liens upon the

1 property of the entities that are parties to the merger shall
2 be impaired by the merger.

3 "(4) Any claim existing or action or proceeding, of
4 any kind, pending by or against an entity that is a party to
5 the merger may be prosecuted or continued as if the merger had
6 not occurred, or the surviving or resulting entity may be
7 substituted as a party to the action or proceeding.

8 "(5) Service of process in an action or proceeding
9 against a surviving or resulting foreign entity to enforce an
10 obligation of a domestic entity that is a party to a merger
11 may be made by registered mail addressed to the surviving
12 entity at the address set forth in the certificate of merger
13 or by any method provided by the Alabama Rules of Civil
14 Procedure. Any notice or demand required or permitted by law
15 to be served on a domestic entity may be served on the
16 surviving or resulting foreign entity by registered mail
17 addressed to the surviving entity at the address set forth in
18 the certificate of merger or in any other manner similar to
19 the procedure provided by the Alabama Rules of Civil Procedure
20 for the service of process.

21 "(6) a. An owner of an entity with limited liability
22 protection remains liable, if at all, for an obligation
23 incurred prior to the merger by an entity that ceases to exist
24 as a result of the merger only to the extent, if any, that the
25 owner would have been liable under the laws applicable to

1 owners of the form of entity that ceased to exist if the
2 merger had not occurred.

3 "b. An owner with limited liability protection who,
4 as a result of the merger, becomes an owner without limited
5 liability protection of the surviving or resulting entity is
6 liable for an obligation of the surviving or resulting entity
7 incurred after merger to the extent provided for by the laws
8 applicable to the surviving or resulting entity.

9 "(7) An owner without limited liability protection
10 of an entity that ceases to exist as a result of a merger and
11 who as a result of the merger becomes an owner of a surviving
12 or resulting entity with limited liability protection remains
13 liable for an obligation of the entity that ceases to exist
14 incurred before the merger takes effect only to the extent, if
15 any, that the owner would have been liable if the merger had
16 not occurred.

17 "§10A-1-8.03.

18 "This article is not exclusive ~~but is cumulative to~~
19 ~~other laws and provisions of this title relating to mergers~~
20 ~~and conversion. Entities, including corporations, limited~~
21 ~~partnerships, limited liability companies, general~~
22 ~~partnerships, and real estate investment trusts, may be~~
23 ~~converted or merged in any other manner provided by law,~~
24 ~~including other provisions of this title. This article does~~

1 not preclude any entity from being converted or merged under
2 law other than this chapter."

3 Section 4. Section 10A-1-9.01 of the Code of Alabama
4 1975, is amended and renumbered to read as follows:

5 "~~§10A-1-9.01.~~ §10A-1-9.02.

6 "In this article, the following terms have the
7 following meanings:

8 "(1) CLAIM. A right to payment, damages, or
9 property, whether liquidated or unliquidated, accrued or
10 contingent, matured or unmatured.

11 "(2) WINDING UP. The process of winding up the
12 business and affairs of a domestic entity as a result of the
13 occurrence of an event requiring winding up."

14 Section 5. Section 10A-1-9.01 is added to the Code
15 of Alabama 1975, as follows:

16 §10A-1-9.01.

17 This article does not apply to limited liability
18 companies, general partnerships, and limited partnerships.

19 Section 6. Sections 10A-1-9.21, 10A-1-9.22,
20 10A-5A-1.02, 10A-5A-1.06, 10A-9A-1.07, and 10A-17-1.02 of the
21 Code of Alabama 1975, are amended to read as follows:

22 "§10A-1-9.21.

23 "(a) A dissolved domestic entity, ~~except as~~
24 ~~otherwise provided in subsection (e),~~ may dispose of the known
25 claims against it by following the procedure described in ~~this~~

1 ~~section~~ subsection (b) at any time after the effective date of
 2 the dissolution of that dissolved domestic entity.

3 "(b) ~~The A~~ dissolved domestic entity ~~shall notify~~
 4 ~~its known claimants in writing may~~ shall give notice of the
 5 dissolution ~~at any time after its effective date. The written~~
 6 in writing to the holder of any known claim. The notice must:

7 "(1) Identify the dissolved domestic entity;

8 "~~(1)~~ (2) Describe the information that must required
 9 to be included in a claim;

10 "~~(2)~~ (3) Provide a mailing address where a to which
 11 the claim may is to be sent;

12 "~~(3)~~ (4) State the deadline, which may not be fewer
 13 than 120 days from the effective date of the written notice,
 14 by which the terminated dissolved domestic entity must receive
 15 the claim; and

16 "~~(4)~~ (5) State that if not sooner barred, the claim
 17 will be barred if not received by the deadline.

18 "(c) Unless sooner barred by any other statute
 19 limiting actions, a A claim against a dissolved domestic
 20 entity is barred:

21 "(1) If a claimant who was given ~~written~~ notice
 22 under subsection (b) does not deliver the claim to the
 23 dissolved domestic entity by the deadline;

24 "(2) If a claimant whose claim was rejected by the
 25 dissolved domestic entity does not commence a proceeding to

1 enforce the claim within 90 days from the effective date of
2 the rejection notice.

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

8 "~~The procedures of~~ Nothing in this section ~~do~~
9 ~~not apply to the disposition of claims against a general or~~
10 ~~limited partnership~~ shall be deemed to extend any otherwise
11 applicable statute of limitations.

12 "§10A-1-9.22.

13 "(a) A dissolved domestic entity, ~~except as~~
14 ~~otherwise provided in subsection (f),~~ may also publish notice
15 of its dissolution and request that persons with claims
16 against the dissolved domestic entity present them in
17 accordance with the notice.

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

19 "(1) Be published at least one time in a newspaper
20 of general circulation in the county ~~where~~ in which the
21 dissolved domestic entity's principal office is located, or,
22 if it has none in this state, ~~its~~ in the county in which the
23 dissolved domestic entity's registered office, is or was last
24 located;

1 "(2) Describe the information that must be included
2 in a claim and provide a mailing address ~~where~~ to which the
3 claim ~~may~~ is to be sent; and

4 "(3) State that if not sooner barred, a claim
5 against the dissolved domestic entity will be barred unless a
6 proceeding to enforce the claim is commenced within two years
7 after the publication of the notice.

8 "(c) If ~~the~~ a dissolved domestic entity publishes a
9 newspaper notice in accordance with subsection (b), unless
10 sooner barred by any other statute limiting actions, the claim
11 of each of the following claimants is barred unless the
12 claimant commences a proceeding to enforce the claim against
13 the dissolved domestic entity within two years after the
14 publication date of the newspaper notice:

15 "(1) A claimant who ~~did not receive written~~ was not
16 given notice under Section 10A-1-9.21;

17 "(2) A claimant whose claim was timely sent to the
18 dissolved domestic entity but not acted on; by the dissolved
19 domestic entity; and

20 "(3) A claimant whose claim is contingent ~~or based~~
21 ~~on an event occurring after the effective date of dissolution~~
22 at the effective date of the dissolution of the dissolved
23 domestic entity, or is based on an event occurring after the
24 effective date of the dissolution of the dissolved domestic
25 entity.

1 ~~"(d) A claim may be enforced under this section that~~
2 ~~is not barred under this section, any other statute limiting~~
3 ~~actions, or Section 10A-1-9.21 may be enforced:~~

4 ~~"(1) Against the a dissolved domestic entity, to the~~
5 ~~extent of its undistributed assets; or and~~

6 ~~"(2) If the assets have been distributed in~~
7 ~~liquidation, against an owner of the dissolved domestic entity~~
8 ~~to the extent of his or her pro rata share of the claim or the~~
9 ~~entity assets distributed to him or her in liquidation,~~
10 ~~whichever is less, but an owner's total liability for all~~
11 ~~claims under this section may not exceed the total amount of~~
12 ~~assets distributed to him or her in liquidation Except as~~
13 ~~provided in subsection (h), if If the assets of a dissolved~~
14 ~~domestic entity have been distributed after dissolution,~~
15 ~~against the person or persons owning ownership interests in~~
16 ~~the dissolved domestic entity to the extent of that person's~~
17 ~~proportionate share of the claim or of the assets of the~~
18 ~~dissolved domestic entity distributed to that person after~~
19 ~~dissolution, whichever is less, but a person's total liability~~
20 ~~for all claims under subsection (d) may not exceed the total~~
21 ~~amount of assets distributed to that person after dissolution~~
22 ~~of the dissolved domestic entity.~~

23 ~~"(e) A dissolved domestic entity that published a~~
24 ~~notice under this section may file an application with the~~
25 ~~circuit court in the county in which the dissolved domestic~~

1 ~~entity's principal place of business is located and if the~~
2 ~~dissolved domestic entity does not have a principal place of~~
3 ~~business within this state, in the county in which the~~
4 ~~dissolved domestic entity's most recent registered office is~~
5 ~~located, for a determination of the amount and form of~~
6 ~~security to be provided for payment of claims that are~~
7 ~~contingent or have not been made known to the dissolved~~
8 ~~domestic entity or that are based on an event occurring after~~
9 ~~the effective date of the dissolution of the dissolved~~
10 ~~domestic entity but that, based on the facts known to the~~
11 ~~dissolved domestic entity, are reasonably estimated to arise~~
12 ~~after the effective date of the dissolution of the dissolved~~
13 ~~domestic entity. Provision need not be made for any claim that~~
14 ~~is or is reasonably anticipated to be barred under subsection~~
15 ~~(c).~~

16 ~~"(f) Within ten days after the filing of the~~
17 ~~application provided for in subsection (e), notice of the~~
18 ~~proceeding shall be given by the dissolved domestic entity to~~
19 ~~each potential claimant as described in subsection (e).~~

20 ~~"(g) The circuit court under subsection (e) may~~
21 ~~appoint a guardian ad litem to represent all claimants whose~~
22 ~~identities are unknown in any proceeding brought under this~~
23 ~~section. The reasonable fees and expenses of the guardian,~~
24 ~~including all reasonable expert witness fees, shall be paid by~~
25 ~~the dissolved domestic entity.~~

1 ~~"(h) Provision by the dissolved domestic entity for~~
2 ~~security in the amount and the form ordered by the circuit~~
3 ~~court under subsection (e) shall satisfy the dissolved~~
4 ~~domestic entity's obligation with respect to claims that are~~
5 ~~contingent, have not been made known to the dissolved domestic~~
6 ~~entity, or are based on an event occurring after the effective~~
7 ~~date of the dissolution of the dissolved domestic entity, and~~
8 ~~those claims may not be enforced against a person owning an~~
9 ~~ownership interest to whom assets have been distributed by the~~
10 ~~dissolved domestic entity after the effective date of the~~
11 ~~dissolution of the dissolved domestic entity.~~

12 ~~"(e) (i) (e)~~ Nothing in this section shall be deemed
13 to extend any otherwise applicable statute of limitations.

14 ~~"(f) The procedures of this section do not apply to~~
15 ~~the disposition of claims against a general or limited~~
16 ~~partnership.~~

17 ~~"(j) (f) If a claim has been satisfied, disposed of,~~
18 ~~or barred under Section 10A-1-9.21, this section, or other~~
19 ~~law, the person or persons designated to wind up the affairs~~
20 ~~of a dissolved domestic entity, and the owners of the~~
21 ~~ownership interests receiving assets from the dissolved~~
22 ~~domestic entity, shall not be liable for that claim.~~

23 "§10A-5A-1.02.

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

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

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

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

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

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

17 "(f) "Converting organization" means an organization
18 that converts into another organization pursuant to Article
19 10.

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

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

1 ~~"(i)~~ "Foreign limited liability company" means a
2 limited liability company governed by the laws of a
3 jurisdiction other than this state which would be a limited
4 liability company if governed by the laws of this state.

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

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

10 ~~"(k)~~ (l) "Limited liability company agreement" means
11 any agreement (whether referred to as a limited liability
12 company agreement, operating agreement or otherwise), written,
13 oral or implied, of the member or members as to the activities
14 and affairs of a limited liability company or series thereof.
15 The limited liability company agreement of a limited liability
16 company having only one member shall not be unenforceable by
17 reason of there being only one person who is a party to the
18 limited liability company agreement. The limited liability
19 company agreement includes any amendments to the limited
20 liability company agreement.

21 ~~"(l)~~ (m) "Member" means a person admitted under
22 Section 10A-5A-4.01 and not dissociated under Section
23 10A-5A-6.02.

24 ~~"(m)~~ (n) "Organization" means a general partnership,
25 including a limited liability partnership; limited

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

7 ~~"(n)~~ (o) "Organizational documents" means:

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

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

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

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

24 "(5) for a corporation for profit or foreign
25 corporation for profit, its certificate of formation, bylaws,

1 and other agreements among its shareholders that are
2 authorized by its governing statute, or comparable writings as
3 provided in its governing statute;

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

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

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

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

23 "~~(p)~~ (q) "Surviving organization" means an
24 organization into which one or more other organizations are

1 merged under Article 10, whether the organization pre-existed
 2 the merger or was created pursuant to the merger.

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

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

9 ~~"(s)~~ (t) "~~Transferrable~~ Transferable interest" means
 10 a member's right to receive distributions from a limited
 11 liability company or a series thereof.

12 "§10A-5A-1.06.

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

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

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

23 "(d) The use of any gender shall be applicable to
 24 all genders. The captions contained in this chapter are for

1 purposes of convenience only and shall not control or affect
2 the construction of this chapter.

3 "(e) Sections 7-9A-406 and 7-9A-408 of the Uniform
4 Commercial Code, and all successor statutes thereto, do not
5 apply to any interest in a limited liability company,
6 including all rights, powers, and interests arising under a
7 limited liability company agreement or this chapter. This
8 provision prevails over Sections 7-9A-406 and 7-9A-408 of the
9 Uniform Commercial Code, and all successor statutes thereto,
10 and is expressly intended to permit the enforcement of the
11 provisions of a limited liability company agreement that would
12 otherwise be ineffective under Sections 7-9A-406 and 7-9A-408
13 of the Uniform Commercial Code, and all successor statutes
14 thereto.

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

17 "~~(g) Sections 10A-1-1.03 (73), (81), (88), and (91)~~
18 The terms president, vice president, secretary, and treasurer
19 as defined in Chapter 1 shall have no application to this
20 chapter.

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

23 "§10A-5A-4.09.

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

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

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

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

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

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

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

16 "(b) Subject to subsection (g), on 10 days' notice
17 made in a writing received by the limited liability company,
18 the records set forth in subsection (a) above, and any other
19 books and records of the limited liability company, wherever
20 situated, are subject to inspection and copying for any proper
21 purpose by any member or the member's agent or attorney during
22 regular business hours. Subject to subsection (g), any person
23 with the authority to bind the limited liability company under
24 Section 10A-5A-3.02 and any person with the authority to
25 direct and oversee the activities and affairs of a limited

1 liability company who, without reasonable cause, refuses to
2 allow any member or the member's agent or attorney to inspect
3 or copy any books or records of the limited liability company
4 for any proper purpose shall be personally liable to the
5 member for a penalty in an amount not to exceed 10 percent of
6 the fair market value of the transferable interest of the
7 member, in addition to any other damages or remedy.

8 "(c) Subject to subsection (g), on 30 days' notice
9 made in a writing received by a limited liability company, a
10 dissociated member may inspect and copy, during regular
11 business hours, at a reasonable location specified by the
12 limited liability company, any record maintained by the
13 limited liability company, to the extent the information
14 pertains to the period during which the person was a member,
15 was material to the person's rights and duties under the
16 limited liability company agreement or this chapter when the
17 person was a member, and the person seeks the information in
18 good faith and for a proper purpose.

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

22 "(e) A member or dissociated member may exercise
23 rights under this section through an agent or attorney, or in
24 the case of an individual under legal disability, a legal
25 representative. Any restriction or condition imposed by the

1 limited liability company agreement or under subsection (g)
2 applies both to the agent, attorney, or legal representative
3 and to the member or dissociated member.

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

6 "(g) (1) In addition to any restriction or condition
7 stated in its limited liability company agreement, a limited
8 liability company, as a matter within the ordinary course of
9 its activities and affairs, may:

10 "a. impose reasonable restrictions and conditions on
11 access to and use of information to be furnished under this
12 section, including designating information confidential and
13 imposing nondisclosure and safeguarding obligations on the
14 recipient; and

15 "b. keep confidential from the members and any other
16 persons, for such period of time as the limited liability
17 company deems reasonable, any information that the limited
18 liability company reasonably believes to be in the nature of
19 trade secrets or other information the disclosure of which the
20 limited liability company in good faith believes is not in the
21 best interest of the limited liability company or could damage
22 the limited liability company or its activities and affairs,
23 or that the limited liability company is required by law or by
24 agreement with a third party to keep confidential.

1 "(2) In any dispute concerning the reasonableness of
2 a restriction under this subsection, the limited liability
3 company has the burden of proving reasonableness.

4 "§10A-5A-7.02.

5 "Notwithstanding Section 10A-1-9.12:

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

10 "(1) collecting its assets;

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

13 "(3) discharging or making provisions for
14 discharging its liabilities;

15 "(4) distributing its remaining property in
16 accordance with Section 10A-5A-7.06; and

17 "(5) doing every other act necessary to wind up and
18 liquidate its activities and affairs.

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

21 "(1) deliver for filing a statement of dissolution
22 to the filing officer provided for in subsection (e) setting
23 forth:

24 "(A) The name of the limited liability company.

1 "(B) The date of filing its certificate of
2 formation, and all amendments and restatements thereof, and
3 the office or offices where filed.

4 "(C) That the limited liability company has
5 dissolved.

6 "(D) Any other information the limited liability
7 company deems appropriate.

8 "(2) preserve the limited liability company's
9 activities and affairs and property as a going concern for a
10 reasonable time;

11 "(3) prosecute, defend, or settle actions or
12 proceedings whether civil, criminal, or administrative;

13 "(4) transfer the limited liability company's
14 assets;

15 "(5) resolve disputes by mediation or arbitration;
16 and

17 "(6) merge or convert in accordance with Article 10
18 of this chapter or Article 8 of Chapter 1.

19 "(c) The dissolution of a limited liability company
20 does not:

21 "(1) transfer title to the limited liability
22 company's property;

23 "(2) prevent the commencement of a proceeding by or
24 against the limited liability company in its limited liability
25 company name;

1 "(3) terminate, abate, or suspend a proceeding
2 pending by or against the limited liability company on the
3 effective date of dissolution;

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

6 "(5) abate, suspend, or otherwise alter the
7 application of Section 10A-5A-3.01.

8 "(d) A statement of dissolution shall be deemed to
9 be a filing instrument under Chapter 1.

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

19 "§10A-5A-10.08.

20 "(a) When a merger becomes effective:

21 "(1) the surviving organization continues or, in the
22 case of a surviving organization created pursuant to the
23 merger, comes into existence;

1 "(2) each constituent organization that merges into
2 the surviving organization ceases to exist as a separate
3 entity;

4 "(3) all property owned by, and every contract right
5 possessed by, each constituent organization, or series
6 thereof, that ceases to exist vests in the surviving
7 organization without ~~reservation~~ transfer, reversion, or
8 impairment and the title to any property and contract rights
9 vested by deed or otherwise in the surviving organization
10 shall not revert, ~~or~~ be in any way impaired, or be deemed to
11 be a transfer by reason of the merger;

12 "(4) all debts, obligations, ~~or~~ and other
13 liabilities of each constituent organization, or series
14 thereof, ~~that ceases to exist continue as~~ other than the
15 surviving organization, are debts, obligations, ~~or~~ and other
16 liabilities of the surviving organization, ~~and~~ and neither the
17 rights of creditors, nor any liens upon the property of any
18 constituent organization, shall be impaired by the merger;

19 "(5) an action or proceeding pending by or against
20 any constituent organization, or series thereof, continues as
21 if the merger had not occurred and the name of the surviving
22 organization may be, but need not be, substituted in any
23 pending proceeding for the name of any constituent
24 organization whose separate existence ceased in the merger;

1 "(6) except as prohibited by law other than this
2 chapter, or the terms of the merger, all of the rights,
3 privileges, franchise, immunities, powers, and purposes of
4 each constituent organization, or series thereof, other than
5 the surviving organization, vest in the surviving
6 organization;

7 "(7) except as otherwise provided in the plan of
8 merger, the terms and conditions of the plan of merger take
9 effect;

10 "(8) except as otherwise agreed, if a constituent
11 limited liability company ceases to exist, the merger does not
12 dissolve the limited liability company and does not dissolve a
13 series thereof;

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

16 "(A) if it is a limited liability company, the
17 certificate of formation becomes effective; or

18 "(B) if it is an organization other than a limited
19 liability company, the organizational ~~document~~ documents that
20 ~~creates~~ create the organization ~~becomes~~ become effective; and

21 "(10) if the surviving organization existed before
22 the merger, any amendments provided for in the statement of
23 merger for the organizational ~~document~~ documents that created
24 the organization become effective.

1 "(11) the transferable interests of each limited
2 liability company that is a constituent organization to the
3 merger, and the ownership interests of each organization that
4 is not a limited liability company, but is a constituent
5 organization to the merger, that are to be converted in
6 accordance with the terms of the merger into transferable
7 interests, ownership interests, other securities, obligations,
8 rights to acquire transferable interests, ownership interests,
9 or other securities, cash, other property, or any combination
10 of the foregoing, are converted, and the former holder of such
11 transferable interests or ownership interests is entitled only
12 to the rights provided to that former holder by those terms or
13 the statute governing that former holder's constituent
14 organization; and

15 "(12) if the surviving organization exists before
16 the merger:

17 "(i) all property and contract rights of the
18 surviving organization remain its property and contract rights
19 without transfer, reversion, or impairment;

20 "(ii) the surviving organization remains subject to
21 all its debts, obligations, and other liabilities; and

22 "(iii) except as provided by law other than this
23 chapter, or the plan of merger, the surviving organization
24 continues to hold all of its rights, privileges, franchises,
25 immunities, powers, and purposes.

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

14 "§10A-9A-1.07.

15 "(a) It is the policy of this chapter and this state
16 to give maximum effect to the principles of freedom of
17 contract and to the enforceability of partnership agreements.

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

21 "(c) If an obligation to pay interest arises under
22 this chapter and the rate is not specified, the rate is the
23 applicable federal rate as determined from time to time by the
24 United States Treasury pursuant to 26 U.S.C. §1274(d) or any
25 successor law.

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

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

8 "(f) Sections 7-9A-406 and 7-9A-408 of the Uniform
9 Commercial Code, and all successor statutes thereto, do not
10 apply to any interest in a limited partnership, including all
11 rights, powers, and interests arising under a partnership
12 agreement or this chapter. This provision prevails over
13 Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code,
14 and all successor statutes thereto, and is expressly intended
15 to permit the enforcement of the provisions of a partnership
16 agreement that would otherwise be ineffective under Sections
17 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all
18 successor statutes thereto.

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

21 "~~Sections 10A-1-1.03(73), (81), (88), and (91)~~
22 The terms president, vice president, secretary, and treasurer
23 as defined in Chapter 1 shall have no application to this
24 chapter.

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

3 "§10A-9A-10.09.

4 "(a) When a merger becomes effective:

5 "(1) the surviving organization continues or, in the
6 case of a surviving organization created pursuant to the
7 merger, comes into existence;

8 "(2) each constituent organization that merges into
9 the surviving organization ceases to exist as a separate
10 entity;

11 "(3) all property owned by, and every contract right
12 possessed by, each constituent organization that ceases to
13 exist vests in the surviving organization without ~~reservation~~
14 transfer, reversion, or impairment and the title to any
15 property and contract rights vested by deed or otherwise in
16 the surviving organization shall not revert, ~~or~~ be in any way
17 impaired, or be deemed to be a transfer by reason of the
18 merger;

19 "(4) all debts, obligations, ~~or~~ and other
20 liabilities of each constituent organization ~~that ceases to~~
21 ~~exist continue as~~ other than the surviving organization are
22 debts, obligations, ~~or~~ and other liabilities of the surviving
23 organization and neither the rights of creditors, nor any
24 liens upon the property of any constituent organization, shall
25 be impaired by the merger;

1 "(5) an action or proceeding pending by or against
2 any constituent organization, or series thereof, continues as
3 if the merger had not occurred and the name of the surviving
4 organization may be, but need not be, substituted in any
5 pending proceeding for the name of any constituent
6 organization whose separate existence ceased in the merger;

7 "(6) except as prohibited by law other than this
8 chapter, or the terms of the merger, all of the rights,
9 privileges, franchise, immunities, powers, and purposes of
10 each constituent organization, other than the surviving
11 organization, vest in the surviving organization;

12 "(7) except as otherwise provided in the plan of
13 merger, the terms and conditions of the plan of merger take
14 effect;

15 "(8) except as otherwise agreed, if a constituent
16 limited partnership ceases to exist, the merger does not
17 dissolve the limited partnership;

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

20 "(A) if it is a limited partnership, the certificate
21 of formation becomes effective; or

22 "(B) if it is an organization other than a limited
23 partnership, the organizational ~~document~~ documents that
24 ~~creates~~ create the organization ~~becomes~~ become effective; and

1 "(10) if the surviving organization existed before
2 the merger, any amendments provided for in the statement of
3 merger for the organizational ~~document~~ documents that created
4 the organization become effective.;

5 "(11) the transferable interests of each limited
6 partnership that is a constituent organization to the merger,
7 and the ownership interests of each organization that is not a
8 limited partnership, but is a constituent organization to the
9 merger, that are to be converted in accordance with the terms
10 of the merger into transferable interest, ownership interests,
11 other securities, obligations, rights to acquire transferable
12 interest, ownership interests, or other securities, cash,
13 other property, or any combination of the foregoing, are
14 converted, and the former holder of such transferable
15 interests or ownership interests is entitled only to the
16 rights provided to that former holder by those terms or the
17 statute governing that former holder's constituent
18 organization; and

19 "(12) if the surviving organization exists before
20 the merger:

21 "(i) all the property and contract rights of the
22 surviving organization remain its property and contract rights
23 without transfer, reversion, or impairment;

24 "(ii) the surviving organization remains subject to
25 all its debts, obligations, and other liabilities; and

1 "(iii) except as provided by law other than this
2 chapter, or the plan of merger, the surviving organization
3 continues to hold all of its rights, privileges, franchises,
4 immunities, powers, and purposes.

5 "(b) A surviving organization that is a foreign
6 entity consents to the jurisdiction of this state to enforce
7 any debt, obligation, or other liability owed by a constituent
8 organization, if before the merger the constituent
9 organization was subject to suit in this state on the debt,
10 obligation, or other liability. If a surviving organization
11 that is a foreign entity fails to designate or maintain a
12 registered agent, or the designated registered agent cannot
13 with reasonable diligence be served, then the service of
14 process on that surviving organization for the purposes of
15 enforcing a debt, obligation, or other liability under this
16 subsection may be made in the same manner and has the same
17 consequences as provided in Section 10A-1-5.35.

18 "§10A-17-1.02.

19 "In this chapter:

20 "(1) "Member" means a person who, under the rules or
21 practices of a nonprofit association, may participate in the
22 selection of persons authorized to manage the affairs of the
23 nonprofit association or in the development of policy of the
24 nonprofit association.

1 "(2) "Nonprofit association" means an unincorporated
2 organization consisting of two or more members joined by
3 mutual consent as an association for a stated common,
4 nonprofit purpose, but does not include a limited liability
5 company, general partnership, or limited partnership. In
6 addition, ~~However,~~ joint tenancy, tenancy in common, or
7 tenancy by the entirety does not by itself establish a
8 nonprofit association, even if the co-owners share use of the
9 property for a nonprofit purpose.

10 "(3) "Nonprofit purpose" shall be any purpose for
11 which a nonprofit corporation could be organized under the
12 Alabama Nonprofit Corporation Act, as amended, and where no
13 part of income or profit is distributable to its members,
14 directors and officers."

15 Section 7. Chapter 8A, comprised of Articles 1 to
16 11, inclusive, is added to Title 10A of the Code of Alabama
17 1975, as follows:

18 Article 1. General Provisions.

19 §10A-8A-1.01. Short title. This chapter and the
20 provisions of Chapter 1 to the extent applicable to
21 partnerships, shall be known and may be cited as the Alabama
22 Partnership Law.

23 §10A-8A-1.02. Definitions.

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

4 (1) "Business" includes every trade, occupation, and
5 profession for profit.

6 (2) "Disqualified person" means any person who is
7 not a qualified person.

8 (3) "Distribution" except as otherwise provided in
9 Section 10A-8A-4.09(f), means a transfer of money or other
10 property from a partnership to another person on account of a
11 transferable interest.

12 (4) "Foreign limited liability partnership" means a
13 foreign partnership whose partners have limited liability for
14 the debts, obligations, or other liabilities of the foreign
15 partnership under a provision similar to Section
16 10A-8A-3.06(c).

17 (5) "Foreign partnership" means a partnership
18 governed by the laws of a jurisdiction other than this state
19 which would be a partnership if governed by the laws of this
20 state. The term includes a foreign limited liability
21 partnership.

22 (6) "Limited liability partnership", except in the
23 phrase "foreign limited liability partnership", means a
24 partnership that has filed a statement of limited liability

1 partnership under Section 10A-8A-10.01, and does not have a
2 similar statement in effect in any other jurisdiction.

3 (7) "Not for profit activity" includes every
4 undertaking not for profit.

5 (8) "Partner" means a person that:

6 (A) has become a partner in a partnership under
7 Section 10A-8A-4.02 or was a partner in a partnership when the
8 partnership became subject to this chapter; and

9 (B) has not dissociated as a partner under Section
10 10A-8A-6.01.

11 (9) "Partnership" means an association of two or
12 more persons formed under Section 10A-8A-2.01, predecessor
13 statute, or comparable law of another jurisdiction or becomes
14 subject to the laws of this state pursuant to Section
15 10A-8A-1.06, to carry on any business or not for profit
16 activity, and includes, for all purposes of the laws of this
17 state, a limited liability partnership.

18 (10) "Partnership agreement" means any agreement
19 (whether referred to as a partnership agreement or otherwise),
20 written, oral or implied, of the partners as to the business
21 or not for profit activity of a partnership. The partnership
22 agreement includes any amendments to the partnership
23 agreement.

24 (11) "Partnership at will" means a partnership in
25 which the partners have not agreed to remain partners until

1 the expiration of a definite term or the completion of a
2 particular undertaking.

3 (12) "Person dissociated as a partner" means a
4 person dissociated as a partner of a partnership.

5 (13) "Qualified person," with respect to a
6 partnership rendering professional services in this state,
7 means a person authorized by this state or a regulatory
8 authority of this state to own a transferable interest in that
9 partnership.

10 (14) "Required information" means the information
11 that a partnership is required to maintain under Section
12 10A-8A-1.11.

13 (15) "Statement" means a statement of partnership
14 under Section 10A-8A-2.02, a statement of not for profit
15 partnership under Section 10A-8A-2.02, a statement of
16 authority under Section 10A-8A-3.03, a statement of denial
17 under Section 10A-8A-3.04, a statement of dissociation under
18 Section 10A-8A-7.04, a statement of dissolution under Section
19 10A-8A-8.02 or under Section 10A-8A-8.03, a certificate of
20 reinstatement under Section 10A-8A-8.11, a statement of
21 limited liability partnership under Section 10A-8A-10.01, a
22 statement of cancellation under Section 10A-8A-10.01, or any
23 other document required or permitted to be delivered to the
24 Secretary of State for filing under this chapter, or an
25 amendment or cancellation of any of the foregoing.

1 (16) "Transfer" means an assignment, conveyance,
2 deed, bill of sale, lease, mortgage, security interest,
3 encumbrance, gift, or transfer by operation of law.

4 (17) "Transferable interest" means a partner's right
5 to receive distributions from a partnership.

6 (18) "Transferee" means a person to which all or
7 part of a transferable interest has been transferred, whether
8 or not the transferor is a partner.

9 §10A-8A-1.03. Knowledge and notice.

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

11 (1) has actual knowledge of it; or

12 (2) is deemed to know it under law other than this
13 chapter.

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

15 (1) knows of it;

16 (2) receives notice of it;

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

19 (4) is deemed to have notice of the fact under
20 subsection (d).

21 (c) A person notifies or gives notice to another
22 person by taking steps reasonably required to inform the other
23 person in ordinary course, whether or not the other person
24 knows the fact.

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

3 (1) statement of partnership, 90 days after a
4 statement of partnership under Section 10A-8A-2.02 becomes
5 effective;

6 (2) statement of not for profit partnership, 90 days
7 after a statement of not for profit partnership under Section
8 10A-8A-2.02 becomes effective;

9 (3) statement of authority, with respect to

10 (i) authority not involving property and

11 (ii) property other than real property, 90 days
12 after a statement of authority under Section 10A-8A-3.03
13 becomes effective; and with respect to real property in
14 accordance with Section 10A-8A-3.03(g);

15 (4) statement of denial, with respect to property
16 other than real property, 90 days after a statement of denial
17 under Section 10A-8A-3.04 becomes effective;

18 (5) dissociation, 90 days after a statement of
19 dissociation under Section 10A-9A-7.04 becomes effective;

20 (6) dissolution, 90 days after a statement of
21 dissolution under Section 10A-9A-8.02 or Section 10A-9A-8.03
22 becomes effective;

23 (7) reinstatement, 90 days after a certificate of
24 reinstatement under Section 10A-9A-8.11 becomes effective;

1 (8) merger or conversion under Article 9 or under
2 Article 8 of Chapter 1, 90 days after the statement of merger
3 or conversion becomes effective;

4 (9) statement of limited liability partnership, 90
5 days after a statement of limited liability partnership under
6 Section 10A-8A-10.01 becomes effective; or

7 (10) statement of cancellation, 90 days after a
8 statement of cancellation under Section 10A-8A-10.01 becomes
9 effective.

10 (e) A partner's knowledge, notice, or receipt of
11 notice of a fact relating to the partnership is effective
12 immediately as knowledge of, notice to, or receipt of notice
13 by the partnership, except in the case of a fraud on the
14 partnership committed by or with the consent of that partner.

15 §10A-8A-1.04. Nature and purpose.

16 (a) A partnership is a separate legal entity. A
17 partnership's status for tax purposes shall not affect its
18 status as a separate legal entity formed under this chapter. A
19 partnership is the same entity regardless of whether the
20 partnership has a statement of limited liability partnership
21 under Section 10A-8A-10.01 stating that the partnership is a
22 limited liability partnership. A partner has no interest in
23 any specific property of a partnership.

1 (b) A partnership may carry on any lawful business
2 and may carry on any lawful not for profit activity if it
3 complies with Section 10A-8A-2.02(b).

4 §10A-8A-1.05. Powers; indemnification.

5 (a) A partnership shall possess and may exercise all
6 the powers and privileges granted and enumerated by Chapter 1
7 or by any other law or by its partnership agreement, together
8 with any powers incidental thereto, including those powers and
9 privileges necessary or convenient to the conduct, promotion,
10 or attainment of the business or not for profit activity of
11 the partnership and including the power to sue, be sued, and
12 defend in its own name and to maintain an action against a
13 partner for harm caused to the partnership by a breach of the
14 partnership agreement or violation of a duty to the
15 partnership.

16 (b) A partnership may indemnify and hold harmless a
17 partner or other person, pay in advance or reimburse expenses
18 incurred by a partner or other person, and purchase and
19 maintain insurance on behalf of a partner or other person.

20 §10A-8A-1.06. Governing law.

21 (a) Except as otherwise provided in subsections (b),
22 (c), and (d) of this section, the law of the jurisdiction in
23 which the partnership has its principal office governs the
24 partnership agreement and the relations among the partners and
25 between the partners and the partnership.

1 (b) The law of this state governs the (i) internal
2 affairs of a limited liability partnership, including the
3 relations among the partners and between the partners and the
4 partnership, (ii) the liability of a partner as a partner for
5 the debts, obligations, or other liabilities of a limited
6 liability partnership, and (iii) the authority of the partners
7 of a limited liability partnership.

8 (c) The law of the jurisdiction in which a foreign
9 limited liability partnership has filed its statement of
10 limited liability partnership or similar writing governs the
11 (i) internal affairs of that foreign limited liability
12 partnership, including the relations among the partners and
13 between the partners and the partnership, (ii) the liability
14 of a partner as a partner for the debts, obligations, or other
15 liabilities of a foreign limited liability partnership, and
16 (iii) the authority of the partners of a foreign limited
17 liability partnership.

18 (d) If (i) a partnership agreement provides for the
19 application of the laws of this state, and (ii) the
20 partnership delivers to the Secretary of State for filing a
21 statement of partnership in accordance with Section
22 10A-8A-2.02(a), a statement of not for profit partnership in
23 accordance with Section 10A-8A-2.02(b), or a statement of
24 limited liability partnership in accordance with Section

1 10A-8A-10.01, then the partnership agreement shall be governed
2 by and construed under the laws of this state.

3 §10A-8A-1.07. Supplemental principles of law; rate
4 of interest.

5 (a) It is the policy of this chapter and this state
6 to give maximum effect to the principles of freedom of
7 contract and to the enforceability of partnership agreements.

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

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

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

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

23 (f) Sections 7-9A-406 and 7-9A-408 of the Uniform
24 Commercial Code, and all successor statutes thereto, do not
25 apply to any interest in a partnership, including all rights,

1 powers, and interests arising under a partnership agreement or
2 this chapter. This provision prevails over Sections 7-9A-406
3 and 7-9A-408 of the Uniform Commercial Code, and all successor
4 statutes thereto, and is expressly intended to permit the
5 enforcement of the provisions of a partnership agreement that
6 would otherwise be ineffective under Sections 7-9A-406 and
7 7-9A-408 of the Uniform Commercial Code, and all successor
8 statutes thereto.

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

11 (h) The terms president, vice-president, secretary,
12 and treasurer as defined in Chapter 1 shall have no
13 application to this chapter.

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

16 §10A-8A-1.08. Effect of partnership agreement;
17 nonwaivable provisions.

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

20 (1) the partnership agreement governs relations
21 among the partners as partners and between the partners and
22 the partnership; and

23 (2) to the extent the partnership agreement does not
24 otherwise provide for a matter described in subsection (a)(1),
25 this chapter governs the matter.

1 (b) (1) To the extent that, at law or in equity, a
2 partner or other person has duties, including fiduciary
3 duties, to a partnership or to another partner or to another
4 person that is a party to or is otherwise bound by a
5 partnership agreement, the partner's or other person's duties
6 may be expanded or restricted or eliminated by provisions in a
7 written partnership agreement, but the implied contractual
8 covenant of good faith and fair dealing may not be eliminated.

9 (2) A written partnership agreement may provide for
10 the limitation or elimination of any and all liabilities for
11 breach of contract and breach of duties, including fiduciary
12 duties, of a partner or other person to a partnership or to
13 another partner or to another person that is a party to or is
14 otherwise bound by a partnership agreement, but a partnership
15 agreement may not limit or eliminate liability for any act or
16 omission that constitutes a bad faith violation of the implied
17 contractual covenant of good faith and fair dealing.

18 (3) A partner or other person shall not be liable to
19 a partnership or to another partner or to another person that
20 is a party to or is otherwise bound by a partnership agreement
21 for breach of fiduciary duty for the partner's or other
22 person's good faith reliance on the partnership agreement.

23 (4) A partnership agreement may provide that:

24 (A) a partner or transferee who fails to perform in
25 accordance with, or to comply with the terms and conditions

1 of, the partnership agreement shall be subject to specified
2 penalties or specified consequences; and

3 (B) at the time or upon the happening of events
4 specified in the partnership agreement, a partner or
5 transferee may be subject to specified penalties or specified
6 consequences.

7 (5) A penalty or consequence that may be specified
8 under paragraph (4) of this subsection may include and take
9 the form of reducing or eliminating the defaulting partner's
10 or transferee's proportionate transferable interest in a
11 partnership, subordinating the partner's or transferee's
12 transferable interest to that of non-defaulting partners or
13 transferees, forcing a sale of that transferable interest,
14 forfeiting the defaulting partner's or transferee's
15 transferable interest, the lending by other partners or
16 transferees of the amount necessary to meet the defaulting
17 partner's or transferee's commitment, a fixing of the value of
18 the defaulting partner's or transferee's transferable interest
19 by appraisal or by formula and redemption or sale of the
20 transferable interest at that value, or other penalty or
21 consequence.

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

25 (c) A partnership agreement may not:

1 (1) vary the nature of the partnership as a separate
2 legal entity under Section 10A-8A-1.04(a);

3 (2) vary a partnership's power under Section
4 10A-8A-1.05 to sue, be sued, and defend in its own name;

5 (3) vary the law applicable to a limited liability
6 partnership under Section 10A-8A-1.06;

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

9 (5) vary the requirements of Section 10A-8A-2.03;

10 (6) unreasonably restrict the right of access to
11 books and records under Section 10A-8A-4.10, but the
12 partnership agreement may impose reasonable restrictions on
13 the availability and use of information obtained under those
14 sections and may define appropriate remedies, including
15 liquidated damages, for a breach of any reasonable restriction
16 on use;

17 (7) eliminate the implied contractual covenant of
18 good faith and fair dealing as provided under Section
19 10A-8A-1.08(b) (1);

20 (8) eliminate or limit the liability of a partner or
21 other person for any act or omission that constitutes a bad
22 faith violation of the implied contractual covenant of good
23 faith and fair dealing as provided under Section
24 10A-8A-1.08(b) (2);

1 (9) waive the requirements of Section
2 10A-8A-4.04(e);

3 (10) reduce the limitations period specified under
4 Section 10A-8A-4.09(e) for an action commenced under other
5 applicable law;

6 (11) waive the prohibition on issuance of a
7 certificate of a transferable interest in bearer form under
8 Section 10A-8A-5.02(c);

9 (12) vary the power of a person to dissociate as a
10 partner under Section 10A-8A-6.02(a) except that the
11 partnership agreement may require that the notice under
12 Section 10A-8A-6.01(1) be in a writing or in a specific form
13 thereof;

14 (13) vary the right of a court to expel a partner in
15 the events specified in Section 10A-8A-6.01(5);

16 (14) vary the power of a court to decree dissolution
17 in the circumstances specified in Section 10A-8A-8.01(4) or
18 (5);

19 (15) vary the requirement to wind up the
20 partnership's business or not for profit activity as specified
21 in Section 10A-8A-8.01(4), (5), (6), or (7);

22 (16) vary the right of a partner to approve or
23 consent to the cancellation of a statement of limited
24 liability partnership as specified in Section 10A-8A-10.01(m);
25 or

1 (17) vary the rights of a partner under Section
2 10A-8A-9.10.

3 §10A-8A-1.09. Partnership agreement; effect on
4 partnership and persons admitted as partners.

5 (a) A partnership is bound by and may enforce the
6 partnership agreement, whether or not the partnership has
7 itself manifested assent to the partnership agreement.

8 (b) A person that is admitted as a partner of a
9 partnership becomes a party to and assents to the partnership
10 agreement except as provided in Section 10A-8A-5.02(g).

11 (c) Two or more persons intending to be the initial
12 partners of a partnership may make an agreement providing that
13 upon the formation of the partnership, the agreement will
14 become the partnership agreement.

15 §10A-8A-1.10. Partnership agreement; effect on third
16 parties and relationship to writings effective on behalf of
17 partnership.

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

1 (b) A partnership agreement may provide rights to
2 any person, including a person who is not a party to the
3 partnership agreement, to the extent set forth in the
4 partnership agreement.

5 (c) The obligations of a partnership and its
6 partners to a person in the person's capacity as a transferee
7 or dissociated partner are governed by the partnership
8 agreement. A transferee and a dissociated partner are bound by
9 the partnership agreement.

10 (d) If a writing that has been delivered by a
11 partnership for filing in accordance with Chapter 1 and has
12 become effective conflicts with a provision of the partnership
13 agreement:

14 (1) the partnership agreement prevails as to
15 partners, dissociated partners, and transferees; and

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

18 §10A-8A-1.11. Required information.

19 A partnership shall maintain the following
20 information:

21 (1) A current list of the full name and last known
22 street and mailing address of each partner, in alphabetical
23 order.

24 (2) Copies of any filed statement.

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

4 (4) Copies of the then effective partnership
5 agreement and any amendment thereto, in each case to the
6 extent made in a writing.

7 (5) Copies of any financial statement of the
8 partnership for the three most recent years.

9 (6) Unless contained in a partnership agreement made
10 in a writing, a writing stating:

11 (A) the amount of cash, and a description and
12 statement of the agreed value of the other benefits,
13 contributed and agreed to be contributed by each partner;

14 (B) the times at which, or events on the happening
15 of which, any additional contributions agreed to be made by
16 each partner are to be made; and

17 (C) any events upon the happening of which the
18 partnership is to be dissolved and its business or not for
19 profit activity wound up.

20 §10A-8A-1.12. Transactions of partner with
21 partnership.

22 A partner may lend money to and transact other
23 business or not for profit activity with the partnership and
24 has the same rights and obligations with respect to the loan
25 or other transaction as a person that is not a partner.

1 §10A-8A-1.13. Consent and proxies of partners.

2 Action requiring the consent of partners under this chapter
3 may be taken without a meeting, and a partner may appoint a
4 proxy to consent or otherwise act for the partner by signing a
5 writing of appointment, either personally or by the partner's
6 attorney in fact.

7 Article 2. Formation of Partnership; Property.

8 §10A-8A-2.01. Formation of partnership.

9 (a) Except as otherwise provided in subsection (b),
10 the association of two or more persons:

11 (i) to carry on as co-owners a business for profit
12 forms a partnership, whether or not the persons intend to form
13 a partnership; or

14 (ii) to carry on any not for profit activity, forms
15 a partnership when (A) the persons intend to form a
16 partnership and (B) the persons deliver to the Secretary of
17 State for filing a statement of not for profit partnership in
18 accordance with Section 10A-8A-2.02(b) setting forth their
19 intention to form a partnership to carry on a not for profit
20 activity.

21 (b) An association formed under a statute other than
22 this chapter, a predecessor statute, or a comparable statute
23 of another jurisdiction is not a partnership under this
24 chapter.

1 (c) In determining whether a partnership is formed
2 under Section 10A-8A-2.01(a)(i), the following rules apply:

3 (1) Joint tenancy, tenancy in common, tenancy by the
4 entireties, joint property, common property, or part ownership
5 does not by itself establish a partnership, even if the
6 co-owners share profits made by the use of the property.

7 (2) The sharing of gross returns does not by itself
8 establish a partnership, even if the persons sharing them have
9 a joint or common right or interest in property from which the
10 returns are derived.

11 (3) A person who receives a share of the profits of
12 a business is presumed to be a partner in the business, unless
13 the profits were received in payment:

14 (i) of a debt by installments or otherwise;

15 (ii) for services as an independent contractor or of
16 wages or other compensation to an employee;

17 (iii) of rent;

18 (iv) of an annuity or other retirement or health
19 benefit to a beneficiary, representative, or designee of a
20 deceased or retired partner;

21 (v) of interest or other charge on a loan, even if
22 the amount of payment varies with the profits of the business,
23 including a direct or indirect present or future ownership of
24 the collateral, or rights to income, proceeds, or increase in
25 value derived from the collateral; or

1 (vi) for the sale of the goodwill of a business or
2 other property by installments or otherwise.

3 §10A-8A-2.02. Statement of partnership; statement of
4 not for profit partnership.

5 (a) A partnership other than a partnership that has
6 an effective statement of not for profit partnership or an
7 effective statement of limited liability partnership on file
8 with the Secretary of State may deliver to the Secretary of
9 State for filing a statement of partnership for the purpose of
10 having its partnership agreement governed by the laws of this
11 state in accordance with Section 10A-8A-1.06(d) and providing
12 notice of its existence in accordance with Section
13 10A-8A-1.03(d) (1). A statement of partnership must contain all
14 of the following:

15 (1) the name of the partnership which name must
16 comply with Article 5 of Chapter 1;

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

19 (3) the street and mailing address of its principal
20 office;

21 (4) the street and mailing address of a registered
22 office and the name of the registered agent at that office for
23 service of process in this state which the partnership shall
24 be required to maintain;

1 (5) a statement that the partnership was formed for
2 the purpose of carrying out a for profit business;

3 (6) a statement that the partnership has two or more
4 partners; and

5 (7) a statement that the partnership agreement is
6 governed by the laws of this state, and if the partnership
7 agreement is a written partnership agreement, a declaration
8 that the written partnership agreement has a provision stating
9 that the partnership agreement is governed by the laws of this
10 state.

11 (b) A partnership other than a partnership that has
12 an effective statement of partnership or an effective
13 statement of limited liability partnership on file with the
14 Secretary of State may deliver to the Secretary of State for
15 filing a statement of not for profit partnership for the
16 purpose of setting forth the partners' intention to form a
17 partnership to carry on a not for profit activity in
18 accordance with Section 10A-8A-2.01(a)(ii), having its
19 partnership agreement governed by the laws of this state in
20 accordance with Section 10A-8A-1.06(d), and providing notice
21 of its existence in accordance with Section 10A-8A-1.03(d)(2).
22 A statement of not for profit partnership must contain all of
23 the following:

24 (1) the name of the partnership which name must
25 comply with Article 5 of Chapter 1;

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

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

5 (4) the street and mailing address of a registered
6 office and the name of the registered agent at that office for
7 service of process in this state which the partnership shall
8 be required to maintain;

9 (5) a statement that the partnership was formed for
10 the purpose of carrying out a not for profit activity in
11 accordance with Section 10A-8A-2.01(a)(ii);

12 (6) a statement that the partnership has two or more
13 partners; and

14 (7) a statement that the partnership agreement is
15 governed by the laws of this state, and if the partnership
16 agreement is a written partnership agreement, a declaration
17 that the written partnership agreement has a provision stating
18 that the partnership agreement is governed by the laws of this
19 state.

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

23 (d) A statement of partnership and a statement of
24 not for profit partnership shall be executed by two or more

1 partners authorized to execute the statement of partnership or
2 statement of not for profit partnership.

3 (e) A statement of partnership and a statement of
4 not for profit partnership shall be accompanied by a fee for
5 the Secretary of State in the amount prescribed by Section
6 10A-1-4.31.

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

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

13 (h) A partnership that has filed a statement of
14 partnership is for all purposes the same entity that existed
15 before the statement of partnership was filed and continues to
16 be a partnership under the laws of this state.

17 (i) A statement of partnership and a statement of
18 not for profit partnership are filing instruments for the
19 purposes of Chapter 1.

20 §10A-8A-2.03. Execution, filing, and recording of
21 statements.

22 (a) A statement may be delivered to the Secretary of
23 State for filing. A certified copy of a statement of authority
24 that was filed by the Secretary of State may be delivered to a
25 judge of probate for filing in accordance with Section

1 10A-8A-3.03(f) and (g). A certified copy of a statement that
2 is filed in an office in another jurisdiction may be delivered
3 to the Secretary of State for filing, and once filed by the
4 Secretary of State, in the case of a statement of authority
5 which is intended to have a similar effect to that of a
6 statement of authority under Section 10A-8A-3.03(f) or (g),
7 may be delivered to the judge of probate for filing in
8 accordance with Section 10A-8A-3.03(f) or (g). Either filing
9 has the effect provided in this chapter with respect to
10 partnership property located in or transactions that occur in
11 this state.

12 (b) A certified copy of statement of authority filed
13 in the office of the Secretary of State and delivered to the
14 judge of probate for filing in the county or counties in which
15 the partnership has real property, without more, shall have
16 the effect of a recorded statement under this chapter with
17 respect to real property located in that county or those
18 counties. Any statement of authority recorded under the
19 preceding sentence that is not a certified copy of a statement
20 of authority filed in the office of the Secretary of State
21 does not have the effect provided for recorded statements of
22 authority in this chapter.

23 (c) Except as specifically provided otherwise in
24 this chapter, a statement filed by a partnership must be
25 executed by at least two partners. Other statements must be

1 executed by a partner or other person authorized by this
2 chapter. An individual who executes a statement as, or on
3 behalf of, a partner or other person named as a partner in a
4 statement shall personally declare under penalty of perjury
5 that the contents of the statement are accurate.

6 (d) Except as specifically provided otherwise in
7 this chapter, a person authorized by this chapter to file a
8 statement may amend or cancel the statement by filing an
9 amendment or cancellation that names the partnership,
10 identifies the statement, and states the substance of the
11 amendment or cancellation.

12 (e) A person who files a statement pursuant to this
13 section shall promptly send a copy of the statement to every
14 partner and to any other person named in the statement.
15 Failure to send a copy of a statement to a partner or other
16 person does not limit the effectiveness of the statement as to
17 a person not a partner.

18 (f) The Secretary of State may collect a fee for
19 filing or providing a certified copy of a statement in the
20 amount prescribed in Section 10A-1-4.31. The office of the
21 judge of probate may collect a fee for recording a certified
22 copy of statement in the amount prescribed in Section
23 10A-1-4.31.

1 (g) Each statement permitted or required under this
2 chapter to be delivered for filing to the Secretary of State
3 or judge of probate is a filing instrument.

4 §10A-8A-2.04. Partnership property. Property
5 acquired by a partnership is property of the partnership and
6 not of the partners individually.

7 §10A-8A-2.05. When property is partnership property.

8 (a) Property is partnership property if acquired in
9 the name of:

10 (1) the partnership; or

11 (2) one or more partners with an indication in the
12 instrument transferring title to the property of the person's
13 capacity as a partner or of the existence of a partnership but
14 without an indication of the name of the partnership.

15 (b) Property is acquired in the name of the
16 partnership by a transfer to:

17 (1) the partnership in its name; or

18 (2) one or more partners in their capacity as
19 partners in the partnership, if the name of the partnership is
20 indicated in the instrument transferring title to the
21 property.

22 (c) Property is presumed to be partnership property
23 if purchased with partnership assets, even if not acquired in
24 the name of the partnership or of one or more partners with an
25 indication in the instrument transferring title to the

1 property of the person's capacity as a partner or of the
2 existence of a partnership.

3 (d) Property acquired in the name of one or more of
4 the partners, without an indication in the instrument
5 transferring title to the property of the person's capacity as
6 a partner or of the existence of a partnership and without use
7 of partnership assets, is presumed to be separate property,
8 even if used for partnership purposes.

9 Article 3. Relations of Partners to Persons Dealing
10 with Partnership.

11 §10A-8A-3.01. Partner agent of partnership.

12 Subject to the effect of a statement of authority
13 under Section 10A-8A-3.03:

14 (1) Each partner is an agent of the partnership for
15 the purpose of its business or not for profit activity. An act
16 of a partner, including the execution of an instrument in the
17 partnership name, for apparently carrying on in the ordinary
18 course the partnership business or not for profit activity, or
19 business or not for profit activity of the kind carried on by
20 the partnership, binds the partnership, unless the partner had
21 no authority to act for the partnership in the particular
22 matter and the person with whom the partner was dealing knew
23 or had notice that the partner lacked authority.

24 (2) An act of a partner which is not apparently for
25 carrying on in the ordinary course the partnership business or

1 not for profit activity, or business or not for profit
2 activity of the kind carried on by the partnership, binds the
3 partnership only if the act was authorized by the other
4 partners.

5 §10A-8A-3.02. Transfer of partnership property.

6 (a) Partnership property may be transferred as
7 follows:

8 (1) Subject to the effect of a statement of
9 authority under Section 10A-8A-3.03, partnership property held
10 in the name of the partnership may be transferred by an
11 instrument of transfer executed by a partner in the
12 partnership name.

13 (2) Partnership property held in the name of one or
14 more partners with an indication in the instrument
15 transferring the property to them of their capacity as
16 partners or of the existence of a partnership, but without an
17 indication of the name of the partnership, may be transferred
18 by an instrument of transfer executed by the persons in whose
19 name the property is held.

20 (3) Partnership property held in the name of one or
21 more persons other than the partnership, without an indication
22 in the instrument transferring the property to them of their
23 capacity as partners or of the existence of a partnership, may
24 be transferred by an instrument of transfer executed by the
25 persons in whose name the property is held.

1 (b) A partnership may recover partnership property
2 from a transferee only if it proves that execution of the
3 instrument of initial transfer did not bind the partnership
4 under Section 10A-8A-3.01 and:

5 (1) as to a subsequent transferee who gave value for
6 property transferred under subsections (a)(1) and (2), proves
7 that the subsequent transferee knew or had received notice
8 that the person who executed the instrument of initial
9 transfer lacked authority to bind the partnership; or

10 (2) as to a transferee who gave value for property
11 transferred under subsection (a)(3), proves that the
12 transferee knew or had notice that the property was
13 partnership property and that the person who executed the
14 instrument of initial transfer lacked authority to bind the
15 partnership.

16 (c) A partnership may not recover partnership
17 property from a subsequent transferee if the partnership would
18 not have been entitled to recover the property, under
19 subsection (b), from any earlier transferee of the property.

20 §10A-8A-3.03. Statement of Authority.

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

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

24 (A) if the partnership has not filed a statement of
25 partnership, a statement of not for profit partnership, or a

1 statement of limited liability partnership, (i) the street and
2 mailing addresses of its principal office and (ii) if the
3 Secretary of State has assigned a unique identifying number or
4 other designation to the partnership, that number or
5 designation; or

6 (B) if the partnership has filed a statement of
7 partnership, a statement of not for profit partnership, or a
8 statement of limited liability partnership, (i) the street
9 address and mailing address of its principal office, (ii) the
10 name, street address, and mailing address of its registered
11 agent, and (iii) the unique identifying number or other
12 designation assigned to the partnership by the Secretary of
13 State.

14 (2) with respect to any position that exists in or
15 with respect to the partnership, may state the authority, or
16 limitations on the authority, of all persons holding the
17 position to:

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

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

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

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

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

3 (b) To amend or cancel a statement of authority
4 filed by the Secretary of State, a partnership must deliver to
5 the Secretary of State for filing an amendment or cancellation
6 stating:

7 (1) the name of the partnership;

8 (2) if the partnership has not filed a statement of
9 partnership, a statement of not for profit partnership, or a
10 statement of limited liability partnership, the street and
11 mailing addresses of the partnership's principal office;

12 (3) if the partnership has filed a statement of
13 partnership, a statement of not for profit partnership, or a
14 statement of limited liability partnership, the name and
15 street and mailing addresses of its registered agent;

16 (4) the date the statement of authority being
17 affected became effective; and

18 (5) the contents of the amendment or a declaration
19 that the statement of authority is canceled.

20 (c) A statement of authority affects only the power
21 of a person to bind a partnership to persons that are not
22 partners.

23 (d) Subject to subsection (c) and Section
24 10A-8A-1.03(d) (3) and except as otherwise provided in
25 subsections (f), (g), and (h), a limitation on the authority

1 of a person or a position contained in an effective statement
 2 of authority is not by itself evidence of any person's
 3 knowledge or notice of the limitation.

4 (e) Subject to subsection (c), a grant of authority
 5 not pertaining to transfers of real property and contained in
 6 an effective statement of authority is conclusive in favor of
 7 a person that gives value in reliance on the grant, except to
 8 the extent that when the person gives value:

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

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

12 (3) a limitation on the grant is contained in
 13 another statement of authority that became effective after the
 14 statement of authority containing the grant became effective.

15 (f) Subject to subsection (c), an effective
 16 statement of authority that grants authority to transfer real
 17 property held in the name of the partnership, a certified copy
 18 of which statement of authority is recorded in the office of
 19 the judge of probate in the county in which the real property
 20 is located, is conclusive in favor of a person that gives
 21 value in reliance on the grant without knowledge to the
 22 contrary, except to the extent that when the person gives
 23 value:

24 (1) the statement of authority has been canceled or
 25 restrictively amended under subsection (b), and a certified

1 copy of the cancellation or restrictive amendment has been
2 recorded in the office of the judge of probate in the county
3 in which the real property is located; or

4 (2) a limitation on the grant is contained in
5 another statement of authority that became effective after the
6 statement of authority containing the grant became effective,
7 and a certified copy of the later-effective statement is
8 recorded in the office of the judge of probate in the county
9 in which the real property is located.

10 (g) Subject to subsection (c), if a certified copy
11 of an effective statement of authority containing a limitation
12 on the authority to transfer real property held in the name of
13 a partnership is recorded in the office of the judge of
14 probate in the county in which the real property is located,
15 all persons are deemed to know of the limitation with respect
16 to the real property located in that county.

17 (h) Subject to subsection (i), an effective
18 statement of dissolution is a cancellation of any filed
19 statement of authority for the purposes of subsection (f) and
20 is a limitation on authority for purposes of subsection (g).

21 (i) After a statement of dissolution becomes
22 effective, a partnership may deliver to the Secretary of State
23 for filing and, if appropriate, may record a statement of
24 authority that is designated as a post-dissolution statement

1 of authority. The statement operates as provided in
2 subsections (f) and (g).

3 (j) Unless canceled earlier, an effective statement
4 of authority is canceled by operation of law five years after
5 the date on which the statement, or its most recent amendment,
6 becomes effective. The cancellation is effective without
7 recording under subsection (f) or (g).

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

11 §10A-8A-3.04. Statement of denial.

12 A person named in a filed statement of authority
13 granting that person authority may deliver to the Secretary of
14 State for filing a statement of denial that:

15 (1) provides the name of the partnership and the
16 caption of the statement of authority to which the statement
17 of denial pertains; and

18 (2) denies the grant of authority.

19 A statement of denial is a limitation on authority
20 as provided in Section 10A-8A-3.03.

21 §10A-8A-3.05. Partnership liable for partner's
22 actionable conduct.

23 (a) A partnership is liable for loss or injury
24 caused to a person, or for a penalty incurred, as a result of
25 a wrongful act or omission, or other actionable conduct, of a

1 partner acting in the ordinary course of business or not for
2 profit activity of the partnership or with authority of the
3 partnership.

4 (b) If, in the ordinary course of business or not
5 for profit activity of the partnership's business or not for
6 profit activity, or while acting with authority of the
7 partnership, a partner receives or causes the partnership to
8 receive money or property of a person not a partner, and the
9 money or property is misapplied by a partner, the partnership
10 is liable for the loss.

11 §10A-8A-3.06. Partner's liability.

12 (a) Except as otherwise provided in subsection (b)
13 or subsection (c), all partners are liable jointly and
14 severally for all obligations of the partnership unless
15 otherwise agreed by the claimant or provided by law.

16 (b) A person admitted as a partner into an existing
17 partnership is not personally liable for any partnership
18 obligation incurred before the person's admission as a
19 partner.

20 (c) Except as set forth in subsection (b) of Section
21 10A-8A-10.02, a debt, obligation, or other liability of a
22 partnership incurred while the partnership is a limited
23 liability partnership is solely the debt, obligation, or other
24 liability of the limited liability partnership. Except as set
25 forth in subsection (b) of Section 10A-8A-10.02, a partner in

1 a limited liability partnership is not personally liable or
2 accountable, directly or indirectly, including by way of
3 indemnification, contribution, assessment, or otherwise, for
4 debts, obligations, and liabilities of, or chargeable to, the
5 limited liability partnership, or another partner or partners,
6 whether arising in tort, contract, or otherwise, solely by
7 reason of being such a partner or acting, or omitting to act,
8 in such capacity, which such debts, obligations and
9 liabilities occur, are incurred or are assumed while the
10 partnership is a limited liability partnership. This
11 subsection applies (1) despite anything inconsistent in the
12 partnership agreement that existed immediately before the
13 partnership becomes a limited liability partnership, and (2)
14 regardless of the dissolution of the limited liability
15 partnership.

16 (d) Subsection (c) of this section shall not affect
17 the liability of a limited liability partnership to the extent
18 of partnership assets for partnership debts, obligations and
19 liabilities.

20 (e) A partner in a limited liability partnership is
21 not a necessary or proper party to a proceeding by or against
22 a limited liability partnership, the object of which is to
23 recover any debts, obligations, or liabilities of, or
24 chargeable to, the limited liability partnership, unless the

1 partner is personally liable therefor under subsection (b) of
2 Section 10A-8A-10.02.

3 §10A-8A-3.07. Actions by and against partnership and
4 partners.

5 (a) A partnership may sue and be sued in the name of
6 the partnership.

7 (b) An action may be brought against the partnership
8 and, except as provided in Section 10A-8A-3.06, against any or
9 all of the partners in the same action or in separate actions.

10 (c) A judgment against a partnership is not by
11 itself a judgment against a partner. A judgment against a
12 partnership may not be satisfied from a partner's assets
13 unless there is also a judgment against the partner.

14 (d) A judgment creditor of a partner may not levy
15 execution against the assets of the partner to satisfy a
16 judgment based on a claim against the partnership unless the
17 claim is for a debt, obligation, or liability for which the
18 partner is personally liable as provided in Section
19 10A-8A-3.06 and either:

20 (1) a judgment based on the same claim has been
21 obtained against the partnership and a writ of execution on
22 the judgment has been returned unsatisfied in whole or in
23 part;

24 (2) the partnership is a debtor in bankruptcy;

1 (3) the partner has agreed that the creditor need
2 not exhaust partnership assets;

3 (4) a court grants permission to the judgment
4 creditor to levy execution against the assets of a partner
5 based on a finding that partnership assets subject to
6 execution are clearly insufficient to satisfy the judgment,
7 that exhaustion of partnership assets is excessively
8 burdensome, or that the grant of permission is an appropriate
9 exercise of the court's equitable powers; or

10 (5) liability is imposed on the partner by law or
11 contract independent of the existence of the partnership.

12 (e) This section applies to any partnership
13 liability or obligation resulting from a representation by a
14 partner or purported partner under Section 10A-8A-3.08.

15 §10A-8A-3.08. Liability of purported partner.

16 Except as provided in Section 10A-8A-3.06:

17 (a) If a person, by words or conduct, purports to be
18 a partner, or consents to being represented by another as a
19 partner, in a partnership or with one or more persons not
20 partners, the purported partner is liable to a person to whom
21 the representation is made, if that person, relying on the
22 representation, enters into a transaction with the actual or
23 purported partnership. If the representation, either by the
24 purported partner or by a person with the purported partner's
25 consent, is made in a public manner, the purported partner is

1 liable to a person who relies upon the purported partnership
2 even if the purported partner is not aware of being held out
3 as a partner to the claimant. If partnership liability
4 results, the purported partner is liable with respect to that
5 liability as if the purported partner were a partner. If no
6 partnership liability results, the purported partner is liable
7 with respect to that liability jointly and severally with any
8 other person consenting to the representation.

9 (b) If a person is thus represented to be a partner
10 in an existing partnership, or with one or more persons not
11 partners, the purported partner is an agent of persons
12 consenting to the representation to bind them to the same
13 extent and in the same manner as if the purported partner were
14 a partner, with respect to persons who enter into transactions
15 in reliance upon the representation. If all of the partners of
16 the existing partnership consent to the representation, a
17 partnership act or obligation results. If fewer than all of
18 the partners of the existing partnership consent to the
19 representation, the person acting and the partners consenting
20 to the representation are jointly and severally liable.

21 (c) A person is not liable as a partner merely
22 because the person is named by another in a statement of
23 authority.

24 (d) A person does not continue to be liable as a
25 partner merely because of a failure to file a statement of

1 dissociation or to amend a statement of authority to indicate
2 the partner's dissociation from the partnership.

3 (e) Except as otherwise provided in subsections (a)
4 and (b), persons who are not partners as to each other are not
5 liable as partners to other persons.

6 Article 4. Relations of Partners to Each Other and
7 to Partnership.

8 §10A-8A-4.01. Partner's rights and duties.

9 (a) Each partner is deemed to have an account that
10 is:

11 (1) credited with an amount equal to the money plus
12 the value of any other property, net of the amount of any
13 liabilities, the partner contributes to the partnership and
14 the partner's share of the partnership profits; and

15 (2) charged with an amount equal to the money plus
16 the value of any other property, net of the amount of any
17 liabilities, distributed by the partnership to the partner and
18 the partner's share of the partnership losses provided that a
19 partner shall not be charged with any share of partnership
20 loss attributable to a debt, obligation or liability for which
21 the partner is not personally liable under Section 10A-8A-3.06
22 unless the loss is satisfied out of partnership assets.

23 (b) Each partner is entitled to an equal share of
24 the partnership profits and, subject to the limitations in
25 subsection (a) (2) of this section, is chargeable with a share

1 of the partnership losses in proportion to the partner's share
2 of the profits.

3 (c) A partnership shall reimburse a partner for
4 payments made and indemnify a partner for liabilities incurred
5 by the partner in the ordinary course of the business or not
6 for profit activity of the partnership or for the preservation
7 of its business or not for profit activity or property;
8 provided, however, no partner in a limited liability
9 partnership shall be required as a consequence of the
10 indemnification to make any payment on behalf of the limited
11 liability partnership to any other partners to the extent that
12 the payment would be inconsistent with Sections 10A-8A-3.06,
13 10A-8A-8.06, or 10A-8A-8.07.

14 (d) A partnership shall reimburse a partner for an
15 advance beyond the amount of capital the partner agreed to
16 contribute.

17 (e) A payment or advance made by a partner which
18 gives rise to a partnership obligation under subsection (c) or
19 (d) constitutes a loan to the partnership which accrues
20 interest from the date of the payment or advance.

21 (f) Each partner has equal rights in the management
22 and conduct of the partnership business or not for profit
23 activity.

24 (g) A partner may use or possess partnership
25 property only on behalf of the partnership.

1 (h) A partner is not entitled to remuneration for
2 services performed for the partnership, except for reasonable
3 compensation for services rendered in winding up the business
4 or not for profit activity of the partnership.

5 (i) A difference arising as to a matter in the
6 ordinary course of business or not for profit activity of a
7 partnership may be decided by a majority of the partners. An
8 act outside the ordinary course of business or not for profit
9 activity of a partnership and an amendment to the partnership
10 agreement may be undertaken only with the consent of all of
11 the partners.

12 (j) This section does not affect the obligations of
13 a partnership to other persons under Section 10A-8A-3.01.

14 §10A-8A-4.02. Admission of partner.

15 (a) The initial partners of a partnership are
16 admitted as partners upon the formation of the partnership.

17 (b) After formation, a person is admitted as a
18 partner of the partnership:

19 (1) as provided in the partnership agreement;

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

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

23 (4) as provided in Section 10A-8A-8.01(6) or
24 10A-8A-8.01(7).

1 (c) Each person to be admitted as a partner to a
2 partnership formed under either Section 10A-8A-2.01(a) (i) or
3 10A-8A-2.01(a) (ii) may be admitted as a partner without:

4 (1) acquiring a transferable interest; or

5 (2) making or being obligated to make a contribution
6 to the partnership.

7 §10A-8A-4.03. Form of contribution. A contribution
8 by a partner may be made to a partnership as agreed by the
9 partners.

10 §10A-8A-4.04. Liability for contribution.

11 (a) A partner's obligation to make a contribution to
12 a partnership is not excused by the partner's death,
13 disability, or other inability to perform personally.

14 (b) If a partner does not make a contribution
15 required by an enforceable promise, the partner or the
16 partner's estate is obligated, at the election of the
17 partnership, to contribute money equal to the value of the
18 portion of the contribution that has not been made. The
19 foregoing election shall be in addition to, and not in lieu
20 of, any other rights, including the right to specific
21 performance, that the partnership may have under the
22 partnership agreement or applicable law.

23 (c) The obligation of a partner to make a
24 contribution to a partnership may be compromised only by
25 consent of all partners. A conditional obligation of a partner

1 to make a contribution to a partnership may not be enforced
2 unless the conditions of the obligation have been satisfied or
3 waived as to or by that partner. Conditional obligations
4 include contributions payable upon a discretionary call of a
5 partnership before the time the call occurs.

6 (d) A creditor of a limited liability partnership
7 which extends credit or otherwise acts in reliance on an
8 obligation described in subsection (a), without notice of any
9 compromise under this subsection, may enforce the original
10 obligation.

11 (e) A promise by a partner to make a contribution to
12 a partnership is not enforceable unless set forth in a writing
13 signed by the partner.

14 §10A-8A-4.05. Sharing of distributions before
15 dissolution. All partners shall share equally in any
16 distributions made by a partnership before its dissolution and
17 winding up.

18 §10A-8A-4.06. Interim distributions. Subject to
19 Section 10A-8A-7.01, a partner has a right to a distribution
20 before the dissolution and winding up of a partnership as
21 provided in the partnership agreement. A decision to make a
22 distribution before the dissolution and winding up of the
23 partnership is a decision in the ordinary course of the
24 business or not for profit activity of the partnership.

1 §10A-8A-4.07. Distribution in kind. A partner does
2 not have a right to demand and receive a distribution from a
3 partnership in any form other than money. Except as otherwise
4 provided in Section 10A-8A-8.07, a partnership may distribute
5 an asset in kind if each partner receives a percentage of the
6 asset in proportion to the partner's share of distributions.

7 §10A-8A-4.08. Right to distribution. If a partner
8 becomes entitled to receive a distribution, the partner has
9 the status of, and is entitled to all remedies available to, a
10 creditor of the partnership with respect to the distribution.
11 However, the partnership's obligation to make a distribution
12 is subject to offset for any amount owed to the partnership by
13 the partner or dissociated partner on whose account the
14 distribution is made.

15 §10A-8A-4.09. Limitations on distribution and
16 liability for improper distributions.

17 (a) A limited liability partnership shall not make a
18 distribution to a partner to the extent that at the time of
19 the distribution, after giving effect to the distribution, all
20 liabilities of the limited liability partnership, other than
21 liabilities to partners on account of their transferable
22 interests and liabilities for which the recourse of creditors
23 is limited to specific property of the limited liability
24 partnership, exceed the fair value of the assets of the
25 limited liability partnership, except that the fair value of

1 the property that is subject to a liability for which recourse
2 of creditors is limited shall be included in the assets of the
3 limited liability partnership only to the extent that the fair
4 value of the property exceeds that liability.

5 (b) A partner who consents to a distribution in
6 violation of subsection (a) or the partnership agreement, and
7 who knew at the time of the distribution that the distribution
8 violated subsection (a) or the partnership agreement, shall be
9 liable to the limited liability partnership for the amount of
10 that distribution.

11 (c) A partner who receives a distribution in
12 violation of subsection (a) or the partnership agreement, and
13 who knew at the time of the distribution that the distribution
14 violated subsection (a) or the partnership agreement, shall be
15 liable to the limited liability partnership for the amount of
16 the distribution received by that partner. A partner who
17 receives a distribution in violation of subsection (a) or the
18 partnership agreement, and who did not know at the time of the
19 distribution that the distribution violated subsection (a) or
20 the partnership agreement, shall not be liable for the amount
21 of the distribution received by that partner.

22 (d) Except as provided in subsection (e), this
23 section shall not affect any obligation or liability of a
24 partner under other applicable law for the amount of a
25 distribution.

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

4 (f) For purposes of subsection (a), "distribution"
5 does not include amounts constituting reasonable compensation
6 for present or past services or reasonable payments made in
7 the ordinary course of the limited liability partnership's
8 business or not for profit activity under a bona fide
9 retirement plan or other benefits program.

10 (g) This section shall not apply to distributions
11 made in accordance with Section 10A-8A-8.09.

12 §10A-8A-4.10. Right of partner and former partner to
13 information.

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

15 (a) Subject to subsection (f), a partner, without
16 having any particular purpose for seeking the information, may
17 inspect and copy during regular hours at a reasonable location
18 specified by the partnership, required information and any
19 other records maintained by the partnership regarding the
20 partnership's business or not for profit activity and
21 financial condition.

22 (b) Subject to subsection (f), each partner and the
23 partnership shall furnish to a partner:

24 (1) without demand, any information concerning the
25 partnership's business or not for profit activity reasonably

1 required for the proper exercise of the partner's rights and
2 duties under the partnership agreement or this chapter; and

3 (2) on demand, any other information concerning the
4 partnership's business or not for profit activity, except to
5 the extent the demand or the information demanded is
6 unreasonable or otherwise improper under the circumstances.

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

12 (1) the information or writing pertains to the
13 period during which the person was a partner;

14 (2) the person seeks the information or record in
15 good faith; and

16 (3) it is determined that:

17 (i) the person seeks the information for a purpose
18 reasonably related to the person's interest as a partner;

19 (ii) the person's demand describes with reasonable
20 particularity the information sought and the purpose for
21 seeking the information; and

22 (iii) the information sought is directly connected
23 to the person's purpose.

1 (d) Within 10 days after receiving a demand pursuant
2 to subsection (c), the partnership in a writing shall inform
3 the person that made the demand:

4 (1) what information the partnership will provide in
5 response to the demand;

6 (2) when and where the partnership will provide the
7 information;

8 (3) if the partnership declines to provide any
9 demanded information, the partnership's reasons for declining;
10 and

11 (4) what, if any, restrictions will be imposed
12 pursuant to the partnership agreement or subsection (f).

13 (e) If a partner dies, Section 10A-8A-5.04 applies.

14 (f) In addition to any restriction or condition
15 stated in its partnership agreement, a partnership, as to a
16 matter within the ordinary course of its business or not for
17 profit activity, may:

18 (1) impose reasonable restrictions and conditions on
19 access to and use of information to be furnished under this
20 section, including designating information confidential and
21 imposing nondisclosure and safeguarding obligations on the
22 recipient; and

23 (2) keep confidential from the partners and any
24 other person, for such period of time as the partnership deems
25 reasonable, any information that the partnership reasonably

1 believes to be in the nature of trade secrets or other
2 information the disclosure of which the partnership in good
3 faith believes is not in the best interest of the partnership
4 or could damage the partnership or its business or not for
5 profit activity, or that the partnership is required by law or
6 by agreement with a third party to keep confidential.

7 In any dispute concerning the reasonableness of a
8 restriction under this subsection, the partnership has the
9 burden of proving reasonableness.

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

13 (h) A partner or person dissociated as a partner may
14 exercise the rights under this section through an attorney or
15 other agent. Any restriction imposed under subsection (f) or
16 by the partnership agreement applies both to the attorney or
17 other agent and to the partner or person dissociated as a
18 partner.

19 (i) The rights under this section do not extend to a
20 person as transferee, but the rights under subsection (c) of a
21 person dissociated as a partner may be exercised by the legal
22 representative of an individual who dissociated as a partner
23 under Section 10A-8A-6.01(6).

24 (j) Any partner who, without reasonable cause,
25 refuses to allow any partner or person dissociated as a

1 partner, or his or her agent or attorney to inspect or copy
2 any records of the partnership to which such partner or person
3 dissociated as a partner is entitled under this section, shall
4 be personally liable to the partner or person dissociated as a
5 partner for a penalty in an amount not to exceed 10 percent of
6 the fair market value of the transferable interest of the
7 partner or person dissociated as a partner, in addition to any
8 other damages or remedy.

9 §10A-8A-4.11. General standards of partner's
10 conduct.

11 (a) The duties that a partner has to the partnership
12 and to the other partners include the duty of loyalty and the
13 duty of care as described in subsections (b) and (c).

14 (b) A partner's duty of loyalty to the partnership
15 and to the other partners includes each of the following:

16 (1) to account to the partnership and to hold as
17 trustee for it any property, profit, or benefit derived by the
18 partner in the conduct or winding up of the partnership's
19 business or not for profit activity or derived from a use by
20 the partner of partnership property, including the
21 appropriation of a partnership opportunity;

22 (2) to refrain from dealing with the partnership in
23 the conduct or winding up of the partnership's business or not
24 for profit activity as or on behalf of a party having an
25 interest adverse to the partnership; and

1 (3) to refrain from competing with the partnership
2 in the conduct or winding up of the partnership's business or
3 not for profit activity.

4 (c) A partner's duty of care to the partnership and
5 to the other partners in the conduct or winding up of the
6 partnership's business or not for profit activity includes
7 refraining from engaging in grossly negligent or reckless
8 conduct, intentional misconduct, or a knowing violation of
9 law.

10 (d) A partner shall discharge the duties to the
11 partnership and to the other partners under this chapter and
12 under the partnership agreement and exercise any rights
13 consistently with the implied contractual covenant of good
14 faith and fair dealing.

15 (e) A partner does not violate a duty or obligation
16 under this chapter or under the partnership agreement merely
17 because the partner's conduct furthers the partner's own
18 interest.

19 §10A-8A-4.12. Reliance on reports and information. A
20 partner of a partnership shall be fully protected in relying
21 in good faith upon the records of the partnership and upon
22 information, opinions, reports, or statements presented by
23 another partner or agent of the partnership, or by any other
24 person as to matters the partner reasonably believes are
25 within that other person's professional or expert competence,

1 including information, opinions, reports, or statements as to
2 the value and amount of the assets, liabilities, profits, or
3 losses of the partnership, or the value and amount of assets
4 or reserves or contracts, agreements, or other undertakings
5 that would be sufficient to pay claims and obligations of the
6 partnership, or to make reasonable provision to pay those
7 claims and obligations, or any other facts pertinent to the
8 existence and amount of assets from which distributions to
9 partners or creditors might properly be paid.

10 §10A-8A-4.13. Actions by partnership and partners.

11 (a) Except as provided in Sections 10A-8A-3.06,
12 10A-8A-8.06, or 10A-8A-8.07, a partnership may maintain an
13 action against a partner for a breach of the partnership
14 agreement, or for the violation of a duty to the partnership,
15 causing harm to the partnership.

16 (b) Except as provided in Sections 10A-8A-3.06,
17 10A-8A-8.06, or 10A-8A-8.07, a partner may maintain an action
18 against the partnership or another partner for legal or
19 equitable relief, with or without an accounting as to
20 partnership business or not for profit activity, to:

21 (1) enforce the partner's rights under the
22 partnership agreement;

23 (2) enforce the partner's rights under this chapter,
24 including:

1 (i) the partner's rights under Sections 10A-8A-4.01,
2 10A-8A-4.03, or 10A-8A-4.04;

3 (ii) the partner's right on dissociation to have the
4 partner's transferable interest in the partnership purchased
5 pursuant to Section 10A-8A-7.01 or enforce any other right
6 under Article 6 or 7; or

7 (iii) the partner's right to compel a dissolution
8 and winding up of the partnership's business or not for profit
9 activity under Section 10A-8A-8.01 or enforce any other right
10 under Article 8; or

11 (3) enforce the rights and otherwise protect the
12 interests of the partner, including rights and interests
13 arising independently of the partnership relationship.

14 (c) The accrual of, and any time limitation on, a
15 right of action for a remedy under this section is governed by
16 other law. A right to an accounting upon a dissolution and
17 winding up does not revive a claim barred by law.

18 §10A-8A-4.14. Continuation of partnership beyond
19 definite term or particular undertaking.

20 (a) If a partnership for a definite term or
21 particular undertaking is continued, without an express
22 agreement, after the expiration of the term or completion of
23 the undertaking, the rights and duties of the partners remain
24 the same as they were at the expiration or completion, so far
25 as is consistent with a partnership at will.

1 (b) If the partners, or those of them who habitually
2 acted in the business or not for profit activity during the
3 term or undertaking, continue the business or not for profit
4 activity without any settlement or liquidation of the
5 partnership, they are presumed to have agreed that the
6 partnership will continue.

7 Article 5. Transferees and Creditors of Partners.

8 §10A-8A-5.01. Partner's transferable interest in
9 partnership. The only interest of a partner which is
10 transferable is the partner's transferable interest. A
11 transferable interest is personal property.

12 §10A-8A-5.02. Transfer of partner's transferable
13 interest.

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

16 (1) is permissible;

17 (2) does not by itself cause the partner's
18 dissociation;

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

21 (4) subject to Section 10A-8A-5.05, does not entitle
22 the transferee to:

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

1 (B) except as otherwise provided in subsection (d),
2 have access to required information, records, or other
3 information concerning the partnership's business or not for
4 profit activity.

5 (b) A transferee has a right:

6 (1) to receive, in accordance with the transfer,
7 distributions to which the transferor would otherwise be
8 entitled;

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

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

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

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

1 (e) Except as otherwise provided in Sections
2 10A-8A-6.01(4), 10A-8A-6.01(11), and 10A-8A-6.01(12), when a
3 partner transfers a transferable interest, the transferor
4 retains the rights of a partner other than the right to
5 distributions transferred and retains all duties and
6 obligations of a partner.

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

10 (g) When a partner transfers a transferable interest
11 to a person that is admitted as a partner with respect to the
12 transferred interest, the transferee is liable for the
13 partner's obligations under Sections 10A-8A-4.04 and
14 10A-8A-4.09 to the extent that the obligations are known to
15 the transferee when the transferee voluntarily accepts
16 admission as a partner.

17 §10A-8A-5.03. Rights of creditor of partner or
18 transferee.

19 (a) On application to a court of competent
20 jurisdiction by any judgment creditor of a partner or
21 transferee, the court may charge the transferable interest of
22 the judgment debtor with payment of the unsatisfied amount of
23 the judgment with interest. To the extent so charged and after
24 the partnership has been served with the charging order, the
25 judgment creditor has only the right to receive any

1 distribution or distributions to which the judgment debtor
2 would otherwise be entitled in respect of the transferable
3 interest.

4 (b) The partnership, after being served with a
5 charging order and its terms, shall be entitled to pay or
6 deposit any distribution or distributions to which the
7 judgment debtor would otherwise be entitled in respect of the
8 charged transferable interest into the hands of the clerk of
9 the court so issuing the charging order, and the payment or
10 deposit shall discharge the partnership and the judgment
11 debtor from liability for the amount so paid or deposited and
12 any interest that might accrue thereon. Upon receipt of the
13 payment or deposit, the clerk of the court shall notify the
14 judgment creditor of the receipt of the payment or deposit.
15 The judgment creditor, after any payment or deposit into the
16 court, shall petition the court for payment of so much of the
17 amount paid or deposited as is held by the court as may be
18 necessary to pay the judgment creditor's judgment. To the
19 extent the court has excess amounts paid or deposited on hand
20 after the payment to the judgment creditor, the excess amounts
21 paid or deposited shall be distributed to the judgment debtor
22 and the charging order shall be extinguished. The court, may
23 in its discretion, order the clerk to deposit, pending the
24 judgment creditor's petition, any money paid or deposited with

1 the clerk, in an interest bearing account at a bank authorized
2 to receive deposits of public funds.

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

5 (d) Subject to subsection (c):

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

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

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

15 (f) This section provides the exclusive remedy by
16 which a judgment creditor of a partner or transferee may
17 satisfy a judgment out of the judgment debtor's transferable
18 interest and the judgment creditor shall have no right to
19 foreclose, under this chapter or any other law, upon the
20 charging order, the charging order lien, or the judgment
21 debtor's transferable interest. A judgment creditor of a
22 partner or transferee shall have no right to obtain possession
23 of, or otherwise exercise legal or equitable remedies with
24 respect to, the property of a partnership. Court orders for
25 actions or requests for accounts and inquiries that the

1 judgment debtor might have made are not available to the
2 judgment creditor attempting to satisfy the judgment out of
3 the judgment debtor's transferable interest and may not be
4 ordered by a court.

5 §10A-8A-5.04. Power of personal representative of
6 deceased partner.

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

9 (a) for the period of time that the deceased
10 partner's personal representative or other legal
11 representative holds the deceased partner's transferable
12 interest:

13 (1) exercise the rights of a holder of transferable
14 interests under this chapter;

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

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

19 (b) for the period of time that the deceased
20 partner's personal representative or other legal
21 representative does not hold the deceased partner's
22 transferable interest, for purposes of settling the estate,
23 exercise the rights of a person dissociated as a partner under
24 Section 10A-8A-4.10.

25 Article 6. Partner's Dissociation.

1 §10A-8A-6.01. Events causing partner's dissociation.

2 A person is dissociated from a partnership as a
3 partner upon the occurrence of any of the following events:

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

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

11 (3) the person is expelled as a partner pursuant to
12 the partnership agreement;

13 (4) the person is expelled as a partner by the
14 unanimous consent of the other partners if:

15 (A) it is unlawful to carry on the partnership's
16 business or not for profit activity with the person as a
17 partner;

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

21 (C) the person is an organization and, within 90
22 days after the partnership notifies the person that it will be
23 expelled as a partner because it has filed a statement of
24 dissolution or the equivalent, or its right to conduct
25 business or not for profit activity has been suspended by its

1 jurisdiction of formation, the statement of dissolution or the
2 equivalent has not been revoked or its right to conduct
3 business or not for profit activity has not been reinstated;
4 or

5 (D) the person is an organization and, within 90
6 days after the partnership notifies the person that it will be
7 expelled as a partner because the person has been dissolved
8 and its business or not for profit activity is being wound up,
9 the organization has not been reinstated or the dissolution
10 and winding up have not been revoked or cancelled;

11 (5) on application by the partnership, the person is
12 expelled as a partner by judicial order because the person:

13 (A) has engaged, or is engaging, in wrongful conduct
14 that has adversely and materially affected, or will adversely
15 and materially affect, the partnership's business or not for
16 profit activity;

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

21 (C) has engaged, or is engaging, in conduct relating
22 to the business or not for profit activity of the partnership
23 that makes it not reasonably practicable to carry on the
24 business or not for profit activity with the person as
25 partner;

1 (6) in the case of a person who is an individual,
2 and the person dies, there is appointed a guardian or general
3 conservator for the person or there is a judicial
4 determination that the person has otherwise become incapable
5 of performing the person's duties as a partner under this
6 chapter or the partnership agreement;

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

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

17 (9) in the case of a person that is an estate or is
18 acting as a partner by virtue of being a personal
19 representative of an estate, the estate's entire transferable
20 interest in the partnership is distributed, but not solely by
21 reason of the substitution of a successor personal
22 representative;

23 (10) in the case of a person that is not an
24 individual, the legal existence of the person otherwise
25 terminates;

1 (11) the transfer of a partner's entire remaining
2 transferable interest to another partner;

3 (12) the transfer of a partner's entire remaining
4 transferable interest to a transferee upon the transferee's
5 becoming a partner; or

6 (13) the partnership's participation in a conversion
7 or merger under Article 9, or Article 8 of Chapter 1 of this
8 title if the partnership:

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

10 (B) is the converted or surviving entity but, as a
11 result of the conversion or merger, the person ceases to be a
12 partner.

13 §10A-8A-6.02. Partner's power to dissociate;
14 wrongful dissociation.

15 (a) A person has the power to dissociate as a
16 partner at any time, rightfully or wrongfully, by express will
17 pursuant to Section 10A-8A-6.01(1).

18 (b) A person's dissociation is wrongful only if:

19 (1) it is in breach of an express provision of the
20 partnership agreement; or

21 (2) in the case of a partnership for a definite term
22 or particular undertaking, before the expiration of the term
23 or the completion of the undertaking if any of the following
24 apply:

1 (A) the person dissociates as a partner by express
2 will, unless the dissociation follows not later than 90 days
3 after another person's dissociation by death or otherwise
4 under Section 10A-8A-6.01(6) through (10) or wrongful
5 dissociation under this subsection;

6 (B) the person is expelled as a partner by judicial
7 order under Section 10A-8A-6.01(5);

8 (C) the person is dissociated under Section
9 10A-8A-6.01(7); or

10 (D) in the case of a person that is not a trust
11 other than a business trust, an estate, or an individual, the
12 person is expelled or otherwise dissociated because it
13 willfully dissolved or terminated.

14 (c) A person that wrongfully dissociates as a
15 partner is liable to the partnership and to the other partners
16 for damages caused by the dissociation. The liability is in
17 addition to any debt, obligation, or other liability of the
18 partner to the partnership or the other partners.

19 §10A-8A-6.03. Effect of partner's dissociation.

20 (a) If a person's dissociation results in a
21 dissolution and winding up of the partnership business or not
22 for profit activity, Article 8 applies; otherwise, Article 7
23 applies.

24 (b) Upon a person's dissociation as a partner:

1 (1) the person's right to participate in the
2 management and conduct of the partnership business or not for
3 profit activity terminates, except as provided in Section
4 10A-8A-8.03;

5 (2) the person's duty of loyalty under Section
6 10A-8A-4.11(b) (3) terminates; and

7 (3) the person's duty of loyalty under Section
8 10A-8A-4.11(b) (1) and (2) and duty of care under Section
9 10A-8A-4.11(c) continue only with regard to matters arising
10 and events occurring before the person's dissociation, unless
11 the partner participates in winding up the partnership's
12 business or not for profit activity pursuant to Section
13 10A-8A-8.03.

14 Article 7. Person's Dissociation as a Partner when
15 Business or Not for Profit Activity Not Wound Up.

16 §10A-8A-7.01. Purchase of transferable interest of a
17 person dissociated as a partner.

18 (a) If a person is dissociated as a partner from a
19 partnership without resulting in a dissolution and winding up
20 of the partnership business or not for profit activity under
21 Section 10A-8A-8.01, the partnership shall cause that person's
22 transferable interest in the partnership owned by that person
23 at the time of dissociation to be purchased for a buyout price
24 determined pursuant to subsection (b).

1 (b) The buyout price of the transferable interest
2 owned by the person at the time of dissociation as a partner
3 is an amount equal to the fair value of that person's
4 transferable interest as of the date of dissociation. Interest
5 on the buyout price must be paid from the date of dissociation
6 to the date of payment.

7 (c) Damages for wrongful dissociation under Section
8 10A-8A-6.02(b) and (c), and all other amounts owing, whether
9 or not presently due, from the person dissociated as a partner
10 to the partnership, must be offset against the buyout price.
11 Interest on damages for wrongful dissociation must be paid
12 from the date of the wrongful dissociation to the date of
13 payment. Interest on all other amounts, whether or not
14 presently due, must be paid from the date the amount owed
15 becomes due to the date of payment.

16 (d) A partnership shall indemnify a person
17 dissociated as a partner whose transferable interest is being
18 purchased against all partnership liabilities, whether
19 incurred before or after the dissociation, except liabilities
20 incurred by an act of the person dissociated as a partner
21 under Section 10A-8A-7.02.

22 (e) If no agreement for the purchase of the
23 transferable interests of a person dissociated as a partner is
24 reached within 120 days after a written demand for payment,
25 the partnership shall pay, or cause to be paid, in cash to the

1 person dissociated as a partner the amount the partnership
2 estimates to be the buyout price and accrued interest, reduced
3 by any offsets and accrued interest under subsection (c).

4 (f) If a deferred payment is authorized under
5 subsection (h), the partnership may tender a written offer to
6 pay the amount it estimates to be the buyout price and accrued
7 interest, reduced by any offsets under subsection (c), stating
8 the time of payment, the amount and type of security for
9 payment, and the other terms and conditions of the obligation.

10 (g) The payment or tender required by subsection (e)
11 or (f) must be accompanied by the following:

12 (1) a written statement of partnership assets and
13 liabilities as of the date of dissociation;

14 (2) the latest available partnership balance sheet
15 and income statement, if any;

16 (3) a written explanation of how the estimated
17 amount of the payment was calculated; and

18 (4) written notice which shall state that the
19 payment is in full satisfaction of the obligation to purchase
20 unless, within 120 days after the written notice, the person
21 dissociated as a partner commences an action to determine the
22 buyout price of that person's transferable interest, any
23 offsets under subsection (c), or other terms of the obligation
24 to purchase.

1 (h) A person that wrongfully dissociates as a
2 partner before the expiration of a definite term or the
3 completion of a particular undertaking is not entitled to
4 payment of any portion of the buyout price until the
5 expiration of the term or completion of the undertaking,
6 unless the person establishes to the satisfaction of the court
7 that earlier payment will not cause undue hardship to the
8 business or not for profit activity of the partnership. A
9 deferred payment under this subsection must bear interest and,
10 to the extent it would not cause undue hardship to the
11 business or not for profit activity of the partnership, be
12 adequately secured.

13 (i) A person dissociated as a partner may maintain
14 an action against the partnership, pursuant to Section
15 10A-8A-4.13(b)(2)(ii), to determine the buyout price of that
16 person's transferable interest under subsection (b), any
17 offsets under subsection (c), or other terms of the obligation
18 to purchase. The action must be commenced within 120 days
19 after the partnership has tendered payment or an offer to pay
20 or within one year after written demand for payment if no
21 payment or offer to pay is tendered. The court shall determine
22 the buyout price of that person's transferable interest under
23 subsection (b), any offset due under subsection (c), and
24 accrued interest, and enter judgment for any additional
25 payment or refund. If deferred payment is authorized under

1 subsection (h), the court shall also determine the security,
2 if any, for payment and other terms of the obligation to
3 purchase. The court may assess reasonable attorney's fees and
4 the fees and expenses of appraisers or other experts for a
5 party to the action, in amounts the court finds equitable,
6 against a party that the court finds acted arbitrarily,
7 vexatiously, or not in good faith. The finding may be based on
8 the partnership's failure to tender payment or an offer to pay
9 or to comply with subsection (g).

10 §10A-8A-7.02. Power to bind and liability of person
11 dissociated as a partner.

12 (a) For one year after a person dissociates as a
13 partner without resulting in a dissolution and winding up of
14 the partnership business or not for profit activity, the
15 partnership, including a surviving partnership or other
16 surviving entity under Article 9 of this chapter and Article 8
17 of Chapter 1, is bound by an act of the person dissociated as
18 a partner which would have bound the partnership under Section
19 10A-8A-3.01 before dissociation only if at the time of
20 entering into the transaction the other party:

21 (1) reasonably believed that the person dissociated
22 as a partner was then a partner and reasonably relied on such
23 belief in entering into the transaction;

24 (2) did not have notice of the person's dissociation
25 as a partner; and

1 (3) is not deemed to have had knowledge or notice
2 under Section 10A-8A-1.03.

3 (b) A person dissociated as a partner is liable to
4 the partnership for any damage caused to the partnership
5 arising from an obligation incurred by the person dissociated
6 as a partner after dissociation for which the partnership is
7 liable under subsection (a).

8 §10A-8A-7.03. Liability of person dissociated as a
9 partner to other persons.

10 (a) A person's dissociation as a partner does not of
11 itself discharge that person's liability for a partnership
12 obligation incurred before dissociation. A person dissociated
13 as a partner is not liable for a partnership obligation
14 incurred after dissociation, except as provided in subsection
15 (b).

16 (b) A person that dissociates as a partner without
17 resulting in a dissolution and winding up of the partnership
18 business or not for profit activity is liable as a partner to
19 the other party in a transaction entered into by the
20 partnership, or a surviving partnership or other surviving
21 entity under Article 9 of this chapter or Article 8 of Chapter
22 1, within one year after the partner's dissociation, only if
23 the partner is liable for the obligation under Section
24 10A-8A-3.06 and at the time of entering into the transaction
25 the other party:

1 (1) reasonably believed that the person dissociated
2 as a partner was then a partner and reasonably relied on such
3 belief in entering into the transaction;

4 (2) did not have notice of the person's
5 dissociation; and

6 (3) is not deemed to have had knowledge or notice
7 under Section 10A-8A-1.03 of the person's dissociation.

8 (c) By agreement with the partnership creditor and
9 the partners continuing the business or not for profit
10 activity, a person dissociated as a partner may be released
11 from liability for a partnership obligation.

12 (d) A person dissociated as a partner is released
13 from liability for a partnership obligation if a partnership
14 creditor, with notice of the person's dissociation but without
15 the person's consent, agrees to a material alteration in the
16 nature or time of payment of a partnership obligation.

17 §10A-8A-7.04. Statement of dissociation.

18 (a) A person dissociated as a partner or the
19 partnership may file a statement of dissociation stating the
20 name of the partnership and that the person is dissociated as
21 a partner from the partnership.

22 (b) A state of dissociation is a limitation on the
23 authority of a person dissociated as a partner for the purposes
24 of Section 10A-8A-3.03.

1 §10A-8A-7.05. Continued use of partnership name.

2 Continued use of a partnership name, or a person's name that
3 is dissociated as a partner as part thereof, by partners
4 continuing the business or not for profit activity does not of
5 itself make the person dissociated as a partner liable for an
6 obligation of the partners or the partnership continuing the
7 business or not for profit activity.

8 Article 8. Dissolution and Winding Up.

9 §10A-8A-8.01. Events of dissolution.

10 A partnership is dissolved, and its business or not
11 for profit activity must be wound up, upon the occurrence of
12 the first of the following events:

13 (1) in a partnership at will, the partnership knows
14 or has notice of a person's express will to dissociate as a
15 partner, other than a partner that has dissociated under
16 Section 10A-8A-6.01(2) through (10), but, if the person has
17 specified a dissociation date later than the date the
18 partnership knew or had notice, on the later date;

19 (2) in a partnership for a definite term or
20 particular undertaking:

21 (i) within 90 days after a partner's dissociation by
22 death or otherwise under Section 10A-8A-6.01(6) through (10),
23 or a partner's wrongful dissociation under Section
24 10A-8A-6.02(b), at least half of the remaining partners
25 affirmatively consent to dissolve the partnership and wind up

1 the partnership business or not for profit activity, for which
 2 purpose a partner's rightful dissociation pursuant to Section
 3 10A-8A-6.02(b) (2) (A) constitutes the expression of that
 4 partner's will to wind up the business or not for profit
 5 activity of the partnership;

6 (ii) the consent of all of the partners to dissolve
 7 and wind up the partnership's business or not for profit
 8 activity; or

9 (iii) the expiration of the term or the completion
 10 of the undertaking;

11 (3) an event or circumstance that the partnership
 12 agreement states causes dissolution;

13 (4) on application by a partner, the entry of an
 14 order by a court of competent jurisdiction dissolving the
 15 partnership on the grounds that it is not reasonably
 16 practicable to carry on the partnership's business or not for
 17 profit activity in conformity with the partnership agreement;

18 (5) on application by a transferee of a partner's
 19 transferable interest, a judicial determination that it is
 20 equitable to wind up the partnership business or not for
 21 profit activity:

22 (i) after the expiration of the term or completion
 23 of the undertaking, if the partnership was for a definite term
 24 or particular undertaking at the time of the transfer; or

1 (ii) at any time, if the partnership was a
2 partnership at will at the time of the transfer;

3 (6) the passage of 90 consecutive days during which
4 the partnership does not have at least two partners, unless
5 either of the following applies:

6 (i) The remaining partner agrees in writing within
7 90 days after the dissociation of the last partner, to
8 continue the business or not for profit activity of the
9 partnership and to admit one or more new partners; or

10 (ii) The business or not for profit activity of the
11 partnership is continued and one or more new partners are
12 admitted in the manner stated in the partnership agreement; or

13 (7) the passage of 90 consecutive days during which
14 the partnership does not have any remaining partners, unless
15 either of the following applies:

16 (i) The holders of all of the transferable interests
17 in the partnership agree in writing, within 90 days after the
18 dissociation of the last partner, to continue the business or
19 not for profit activity of the partnership and to admit two or
20 more new partners; or

21 (ii) The business or not for profit activity of the
22 partnership is continued and two or more new partners are
23 admitted in the manner stated in the partnership agreement.

24 §10A-8A-8.02. Effect of dissolution.

25 Notwithstanding Section 10A-1-9.12:

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

5 (1) collecting its assets;

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

8 (3) discharging or making provisions for discharging
9 its liabilities;

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

12 (5) doing every other act necessary to wind up and
13 liquidate its business or not for profit activity.

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

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

18 (A) The name of the partnership;

19 (B) If the partnership has filed a statement of
20 partnership, a statement of not for profit partnership, a
21 statement of authority, or a statement of limited liability
22 partnership, the date of filing its statement of partnership,
23 statement of not for profit partnership, statement of
24 authority, or statement of limited liability partnership, and

1 all amendments and restatements thereof, and the office or
2 offices where filed;

3 (C) That the partnership has dissolved;

4 (D) The name, street address, and mailing address of
5 the partner who will be winding up the business or not for
6 profit activity of the partnership pursuant to Section
7 10A-8A-8.03(a), and if none, the name, street address, and
8 mailing address of the person appointed pursuant to Section
9 10A-8A-8.03(b) or (c) to wind up the business or not for
10 profit activity of the partnership;

11 (E) If the partnership has filed a statement of
12 partnership, a statement of not for profit partnership, or a
13 statement of limited liability partnership, the name, street
14 address, and mailing address of the partnership's registered
15 agent; and

16 (F) Any other information the partnership deems
17 appropriate;

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

20 (3) prosecute, defend, or settle actions or
21 proceedings whether civil, criminal or administrative;

22 (4) transfer the partnership's assets;

23 (5) resolve disputes by mediation or arbitration;

24 and

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

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

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

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

7 (3) terminate, abate or suspend a proceeding pending
8 by or against the partnership on the effective date of
9 dissolution;

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

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

14 (d) A statement of dissolution is a filing
15 instrument under Chapter 1.

16 §10A-8A-8.03. Right to wind up business or not for
17 profit activity.

18 (a) If a dissolved partnership has a partner or
19 partners that have not dissociated, that partner or those
20 partners shall wind up the business or not for profit activity
21 of the partnership and shall have the powers set forth in
22 Section 10A-8A-8.04. A person whose dissociation as a partner
23 resulted in the dissolution of the partnership may participate
24 in the winding up as if still a partner, unless the
25 dissociation was wrongful.

1 (b) If a dissolved partnership does not have a
2 partner and no person has the right to participate in winding
3 up under subsection (a), the personal or legal representative
4 of the last person to have been a partner may wind up the
5 partnership's business or not for profit activity. If the
6 representative does not exercise that right, a person to wind
7 up the partnership's business or not for profit activity may
8 be appointed by the affirmative vote or consent of transferees
9 owning a majority of the transferable interests at the time
10 the consent is to be effective.

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

15 (1) on application of a partner or any person
16 entitled under the last sentence of subsection (a) to
17 participate in the winding up of the dissolved partnership, if
18 the applicant establishes good cause;

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

24 (3) on application of a transferee, if the
25 partnership does not have a partner and within a reasonable

1 time following the dissolution the person appointed pursuant
 2 to subsection (b) is not winding up the business or not for
 3 profit activity of the partnership; or

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

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

8 (1) has the powers of a partner under Section
 9 10A-8A-8.04 but is not liable for the debts, liabilities, and
 10 other obligations of the partnership solely by reason of
 11 having or exercising those powers or otherwise acting to wind
 12 up the business or not for profit activity of the dissolved
 13 partnership; and

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

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

18 (B) the name, street address, and mailing address of
 19 each person that has been appointed to wind up the business or
 20 not for profit activity of the partnership;

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

24 (D) pursuant to this section, that each person has
 25 the powers of a partner under Section 10A-8A-8.04 but is not

1 liable for the debts, liabilities, and other obligations of
 2 the partnership solely by reason of having or exercising those
 3 powers or otherwise acting to wind up the business or not for
 4 profit activity of the dissolved partnership.

5 §10A-8A-8.04. Power to bind partnership after
 6 dissolution.

7 (a) After dissolution, a partnership is bound by the
 8 act of a partner or by the act of a dissociated partner acting
 9 as a partner under Section 10A-8A-8.03(a) which:

10 (1) is appropriate for winding up the partnership's
 11 business or not for profit activity; or

12 (2) would have bound the partnership under Section
 13 10A-8A-3.01 before dissolution, if, at the time the other
 14 party enters into the transaction, the other party does not
 15 have notice of the dissolution.

16 (b) Subject to subsection (a), a person dissociated
 17 as a partner binds a partnership through an act occurring
 18 after dissolution only if:

19 (1) at the time the other party enters into the
 20 transaction the other party does not have notice of the
 21 dissociation and reasonably believes that the person is a
 22 partner; and

23 (2) the act:

24 (A) is appropriate for winding up the partnership's
 25 business or not for profit activity; or

1 (B) would have bound the partnership under Section
2 10A-8A-3.01 before dissolution and at the time the other party
3 enters into the transaction the other party does not have
4 notice of the dissolution.

5 §10A-8A-8.05. Liability after dissolution of partner
6 and person dissociated as partner; other partners, and persons
7 dissociated as partners.

8 (a) If a partner having knowledge of the dissolution
9 causes a partnership to incur an obligation under Section
10 10A-8A-8.04(a) by an act that is not appropriate for winding
11 up the partnership's business or not for profit activity, the
12 partner is liable:

13 (1) to the partnership for any damage caused to the
14 partnership arising from the obligation; and

15 (2) if another partner or a person dissociated as a
16 partner is liable for the obligation, to that other partner or
17 person for any damage caused to that other partner or person
18 arising from the liability.

19 (b) If a person dissociated as a partner causes a
20 partnership to incur an obligation under Section
21 10A-8A-8.04(b), the person is liable:

22 (1) to the partnership for any damage caused to the
23 partnership arising from the obligation; and

24 (2) if a partner or another person dissociated as a
25 partner is liable for the obligation, to the partner or other

1 person for any damage caused to the partner or other person
2 arising from the liability.

3 (c) A person dissociated as a partner is not liable
4 under subsection (b) if:

5 (1) the last sentence of Section 10A-8A-8.03(a)
6 permits the person to participate in winding up; and

7 (2) the act that causes the partnership to be bound
8 under Section 10A-8A-8.04(b) is appropriate for winding up the
9 partnership's business or not for profit activity.

10 §10A-8A-8.06. Known claims against dissolved
11 partnership.

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

13 (a) A dissolved partnership may dispose of any known
14 claims against it by following the procedures described in
15 subsection (b) at any time after the effective date of the
16 dissolution of the partnership.

17 (b) A dissolved partnership may give notice of the
18 dissolution in writing to the holder of any known claim. The
19 notice must:

20 (1) identify the dissolved partnership;

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

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

1 (4) state the deadline, which may not be fewer than
2 120 days from the effective date of the notice, by which the
3 dissolved partnership must receive the claim;

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

6 (6) unless the partnership has been throughout its
7 existence a limited liability partnership, state that the
8 barring of a claim against the partnership will also bar any
9 corresponding claim against any partner or person dissociated
10 as a partner which is based on Section 10A-8A-3.06.

11 (c) Unless sooner barred by any other statute
12 limiting actions, a claim against a dissolved partnership is
13 barred:

14 (1) if a claimant who was given notice under
15 subsection (b) does not deliver the claim to the dissolved
16 partnership by the deadline; or

17 (2) if a claimant whose claim was rejected by the
18 dissolved partnership, does not commence a proceeding to
19 enforce the claim within 90 days from the effective date of
20 the rejection notice.

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

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

3 §10A-8A-8.07. Other claims against dissolved
4 partnership.

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

6 (a) A dissolved partnership may publish notice of
7 its dissolution and request that persons with claims against
8 the dissolved partnership present them in accordance with the
9 notice.

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

11 (1) be published at least one time in a newspaper of
12 general circulation in the county in which the dissolved
13 partnership's principal place of business or not for profit
14 activity in this state is located, and if none, was last
15 located;

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

19 (3) state that if not sooner barred, a claim against
20 the dissolved partnership will be barred unless a proceeding
21 to enforce the claim is commenced within two years after the
22 publication of the notice; and

23 (4) unless the partnership has been throughout its
24 existence a limited liability partnership, state that the
25 barring of a claim against the partnership will also bar any

1 corresponding claim against any partner or person dissociated
2 as a partner which is based on Section 10A-8A-3.06.

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

10 (1) a claimant who was not given notice under
11 Section 10A-8A-8.06;

12 (2) a claimant whose claim was timely sent to the
13 dissolved partnership but not acted on by the dissolved
14 partnership; and

15 (3) a claimant whose claim is contingent at the
16 effective date of the dissolution of the partnership, or is
17 based on an event occurring after the effective date of the
18 dissolution of the partnership.

19 (d) A claim that is not barred under this section,
20 any other statute limiting actions, or Section 10A-8A-8.06 may
21 be enforced:

22 (1) against a partnership, to the extent of its
23 undistributed assets;

24 (2) except as provided in subsection (h), if the
25 assets of a dissolved partnership have been distributed after

1 dissolution, against the person or persons owning the
2 transferable interests to the extent of that person's
3 proportionate share of the claim or of the assets distributed
4 to that person after dissolution, whichever is less, but a
5 person's total liability for all claims under subsection (d)
6 may not exceed the total amount of assets distributed to that
7 person after dissolution of the partnership; or

8 (3) against any person liable on the claim under
9 Sections 10A-8A-3.06, 10A-8A-7.03 and 10A-8A-8.05.

10 (e) A dissolved partnership that published a notice
11 under this section may file an application with a court of
12 competent jurisdiction for a determination of the amount and
13 form of security to be provided for payment of claims that are
14 contingent or have not been made known to the dissolved
15 partnership or that are based on an event occurring after the
16 effective date of the dissolution of the partnership but that,
17 based on the facts known to the dissolved partnership, are
18 reasonably estimated to arise after the effective date of the
19 dissolution of the partnership. Provision need not be made for
20 any claim that is or is reasonably anticipated to be barred
21 under subsection (c).

22 (f) Within ten days after the filing of the
23 application provided for in subsection (e), notice of the
24 proceeding shall be given by the dissolved partnership to each
25 potential claimant as described in subsection (e).

1 (g) The court under subsection (e) may appoint a
2 guardian ad litem to represent all claimants whose identities
3 are unknown in any proceeding brought under this section. The
4 reasonable fees and expenses of the guardian, including all
5 reasonable expert witness fees, shall be paid by the dissolved
6 partnership.

7 (h) Provision by the dissolved partnership for
8 security in the amount and the form ordered by the court under
9 subsection (e) shall satisfy the dissolved partnership's
10 obligation with respect to claims that are contingent, have
11 not been made known to the dissolved partnership, or are based
12 on an event occurring after the effective date of the
13 dissolution of the partnership, and those claims may not be
14 enforced against a person owning a transferable interest to
15 whom assets have been distributed by the dissolved partnership
16 after the effective date of the dissolution of the
17 partnership.

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

20 (j) If a claim has been satisfied, disposed of, or
21 barred under Section 10A-8A-8.06, this section, or other law,
22 the person or persons designated to wind up the business or
23 not for profit activity of a partnership, and the owners of
24 the transferable interests receiving assets from the
25 partnership, shall not be liable for that claim.

1 §10A-8A-8.08. Liability of partner and person
2 dissociated as partner when claim against partnership. If a
3 claim against a dissolved partnership is barred under Section
4 10A-8A-8.06 or 10A-8A-8.07, any corresponding claim under
5 Sections 10A-8A-3.06, 10A-8A-7.03, and 10A-8A-8.05 is also
6 barred.

7 §10A-8A-8.09. Disposition of assets, when
8 contributions required.

9 Notwithstanding Section 10A-1-9.12, upon the winding
10 up of a partnership, the assets of the partnership, including
11 any obligation under Sections 10A-8A-4.03, 10A-8A-4.04, and
12 10A-8A-4.09, and any contribution required by this section,
13 shall be applied as follows:

14 (a) Payment, or adequate provision for payment,
15 shall be made to creditors, including, to the extent permitted
16 by law, partners who are creditors, in satisfaction of
17 liabilities of the partnership.

18 (b) After a partnership complies with subsection
19 (a), any surplus must be distributed:

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

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

5 (c) If the partnership does not have sufficient
6 surplus to comply with subsection (b)(1), any surplus must be
7 distributed among the owners of transferable interests in
8 proportion to the value of their respective unreturned
9 contributions.

10 (d) If a partnership's assets are insufficient to
11 satisfy all of its obligations under subsection (a), with
12 respect to each unsatisfied obligation incurred when the
13 partnership was not a limited liability partnership, the
14 following rules apply:

15 (1) Each person that was a partner when the
16 obligation was incurred and that has not been released from
17 the obligation under Section 10A-8A-7.03(c) and (d) shall
18 contribute to the partnership for the purpose of enabling the
19 partnership to satisfy the obligation. The contribution due
20 from each of those persons is in proportion to the right to
21 receive distributions in the capacity of partner in effect for
22 each of those persons when the obligation was incurred.

23 (2) If a person does not contribute the full amount
24 required under paragraph (1) with respect to an unsatisfied
25 obligation of the partnership, the other persons required to

1 contribute by paragraph (1) on account of the obligation shall
2 contribute the additional amount necessary to discharge the
3 obligation. The additional contribution due from each of those
4 other persons is in proportion to the right to receive
5 distributions in the capacity of partner in effect for each of
6 those other persons when the obligation was incurred.

7 (3) If a person does not make the additional
8 contribution required by paragraph (2), further additional
9 contributions are determined and due in the same manner as
10 provided in that paragraph.

11 (e) A person that makes an additional contribution
12 under subsection (d)(2) or (3) may recover from any person
13 whose failure to contribute under subsection (d)(1) or (2)
14 necessitated the additional contribution. A person may not
15 recover under this subsection more than the amount
16 additionally contributed. A person's liability under this
17 subsection may not exceed the amount the person failed to
18 contribute.

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

21 (g) An assignee for the benefit of creditors of a
22 partnership or a partner, or a person appointed by a court to
23 represent creditors of a partnership or a partner, may enforce
24 a person's obligation to contribute under subsection (d).

25 §10A-8A-8.10. Reinstatement after dissolution.

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

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

7 (1) required for reinstatement under the partnership
8 agreement; or

9 (2) if the partnership agreement does not state the
10 consent required for reinstatement, sufficient for dissolution
11 under the partnership agreement; or

12 (3) if the partnership agreement neither states the
13 consent required for reinstatement nor for dissolution,
14 sufficient for dissolution under this chapter;

15 (b) in the case of a written objection to
16 reinstatement having been delivered to the partnership before
17 or at the time of the consent required by subsection (a) by
18 the partners or other persons having authority under the
19 partnership agreement to bring about or prevent dissolution of
20 the partnership, those partners or persons withdrawing that
21 written objection effective at the time of the consent
22 required by subsection (a);

23 (c) in the case of a partnership dissolved in a
24 judicial proceeding initiated by one or more of the partners
25 pursuant to Section 10A-8A-8.01(4), the consent of each of

1 those partners shall have been obtained and shall be included
2 in the consent required by subsection (a);

3 (d) in the case of a partnership dissolved in a
4 judicial proceeding initiated by one or more of transferees
5 pursuant to Section 10A-8A-8.01(5), the consent of each of
6 those transferees shall have been obtained and shall be
7 included in the consent required by subsection (a); and

8 (e) in the case of a partnership that has filed a
9 statement of dissolution, the filing of a certificate of
10 reinstatement in accordance with Section 10A-8A-8.11.

11 §10A-8A-8.11. Certificate of reinstatement.

12 A partnership that has dissolved, has filed a
13 statement of dissolution, and is seeking to reinstate in
14 accordance with Section 10A-8A-8.10, shall deliver to the
15 Secretary of State for filing a certificate of reinstatement
16 in accordance with the following:

17 (a) A certificate of reinstatement shall be
18 delivered to the Secretary of State for filing. The
19 certificate of reinstatement shall state:

20 (1) the name of the partnership before
21 reinstatement;

22 (2) the name of the partnership following
23 reinstatement, which partnership name shall comply with
24 Section 10A-8A-8.12;

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

1 (4) the date of filing its statement of dissolution,
2 and all amendments and restatements thereof, and the office or
3 offices where filed;

4 (5) if the partnership has filed a statement of
5 partnership, a statement of not for profit partnership, a
6 statement of authority, or a statement of limited liability
7 partnership, the date of filing its statement of partnership,
8 statement of not for profit partnership, statement of
9 authority, or statement of limited liability partnership, and
10 all amendments and restatements thereof, and the office or
11 offices where filed;

12 (6) the date of dissolution of the partnership, if
13 known;

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

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

19 (b) A partnership shall deliver to the Secretary of
20 State for filing a statement of dissolution prior to or
21 simultaneously with the certificate of reinstatement. If a
22 partnership has not filed a statement of partnership, a
23 statement of not for profit partnership, or a statement of
24 limited liability partnership prior to filing its statement of
25 dissolution, the partnership must also deliver to the

1 Secretary of State for filing a statement of partnership, a
2 statement of not for profit partnership, or a statement of
3 limited liability partnership, simultaneously with the
4 certificate of reinstatement.

5 (c) A certificate of reinstatement is a filing
6 instrument under Chapter 1.

7 §10A-8A-8.12. Partnership name upon reinstatement.

8 The name of a partnership following the filing of a
9 certificate of reinstatement shall be determined as follows:

10 (a) if the partnership is listed in the Secretary of
11 State's records as a partnership that has been dissolved, then
12 the name of a partnership following reinstatement shall be
13 that partnership name at the time of reinstatement if that
14 partnership name complies with Article 5 of Chapter 1 at the
15 time of reinstatement; and

16 (b) if that partnership name does not comply with
17 Article 5 of Chapter 1, the name of the partnership following
18 reinstatement shall be that partnership name followed by the
19 word "reinstated."

20 §10A-8A-8.13. Effect of reinstatement.

21 (a) Subject to subsection (b), upon reinstatement,
22 the partnership shall be deemed for all purposes to have
23 continued its business or not for profit activity as if
24 dissolution had never occurred; and each right inuring to, and
25 each debt, obligation, and liability incurred by, the

1 partnership after the dissolution shall be determined as if
2 the dissolution had never occurred.

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

7 Article 9. Conversions and Mergers.

8 §10A-8A-9.01. Definitions.

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

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

14 (2) "Constituent partnership" means a constituent
15 organization that is a partnership.

16 (3) "Converted organization" means the organization
17 into which a converting organization converts pursuant to this
18 article.

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

22 (5) "Converting partnership" means a converting
23 organization that is a partnership.

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

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

8 (8) "Organizational documents" means:

9 (A) (i) for a partnership, its partnership agreement
10 and, if applicable, its statement of partnership, statement of
11 not for profit partnership, or statement of limited liability
12 partnership; (ii) for a foreign partnership, its partnership
13 agreement and, if applicable, its statement of foreign limited
14 liability partnership;

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

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

23 (D) for a business or statutory trust or foreign
24 business or statutory trust its agreement of trust and

1 declaration of trust, or comparable writings as provided in
2 its governing statute;

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

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

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

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

21 (9) "Surviving organization" means an organization
22 into which one or more other organizations are merged under
23 this article, whether the organization pre-existed the merger
24 or was created pursuant to the merger.

25 §10A-8A-9.02. Conversion.

1 (a) An organization other than a partnership may
2 convert to a partnership, and a partnership may convert to an
3 organization other than a partnership pursuant to this
4 section, Sections 10A-8A-9.03 through 10A-8A-9.05, and a plan
5 of conversion, if:

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

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

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

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

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

20 (2) the name, type of organization, and mailing
21 address of the principal office of the converted organization
22 after conversion;

23 (3) the terms and conditions of the conversion,
24 including the manner and basis for converting interests in the
25 converting organization into any combination of money,

1 interests in the converted organization, and other
2 consideration allowed in Section 10A-8A-9.02(c); and

3 (4) the organizational documents of the converted
4 organization.

5 (c) In connection with a conversion, rights or
6 securities of or interests in the converting organization may
7 be exchanged for or converted into cash, property, or rights
8 or securities of or interests in the converted organization,
9 or, in addition to or in lieu thereof, may be exchanged for or
10 converted into cash, property, or rights or securities of or
11 interests in another organization or may be cancelled.

12 (d) If a partnership is the converting organization
13 and that partnership does not have an effective statement of
14 partnership, statement of not for profit partnership, or
15 statement of limited liability partnership on file with the
16 Secretary of State, then that partnership must, before
17 proceeding with a conversion deliver to the Secretary of State
18 for filing, a statement of partnership, statement of not for
19 profit partnership, or statement of limited liability
20 partnership simultaneously with the delivery to the Secretary
21 of State for filing, of a statement of conversion.

22 (e) If an organization is converting to a
23 partnership, the converting organization must deliver to the
24 Secretary of State for filing a statement of partnership,
25 statement of not for profit partnership, or a statement of

1 limited liability partnership in accordance with Section
2 10A-8A-9.04.

3 §10A-8A-9.03. Action on plan of conversion by
4 converting partnership.

5 (a) Subject to Section 10A-8A-9.10, a plan of
6 conversion must be consented to by all the partners of a
7 converting partnership.

8 (b) Subject to Section 10A-8A-9.10 and any
9 contractual rights, after a conversion is approved, and at any
10 time before a filing is made under Section 10A-8A-9.04, a
11 converting partnership may amend the plan or abandon the
12 planned conversion:

13 (1) as provided in the plan; and

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

16 §10A-8A-9.04. Filings required for conversion;
17 effective date.

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

19 (1) if the converting organization is an
20 organization formed under, or its internal affairs are
21 governed by, the laws of this state, the converting
22 organization shall file a statement of conversion in
23 accordance with subsection (c), which statement of conversion
24 must be signed in accordance with Section 10A-8A-2.03 and
25 which must include:

1 (A) the name of the converting organization;

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

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

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

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

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

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

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

20 (I) if the converted organization is a foreign
21 organization not authorized to conduct business or not for
22 profit activity in this state, the street and mailing address
23 of an office for the purposes of Section 10A-8A-9.05(b); and

24 (2) if the converted organization is a partnership,
25 the converting organization shall deliver to the Secretary of

1 State for filing a statement of partnership, statement of not
2 for profit partnership, or statement of limited liability
3 partnership, as applicable, which statement of partnership,
4 statement of not for profit partnership, or statement of
5 limited liability partnership must include, in addition to the
6 information required by Section 10A-8A-2.02 or 10A-8A-10.01,
7 as applicable:

8 (A) a statement that the partnership was converted
9 from the converting organization;

10 (B) the name and type of organization of the
11 converting organization and the jurisdiction of the converting
12 organization's governing statute; and

13 (C) a statement that the conversion was approved in
14 a manner that complied with the converting organization's
15 governing statute.

16 (3) if the converting organization is a partnership
17 and that partnership does not have an effective statement of
18 partnership, statement of not for profit partnership, or
19 statement of limited liability partnership on file with the
20 Secretary of State, then the converting organization must
21 deliver to the Secretary of State for filing, a statement of
22 partnership, statement of not for profit partnership, or
23 statement of limited liability partnership simultaneously with
24 the delivery to the Secretary of State for filing, of a
25 statement of conversion.

1 (b) A conversion becomes effective:

2 (1) if the converted organization is a partnership,
3 when the statement of partnership, statement of not for profit
4 partnership, or statement of limited liability partnership
5 takes effect; and

6 (2) if the converted organization is not a
7 partnership, as provided by the governing statute of the
8 converted organization.

9 (c) If the converting organization is an
10 organization formed under, or its internal affairs are
11 governed by, the laws of this state, then the converting
12 organization shall file the statement of conversion required
13 under subsection (a) (1) and the statement, if any, required
14 under subsection (a) (3) with the Secretary of State in
15 accordance with Section 10A-1-4.02(c) (1).

16 (d) If the converted organization is a partnership,
17 then, notwithstanding Section 10A-1-4.02(b), the converting
18 organization shall file a statement of partnership, statement
19 of not for profit partnership, or statement of limited
20 liability partnership required under subsection (a) (2) with
21 the Secretary of State in accordance with Section
22 10A-1-4.02(c) (5), along with the fees specified in Section
23 10A-1-4.31 subject to subsections (f) (3) and (f) (4).

24 (e) If the converting organization is required to
25 file a statement of conversion and a statement of partnership,

1 statement of not for profit partnership, or statement of
2 limited liability partnership with the Secretary of State,
3 then the converting organization shall file the statement of
4 conversion and the statement of partnership, statement of not
5 for profit partnership, or statement of limited liability
6 partnership with the Secretary of State simultaneously.

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

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

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

24 (3) if the converting organization is, immediately
25 prior to the conversion becoming effective, an organization

1 described in Section 10A-1-4.02(c) (4), but is not required
2 under this title to file its organizational documents with the
3 judge of probate, the Secretary of State shall not transmit a
4 certified copy of the statement of conversion to the office of
5 the judge of probate and shall not collect any fee for the
6 judge of probate.

7 (4) if the converting organization is a partnership,
8 the Secretary of State shall not transmit a certified copy of
9 the statement of conversion to the office of the judge of
10 probate and shall not collect any fee for the judge of
11 probate.

12 (g) In the case of a statement of partnership,
13 statement of not for profit partnership, or statement of
14 limited liability partnership that is to be filed with the
15 Secretary of State pursuant to subsection (d), the Secretary
16 of State shall not transmit a certified copy of the statement
17 of partnership, statement of not for profit partnership, or
18 statement of limited liability partnership to the office of
19 the judge of probate and shall not collect any fee for the
20 judge of probate, but shall collect the fee provided for the
21 Secretary of State in Section 10A-1-4.31(a) (1).

22 (h) After a conversion becomes effective, if the
23 converted organization is a partnership, then all filing
24 instruments required to be filed under this title regarding

1 that converted organization shall be filed with the Secretary
2 of State.

3 (i) If:

4 (1) the converting organization is a filing entity,
5 a partnership with an effective statement of partnership,
6 statement of not for profit partnership, or statement of
7 limited liability partnership on file with the Secretary of
8 State, a foreign filing entity registered to conduct business
9 or not for profit activity in this state or a qualified
10 foreign limited liability partnership;

11 (2) the converted organization will be a filing
12 entity, a partnership with an effective statement of
13 partnership, statement of not for profit partnership, or
14 statement of limited liability partnership on file with the
15 Secretary of State, a foreign filing entity registered to
16 conduct business or not for profit activity in this state or a
17 qualified foreign limited liability partnership;

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

21 (4) the name of the converted organization complies
22 with Division A of Article 5 of Chapter 1 or Section
23 10A-1-7.07, as the case may be; then notwithstanding Division
24 B of Article 5 of Chapter 1, no name reservation shall be
25 required and the converted organization shall for all purposes

1 of this title be entitled to utilize the name of the
2 converting organization without any further action by the
3 converting organization or the converted organization.

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

14 (k) A statement of conversion is a filing instrument
15 under Chapter 1.

16 (l) Except as set forth in subsections (f) (2),
17 (f) (3), and (f) (4), the filing fees for a statement of
18 conversion shall be the same fee as provided in Section
19 10A-1-4.31(a) (5).

20 §10A-8A-9.05. Effect of conversion.

21 (a) When a conversion takes effect:

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

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

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

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

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

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

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

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

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

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

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

22 (11) If the Secretary of State has assigned a unique
23 identifying number or other designation to the converting
24 organization and

1 (i) the converted organization is formed pursuant
2 to, or governed by, the laws of this state or

3 (ii) the converted organization is, within 30 days
4 after the effective date of the conversion, registered to
5 transact business in this state, then that unique identifying
6 number or other designation shall continue to be assigned to
7 the converted organization.

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

21 §10A-8A-9.06. Merger.

22 (a) A partnership may merge with one or more other
23 constituent organizations pursuant to this section, Sections
24 10A-8A-9.07 through 10A-8A-9.09, and a plan of merger, if:

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

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

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

7 (b) A plan of merger must be in writing and must
8 include:

9 (1) the name, type of organization, and mailing
10 address of the principal office of each constituent
11 organization;

12 (2) the name, type of organization, and mailing
13 address of the principal office of the surviving organization
14 and, if the surviving organization is to be created pursuant
15 to the merger, a statement to that effect;

16 (3) the terms and conditions of the merger,
17 including the manner and basis for converting the interests in
18 each constituent organization into any combination of money,
19 interests in the surviving organization, and other
20 consideration as allowed by subsection (c);

21 (4) if the surviving organization is to be created
22 pursuant to the merger, the surviving organization's
23 organizational documents; and

24 (5) if the surviving organization is not to be
25 created pursuant to the merger, any amendments to be made by

1 the merger to the surviving organization's organizational
2 documents.

3 (c) In connection with a merger, rights or
4 securities of or interests in a constituent organization may
5 be exchanged for or converted into cash, property, or rights
6 or securities of or interests in the surviving organization,
7 or, in addition to or in lieu thereof, may be exchanged for or
8 converted into cash, property, or rights or securities of or
9 interests in another organization or may be cancelled.

10 §10A-8A-9.07. Action on plan of merger by
11 constituent partnership.

12 (a) Subject to Section 10A-8A-9.10, a plan of merger
13 must be consented to by all the partners of a constituent
14 partnership.

15 (b) Subject to Section 10A-8A-9.10 and any
16 contractual rights, after a merger is approved, and at any
17 time before a filing is made under Section 10A-8A-9.08, a
18 constituent partnership may amend the plan or abandon the
19 merger:

20 (1) as provided in the plan; and

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

23 §10A-8A-9.08. Filings required for merger; effective
24 date.

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

4 (1) each constituent partnership, as provided in
5 Section 10A-8A-2.03(a); and

6 (2) each other constituent organization, as provided
7 by its governing statute.

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

10 (1) the name, type of organization, and mailing
11 address of the principal office of each constituent
12 organization and the jurisdiction of its governing statute;

13 (2) the name, type of organization, and mailing
14 address of the principal office of the surviving organization,
15 the jurisdiction of its governing statute, and, if the
16 surviving organization is created pursuant to the merger, a
17 statement to that effect;

18 (3) the date of the filing of the certificate of
19 formation, if any, and all prior amendments and the filing
20 office or offices, if any, and where such is filed of each
21 constituent organization which was formed under the laws of
22 this state;

23 (4) the date of the filing of the statement of
24 partnership, statement of not for profit partnership, or
25 statement of limited liability partnership, if any, and all

1 prior amendments and the filing office or offices, if any, and
2 where such is filed of each constituent organization which is
3 a partnership;

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

6 (6) if the surviving organization is to be created
7 pursuant to the merger:

8 (A) if it will be a partnership, the partnership's
9 statement of partnership, statement of not for profit
10 partnership, or statement of limited liability partnership; or

11 (B) if it will be an organization other than a
12 partnership, any organizational document that creates the
13 organization that is required to be in a public writing;

14 (7) if the surviving organization exists before the
15 merger, any amendments provided for in the plan of merger for
16 the organizational document that are required to be in a
17 public writing;

18 (8) a statement as to each constituent organization
19 that the merger was approved as required by the organization's
20 governing statute;

21 (9) if the surviving organization is a foreign
22 organization not authorized to conduct business or not for
23 profit activity in this state, the street and mailing address
24 of an office for the purposes of Section 10A-8A-9.09(b); and

1 (10) any additional information required by the
2 governing statute of any constituent organization.

3 (c) Prior to the statement of merger being delivered
4 for filing to the Secretary of State in accordance subsection
5 (d), all constituent organizations that are partnerships,
6 other than a partnership that is created pursuant to the
7 merger, must have on file with the Secretary of State a
8 statement of partnership, statement of not for profit
9 partnership, or statement of limited liability partnership.

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

1 effective, an organization described in Section
2 10A-1-4.02(c) (4), but which has a certificate of formation
3 filed with the judge of probate, the Secretary of State shall
4 transmit a certified copy of the statement of merger to the
5 office of the judge of probate in the county in which the
6 certificate of formation for each such constituent
7 organization was filed along with the proper fee for the judge
8 of probate. For each constituent organization which (1) is
9 formed under the laws of this state pursuant to a certificate
10 of formation, (2) is, immediately prior to the merger becoming
11 effective, an organization described in Section
12 10A-1-4.02(c) (4), and (3) did not file its certificate of
13 formation with the judge of probate, but rather in accordance
14 with this title filed its certificate of formation with the
15 Secretary of State, the Secretary of State shall not transmit
16 a certified copy of the statement of merger to the office of
17 the judge of probate and shall not collect any fee for the
18 judge of probate. For each constituent organization which is a
19 partnership, the Secretary of State shall not transmit a
20 certified copy of the statement of merger to the office of the
21 judge of probate and shall not collect any fee for the judge
22 of probate.

23 (e) A merger becomes effective under this article:

24 (1) if the surviving organization is a partnership,
25 upon the later of:

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

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

4 (2) if the surviving organization is not a
5 partnership, as provided by the governing statute of the
6 surviving organization.

7 (f) After a merger becomes effective, if the
8 surviving organization is a partnership, then all filing
9 instruments required to be filed under this title regarding
10 that surviving organization shall be filed with the Secretary
11 of State.

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

22 (h) A statement of merger is a filing instrument
23 under Chapter 1.

24 (i) Except as provided in the last two sentences of
25 subsection (d), the filing fees for a statement of merger

1 shall be the same fees as provided in Section
2 10A-1-4.31(a)(5).

3 §10A-8A-9.09. Effect of merger.

4 (a) When a merger becomes effective:

5 (1) the surviving organization continues or, in the
6 case of a surviving organization created pursuant to the
7 merger, comes into existence;

8 (2) each constituent organization that merges into
9 the surviving organization ceases to exist as a separate
10 entity;

11 (3) all property owned by, and every contract right
12 possessed by, each constituent organization that ceases to
13 exist vests in the surviving organization without transfer,
14 reversion, or impairment and the title to any property and
15 contract rights vested by deed or otherwise in the surviving
16 organization shall not revert, be in any way impaired, or be
17 deemed to be a transfer by reason of the merger;

18 (4) all debts, obligations, and other liabilities of
19 each constituent organization, other than the surviving
20 organization, are debts, obligations, and other liabilities of
21 the surviving organization, and neither the rights of
22 creditors, nor any liens upon the property of any constituent
23 organization, shall be impaired by the merger;

24 (5) an action or proceeding pending by or against
25 any constituent organization continues as if the merger had

1 not occurred and the name of the surviving organization may
2 be, but need not be, substituted in any pending proceeding for
3 the name of any constituent organization whose separate
4 existence ceased in the merger;

5 (6) except as prohibited by law other than this
6 chapter, or the terms of the merger, all of the rights,
7 privileges, franchises, immunities, powers, and purposes of
8 each constituent organization, other than the surviving
9 organization, vest in the surviving organization;

10 (7) except as otherwise provided in the plan of
11 merger, the terms and conditions of the plan of merger take
12 effect;

13 (8) except as otherwise agreed, if a constituent
14 partnership ceases to exist, the merger does not dissolve the
15 partnership;

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

18 (A) if it is a partnership, the statement of
19 partnership, statement of not for profit partnership or
20 statement of limited liability partnership becomes effective;
21 or

22 (B) if it is an organization other than a
23 partnership, the organizational documents that create the
24 organization become effective;

1 (10) if the surviving organization existed before
2 the merger, any amendments provided for in the statement of
3 merger for the organizational documents of that organization
4 become effective;

5 (11) the transferable interests of each partnership
6 that is a constituent organization to the merger, and the
7 ownership interests of each organization that is not a
8 partnership, but is a constituent organization to the merger,
9 that are to be converted in accordance with the terms of the
10 merger into transferable interests, ownership interests, other
11 securities, obligations, rights to acquire transferable
12 interests, ownership interests, or other securities, cash,
13 other property, or any combination of the foregoing, are
14 converted, and the former holder of such transferable
15 interests or ownership interests is entitled only to the
16 rights provided to that former holder by those terms or the
17 statute governing that former holder's constituent
18 organization; and

19 (12) if the surviving organization exists before the
20 merger:

21 (i) all the property and contract rights of the
22 surviving organization remain its property and contract rights
23 without transfer, reversion, or impairment;

24 (ii) the surviving organization remains subject to
25 all its debts, obligations, and other liabilities; and

1 (iii) except as provided by law other than this
2 chapter, or the plan of merger, the surviving organization
3 continues to hold all of its rights, privileges, franchises,
4 immunities, powers, and purposes.

5 (b) A surviving organization that is a foreign
6 entity consents to the jurisdiction of this state to enforce
7 any debt, obligation, or other liability owed by a constituent
8 organization, if before the merger the constituent
9 organization was subject to suit in this state on the debt,
10 obligation, or other liability. If a surviving organization
11 that is a foreign entity fails to designate or maintain a
12 registered agent, or the designated registered agent cannot
13 with reasonable diligence be served, then the service of
14 process on that surviving organization for the purposes of
15 enforcing a debt, obligation, or other liability under this
16 subsection may be made in the same manner and has the same
17 consequences as provided in Section 10A-1-5.35.

18 §10A-8A-9.10. Restrictions on approval of mergers,
19 conversions and on relinquishing LLP status.

20 (a) If a partner of a converting or constituent
21 partnership will have personal liability with respect to a
22 converted or surviving organization, approval and amendment of
23 a plan of conversion or plan of merger are ineffective without
24 that partner's consent to the plan.

1 (b) A statement of cancellation of the statement of
2 limited liability partnership filed in connection with a
3 conversion or merger is ineffective without each partner's
4 written consent to such amendment.

5 (c) A partner does not give the consent required by
6 subsection (a) or (b) merely by consenting to a provision of
7 the partnership agreement that permits the partnership
8 agreement to be amended with the consent of fewer than all the
9 partners.

10 §10A-8A-9.11. Liability of partner after conversion
11 or merger.

12 (a) A conversion or merger under this article does
13 not discharge any liability under Section 10A-8A-3.06,
14 10A-8A-7.02, or 10A-8A-7.03 of a person that was a partner in
15 or dissociated as a partner from a converting or constituent
16 partnership, but:

17 (1) the provisions of this chapter pertaining to the
18 collection or discharge of the liability continue to apply to
19 the liability;

20 (2) for the purposes of applying those provisions,
21 the converted or surviving organization is deemed to be the
22 converting or constituent partnership; and

23 (3) if a person is required to pay any amount under
24 this subsection:

1 (A) the person has a right of contribution from each
2 other person that was liable as a partner under Section
3 10A-8A-3.06 when the obligation was incurred and has not been
4 released from the obligation under Section 10A-8A-7.02 or
5 10A-8A-7.03; and

6 (B) the contribution due from each of those persons
7 is in proportion to the right to receive distributions in the
8 capacity of partner in effect for each of those persons when
9 the obligation was incurred.

10 (b) In addition to any other liability provided by
11 law:

12 (1) a person that immediately before a conversion or
13 merger became effective was a partner in a converting or
14 constituent partnership that was not a limited liability
15 partnership is personally liable for each obligation of the
16 converted or surviving organization arising from a transaction
17 with a third party after the conversion or merger becomes
18 effective, if, at the time the third party enters into the
19 transaction, the third party:

20 (A) does not have notice of the conversion or
21 merger; and

22 (B) reasonably believes that:

23 (i) the converted or surviving business is the
24 converting or constituent partnership;

1 (ii) the converting or constituent partnership is
2 not a limited liability partnership; and

3 (iii) the person is a partner in the converting or
4 constituent partnership; and

5 (2) a person that was dissociated as a partner from
6 a converting or constituent partnership before the conversion
7 or merger became effective is personally liable for each
8 obligation of the converted or surviving organization arising
9 from a transaction with a third party after the conversion or
10 merger becomes effective, if:

11 (A) immediately before the conversion or merger
12 became effective the converting or surviving partnership was
13 not a limited liability partnership; and

14 (B) at the time the third party enters into the
15 transaction the third party:

16 (i) does not have notice of the dissociation;

17 (ii) does not have notice of the conversion or
18 merger; and

19 (iii) reasonably believes that the converted or
20 surviving organization is the converting or constituent
21 partnership, the converting or constituent partnership is not
22 a limited liability partnership, and the person is a partner
23 in the converting or constituent partnership.

1 §10A-8A-9.12. Power of partners and persons
 2 dissociated as partners to bind organization after conversion
 3 or merger.

4 (a) An act of a person that immediately before a
 5 conversion or merger became effective was a partner in a
 6 converting or constituent partnership binds the converted or
 7 surviving organization after the conversion or merger becomes
 8 effective, if:

9 (1) before the conversion or merger became
 10 effective, the act would have bound the converting or
 11 constituent partnership under Section 10A-8A-3.01; and

12 (2) at the time the third party enters into the
 13 transaction, the third party:

14 (A) does not have notice of the conversion or
 15 merger; and

16 (B) reasonably believes that the converted or
 17 surviving organization is the converting or constituent
 18 partnership and that the person is a partner in the converting
 19 or constituent partnership.

20 (b) An act of a person that before a conversion or
 21 merger became effective was dissociated as a partner from a
 22 converting or constituent partnership binds the converted or
 23 surviving organization after the conversion or merger becomes
 24 effective, if:

1 (1) before the conversion or merger became
2 effective, the act would have bound the converting or
3 constituent partnership under Section 10A-8A-3.01 if the
4 person had been a partner; and

5 (2) at the time the third party enters into the
6 transaction, the third party:

7 (A) does not have notice of the dissociation;

8 (B) does not have notice of the conversion or
9 merger; and

10 (C) reasonably believes that the converted or
11 surviving organization is the converting or constituent
12 partnership and that the person is a partner in the converting
13 or constituent partnership.

14 (c) If a person having knowledge of the conversion
15 or merger causes a converted or surviving organization to
16 incur an obligation under subsection (a) or (b), the person is
17 liable:

18 (1) to the converted or surviving organization for
19 any damage caused to the organization arising from the
20 obligation; and

21 (2) if another person is liable for the obligation,
22 to that other person for any damage caused to that other
23 person arising from the liability.

1 §10A-8A-9.13. Article not exclusive. This article is
2 not exclusive. This article does not preclude an entity from
3 being converted or merged under law other than this chapter.

4 Article 10. Limited Liability Partnership.

5 §10A-8A-10.01. Limited liability partnerships;
6 statements; cancellations.

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

9 (b) In order to form a limited liability
10 partnership, the original partnership agreement of the
11 partnership shall state that the partnership is formed as a
12 limited liability partnership, and the partnership shall
13 deliver to the Secretary of State for filing a statement of
14 limited liability partnership in accordance with subsection
15 (d) of this section.

16 (c) In order for an existing partnership to become a
17 limited liability partnership, the terms and conditions on
18 which the partnership becomes a limited liability partnership
19 must be approved by the affirmative approval necessary to
20 amend the partnership agreement and, in the case of a
21 partnership agreement that expressly considers obligations to
22 contribute to the partnership, also the affirmative approval
23 necessary to amend those provisions, and after such approval,
24 the partnership shall deliver to the Secretary of State for

1 filing a statement of limited liability partnership in
2 accordance with subsection (d).

3 (d) A statement of limited liability partnership
4 must contain all of the following:

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

7 (2) the street, and mailing, if different, address
8 of its principal office.

9 (3) the street and mailing address of a registered
10 office and the name of the registered agent at that office for
11 service of process in this state which the partnership shall
12 be required to maintain;

13 (4) a statement that the partnership was formed as a
14 limited liability partnership in accordance with subsection
15 (b) or a statement that the statement of limited liability
16 partnership was approved in accordance with subsection (c);
17 and

18 (5) a statement that the partnership is a limited
19 liability partnership.

20 (e) A statement of limited liability partnership may
21 be amended or restated from time to time in accordance with
22 Section 10A-1-4.26.

23 (f) The statement of limited liability partnership
24 shall be executed by one or more partners authorized to
25 execute the statement of limited liability partnership.

1 (g) The statement of limited liability partnership
2 shall be accompanied by a fee for the Secretary of State in
3 the respective amounts prescribed by Section 10A-1-4.31.

4 (h) The Secretary of State shall file the statement
5 of limited liability partnership of any partnership as a
6 limited liability partnership that submits a completed
7 statement of limited liability partnership with the required
8 fees. The filing by the Secretary of State of a statement of
9 limited liability partnership is conclusive evidence that the
10 partnership has satisfied all conditions required to be a
11 limited liability partnership.

12 (i) The statement of limited liability partnership
13 is effective, and a partnership becomes a limited liability
14 partnership, immediately on the date the statement of limited
15 liability partnership is filed with the Secretary of State or
16 at any later date or time specified in the statement of
17 limited liability partnership in compliance with Article 4 of
18 Chapter 1. The status as a limited liability partnership
19 remains effective, regardless of changes in the partnership,
20 and partnership continues as a limited liability partnership
21 until a statement of cancellation is voluntarily filed in
22 accordance with subsection (m).

23 (j) The fact that a statement of limited liability
24 partnership is on file with the Secretary of State is notice
25 that the partnership is a limited liability partnership and as

1 notice of the facts required to be set forth in the statement
2 of limited liability partnership.

3 (k) A partnership that has filed a statement of
4 limited liability partnership as a limited liability
5 partnership is for all purposes, except as provided in Section
6 10A-8A-3.06, the same entity that existed before the statement
7 of limited liability partnership was filed and continues to be
8 a partnership under the laws of this state subject to the
9 limited liability partnership provisions of this chapter. If a
10 limited liability partnership dissolves and its business or
11 not for profit activity, or a portion of its business or not
12 for profit activity is continued without the complete winding
13 up of partnership's business or not for profit activity, a
14 partnership which is a successor to the limited liability
15 partnership shall not be required to file a new statement of
16 limited liability partnership.

17 (l) The status of the partnership as a limited
18 liability partnership and the liability of a partner of the
19 limited liability partnership shall not be adversely affected
20 by error or subsequent changes in the information stated in
21 the statement of limited liability partnership under
22 subsection (d).

23 (m) The decision to file a statement of cancellation
24 shall require the approval of all of the partners of the
25 partnership. The statement of cancellation must be delivered

1 for filing to the Secretary of State and must contain the
2 following:

3 (1) the name of the limited liability partnership;

4 (2) the date and office or offices in which it filed
5 its statement of limited liability partnership, and all
6 amendments and restatements thereof;

7 (3) the street and mailing address of its principal
8 office;

9 (4) the street and mailing address of its registered
10 office and the name of the registered agent at that office for
11 service of process in this state which the partnership was
12 required to maintain;

13 (5) a statement that the statement of cancellation
14 was approved in accordance with this subsection; and

15 (6) any other information that the partners
16 determine to include.

17 (n) A statement of cancellation must be executed by
18 one or more partners authorized to execute the statement of
19 cancellation.

20 (o) The statement of cancellation is effective, and
21 a partnership ceases to be a limited liability partnership,
22 immediately on the date the statement of cancellation is
23 delivered to the Secretary of State for filing or at any later
24 date or time specified in the statement of cancellation in
25 compliance with Article 4 of Chapter 1. The statement of

1 cancellation shall not cause the dissolution of the
2 partnership.

3 (p) The filing of a statement of cancellation of a
4 limited liability partnership does not affect the limited
5 liability of partners for debts, obligations or liabilities of
6 the partnership which occur or were incurred prior to the
7 filing of the statement of cancellation.

8 (q) A dissolved limited liability partnership shall
9 continue its status as a limited liability partnership unless
10 a statement of cancellation is voluntarily filed in accordance
11 with subsection (m).

12 (r) The statement of limited liability partnership
13 and the statement of cancellation are filing instruments for
14 the purposes of Chapter 1.

15 §10A-8A-10.02. Special rules for limited liability
16 partnerships performing professional services.

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

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

1 (c) Except as otherwise provided in subsection (b),
2 the personal liability of a partner of any limited liability
3 partnership engaged in providing professional services shall
4 be governed by Section 10A-8A-3.06.

5 (d) The personal liability of a partner or employee
6 of a foreign limited liability partnership engaged in
7 providing professional services shall be determined under the
8 law of the jurisdiction which governs the foreign limited
9 liability partnership.

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

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

22 (g) A partner's transferable interest in a limited
23 liability partnership organized to render professional
24 services may be voluntarily transferred only to a qualified
25 person.

1 §10A-8A-10.03. Death or disqualification of partner.

2 (a) In the case of a limited liability partnership
3 performing professional services, upon the death of a partner,
4 upon a partner becoming a disqualified person, or upon a
5 transferable interest being transferred by operation of law or
6 court decree to a disqualified person, the transferable
7 interest of the deceased partner or of the disqualified person
8 may be transferred to a qualified person and, if not so
9 transferred, subject to Section 10A-8A-4.09, shall be
10 purchased by the limited liability partnership as provided in
11 this section.

12 (b) If the price of the transferable interest is not
13 fixed by the partnership agreement, the limited liability
14 partnership, within six months after the death or 30 days
15 after the disqualification or transfer, as the case may be,
16 shall make a written offer to pay to the holder of the
17 transferable interest a specified price deemed by the limited
18 liability partnership to be the fair value of the transferable
19 interest as of the date of the death, disqualification, or
20 transfer. The offer shall be given to the personal
21 representative of the estate of the deceased partner, the
22 disqualified person, or the transferee, as the case may be,
23 and shall be accompanied by a balance sheet of the limited
24 liability partnership, as of the latest available date and not
25 more than 12 months prior to the making of the offer, and a

1 profit and loss statement of the limited liability partnership
2 for the 12-month period ended on the date of the balance
3 sheet.

4 (c) If within 30 days after the date of the written
5 offer from the limited liability partnership the fair value of
6 the transferable interest is agreed upon between the personal
7 representative of the estate of the deceased partner, the
8 disqualified person, or the transferee, as the case may be,
9 and the limited liability partnership, payment therefor shall
10 be made within 90 days, or such other period as the parties
11 may agree, after the date of the offer. Upon payment of the
12 agreed value, the personal representative of the estate of the
13 deceased partner, the disqualified person, or the transferee,
14 as the case may, be shall cease to have any interest in, or
15 claim to, the transferable interest.

16 (d) If within 30 days from the date of the written
17 offer from the limited liability partnership, the personal
18 representative of the estate of the deceased partner, the
19 disqualified person, or the transferee, as the case may be,
20 and the limited liability partnership do not so agree as to
21 the fair value of the transferable interest, then either party
22 may commence a civil action in the circuit court in the county
23 in which the limited liability partnership's principal place
24 of business or not for profit activity within this state is
25 located, and if the limited liability partnership does not

1 have a principal place of business or not for profit activity
2 within this state, then the circuit court for the county in
3 which the limited liability partnership's most recent
4 registered office is located requesting that the fair value of
5 the transferable interest be found and determined. The
6 personal representative of the estate of the deceased partner,
7 the disqualified person, or the transferee, as the case may
8 be, wherever residing, shall be made a party to the proceeding
9 as an action against that person's transferable interest quasi
10 in rem. Service shall be made in accordance with the rules of
11 civil procedure. The personal representative of the estate of
12 the deceased partner, the disqualified person, or the
13 transferee, as the case may be, shall be entitled to a
14 judgment against the limited liability partnership for the
15 amount of the fair value of that person's transferable
16 interest as of the date of death, disqualification, or
17 transfer. The court may order that the judgment be paid in
18 installments and with interest and on terms as the court may
19 determine. The court may appoint one or more persons as
20 appraisers to receive evidence and recommend a decision on the
21 question of fair value. The appraisers shall have the power
22 and authority as shall be specified in the order of their
23 appointment or an amendment thereof.

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

1 in all the circumstances, from the date of death,
2 disqualification, or transfer.

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

6 (g) The expenses shall include reasonable
7 compensation for and reasonable expenses of the appraisers and
8 a reasonable attorney's fee but shall exclude the fees and
9 expenses of counsel for and of experts employed by any party;
10 but:

11 (1) if the fair value of the transferable interest
12 as determined materially exceeds the amount which the limited
13 liability partnership offered to pay therefor, or if no offer
14 was made by the limited liability partnership, the court in
15 its discretion may award to the personal representative of the
16 estate of the deceased partner, the disqualified person, or
17 the transferee, as the case may be, the sum the court
18 determines to be reasonable compensation to any expert or
19 experts employed by the personal representative of the estate
20 of the deceased partner, the disqualified person, or the
21 transferee, as the case may be, in the proceeding; and

22 (2) if the offer of the limited liability
23 partnership for the transferable interest materially exceeds
24 the amount of the fair value of the transferable interest as
25 determined, the court in its discretion may award to the

1 limited liability partnership the sum the court determines to
2 be reasonable compensation to any expert or experts employed
3 by the limited liability partnership, in the proceeding.

4 (h) If the purchase or transfer of the transferable
5 interest of a deceased partner, a disqualified person or a
6 transferee is not completed within 12 months after the death
7 of the deceased partner or 12 months after the
8 disqualification or transfer, as the case may be, the limited
9 liability partnership shall forthwith cancel the transferable
10 interest on its books and the personal representative of the
11 estate of the deceased partner, the disqualified person, or
12 the transferee, as the case may be, shall have no further
13 interest in the transferable interest other than that person's
14 right to payment for the transferable interest under this
15 section.

16 (i) This section shall not require a limited
17 liability partnership to purchase a transferable interest of a
18 disqualified person if the disqualification is for less than
19 12 months from the date of disqualification. A limited
20 liability partnership may require the disqualified person to
21 sell the disqualified person's transferable interest to the
22 limited liability partnership upon any disqualification.

23 (j) Any provision of a partnership agreement
24 regarding the purchase or transfer of a transferable interest
25 of a limited liability partnership performing professional

1 services shall be specifically enforceable in the courts of
2 Alabama.

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

6 Article 11. Transition Rules and Miscellaneous
7 Provisions.

8 §10A-8A-11.01. Application to existing
9 relationships.

10 (a) Beginning January 1, 2019, this chapter governs
11 all partnerships and all foreign partnerships.

12 (b) With respect to a partnership formed before
13 January 1, 2019, and governed by the laws of this state, the
14 following rules apply:

15 (1) a registration of a limited liability
16 partnership which is current and effective as of December 31,
17 2018, shall remain effective without further action on the
18 part of the limited liability partnership, and a partnership
19 having the status of a limited liability partnership, under
20 predecessor law, shall have the status of a limited liability
21 partnership under this chapter and to the extent such
22 partnership has not filed a statement of limited liability
23 partnership pursuant to this chapter, the registration or
24 latest annual notice filed by such partnership under

1 predecessor law shall constitute a statement of limited
2 liability partnership filed under this chapter;

3 (2) a partnership's partnership agreement existing
4 as of December 31, 2018, shall be deemed to be that
5 partnership's partnership agreement under this chapter;

6 (3) a statement of partnership authority is deemed
7 to be a statement of authority and each statement of
8 partnership authority existing as of December 31, 2018, shall
9 remain effective without further action on the part of the
10 partnership for the remainder of the period of time authorized
11 under predecessor law, unless earlier amended, in which case,
12 such statement of partnership authority shall comply with
13 Section 10A-8A-3.03;

14 (4) a statement of denial, statement of
15 dissociation, and statement of dissolution existing as of
16 December 31, 2018, shall be deemed to be a statement of
17 denial, statement of dissociation, and statement of
18 dissolution under this chapter respectively;

19 (5) a registration of a foreign limited liability
20 partnership which is current and effective as of December 31,
21 2018, shall remain effective without further action on the
22 part of the foreign limited liability partnership, and a
23 foreign limited liability partnership having the status of a
24 qualified foreign limited liability partnership, under
25 predecessor law, shall have the status of a qualified foreign

1 limited liability partnership under this chapter and to the
2 extent such partnership has not filed a statement of foreign
3 limited liability partnership pursuant to this chapter, the
4 registration or latest annual notice filed by such partnership
5 under predecessor law shall constitute a statement of foreign
6 limited liability partnership filed under this chapter; and

7 (6) if a limited liability partnership or foreign
8 limited liability partnership is using the phrase "registered
9 limited liability partnership" or the abbreviation "RLLP" or
10 "R.L.L.P.," in its name as of December 31, 2018, such phrase
11 or abbreviation shall continue to comply with Article 5 of
12 Chapter 1 unless and until it changes or amends, by whatever
13 means, its name on or after January 1, 2019, at which point it
14 may only use the term "limited liability partnership" or the
15 abbreviation "LLP" or "L.L.P.," in its name in compliance with
16 Article 5 of Chapter 1. No limited liability partnership which
17 is formed or elects to become a limited liability partnership
18 on or after January 1, 2018, and no foreign limited liability
19 partnership which delivers to the Secretary of State for
20 filing, a statement of foreign limited liability partnership,
21 may use the phrase "registered limited liability partnership"
22 or the abbreviation "RLLP" or "R.L.L.P.," in its name.

23 §10A-8A-11.02. Severability clause. If any provision
24 of this chapter or its application to any person or
25 circumstance is held invalid, the invalidity does not affect

1 other provisions or applications of this chapter which can be
2 given effect without the invalid provision or application, and
3 to this end the provisions of this chapter are severable.

4 §10A-8A-11.03. Relation to Electronic Signatures in
5 Global and National Commerce Act. This chapter modifies,
6 limits, or supersedes the federal Electronic Signatures in
7 Global and National Commerce Act, 15 U.S.C. Section 7001 et
8 seq., but this chapter does not modify, limit, or supersede
9 Section 101(c) of that act or authorize electronic delivery of
10 any of the notices described in Section 103(b) of that act.

11 §10A-8A-11.04. Effective date. This chapter takes
12 effect January 1, 2019.

13 §10A-8A-11.05. Repeals. Effective January 1, 2019,
14 the following parts of the Code of Alabama 1975, are repealed:
15 Section 10A-1-7.33 and Chapter 8 of Title 10A, comprised of
16 Sections 10A-8-1.01 to 10A-8-11.04, inclusive, as amended and
17 in effect immediately before the effective date of this act.

18 §10A-8A-11.06. Savings clause.

19 (a) Except as provided in subsection (b), the repeal
20 of a statute by this chapter does not affect:

21 (1) the operation of the statute or any action taken
22 under it before its repeal;

23 (2) any ratification, right, remedy, privilege,
24 obligation, or liability acquired, accrued, or incurred under
25 the statute before its repeal;

1 (3) any violation of the statute, or any penalty,
2 forfeiture, or punishment incurred because of the violation,
3 before its repeal; or

4 (4) any proceeding, reorganization, or dissolution
5 commenced under the statute before its repeal, and the
6 proceeding, reorganization, or dissolution may be completed in
7 accordance with the statute as if it had not been repealed.

8 (b) If a penalty or punishment imposed for violation
9 of a statute repealed by this chapter is reduced by this
10 chapter, the penalty or punishment if not already imposed
11 shall be imposed in accordance with this chapter.

12 §10A-8A-11.07. Composite returns. The Alabama
13 Department of Revenue shall promulgate rules and regulations
14 similar to those provided under Section 40-18-176, relating to
15 Alabama S corporations, to permit the filing of annual
16 composite income tax returns for one or more nonresident
17 partners, who are individuals, of a partnership, limited
18 liability partnership or foreign limited liability partnership
19 with an effective statement of foreign limited liability
20 partnership on file with the Secretary of State, as well as
21 one or more nonresident members, who are individuals, of a
22 limited liability company or foreign limited liability company
23 and one or more nonresident beneficiaries, who are
24 individuals, of a business trust, organized under or
25 recognized by the laws of this state.

1 §10A-8A-11.08. Taxation of limited liability
2 partnership. A limited liability partnership and a foreign
3 limited liability partnership shall be taxed as a partnership
4 in accordance with Section 40-18-24, as amended from time to
5 time, will file partnership returns as required by Section
6 40-18-28, as amended from time to time, and shall for all
7 other tax purposes be taxed as a partnership, all being
8 subject to the limited liability partnership and a foreign
9 limited liability partnership maintaining its status as a
10 partnership under federal income tax law.

11 §10A-8A-11.09. Reserved power of the state to alter
12 or repeal chapter. All provisions of this chapter may be
13 altered from time to time or repealed and all rights of
14 partners, partnerships, and agents are subject to this
15 reservation. Unless expressly stated to the contrary in this
16 chapter, all amendments of this chapter shall apply to
17 partners, partnerships, and agents whether or not existing as
18 such at the time of the enactment of any such amendment.

19 §10A-8A-11.10. Interstate application. A limited
20 liability partnership governed by this chapter may conduct its
21 business or not for profit activity, carry on its operations,
22 and have and exercise the powers granted by this chapter in
23 any state, foreign country, or other jurisdiction.

24 Section 8. This act shall become effective on
25 January 1, 2019.

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Speaker of the House of Representatives

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7

President and Presiding Officer of the Senate

8

House of Representatives

9

I hereby certify that the within Act originated in
and was passed by the House 18-JAN-18, as amended.

10

11

12

Jeff Woodard

13

Clerk

14

15

16

17

Senate

13-FEB-18

Passed

18