

1 HB72
2 188769-2
3 By Representatives Poole and Daniels
4 RFD: Judiciary
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8 SYNOPSIS: Under existing law, the Alabama Partnership
9 Act governs the formation, powers, governance, and
10 dissolution of partnerships in the state.

11 This bill would revise the Alabama
12 Partnership Act and would specify that the
13 procedures for formation, powers, governance, and
14 dissolution are applicable to limited liability
15 limited partnerships, limited liability
16 partnerships, foreign limited liability limited
17 partnerships, and foreign limited liability
18 partnerships that function in the state. This bill
19 would make conforming changes elsewhere in the
20 business entities law.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating to business entities; to amend Sections
27 10A-1-1.02, 10A-1-1.03, 10A-1-1.06, 10A-1-1.08, 10A-1-1.12,

1 10A-1-2.02, 10A-1-2.11, 10A-1-3.04, 10A-1-3.05, 10A-1-3.06,
2 10A-1-3.17, 10A-1-3.32, 10A-1-3.33, 10A-1-3.41, 10A-1-3.42,
3 10A-1-4.01, 10A-1-4.02, 10A-1-4.12, 10A-1-4.25, 10A-1-4.31,
4 10A-1-5.01, 10A-1-5.02, 10A-1-5.03, 10A-1-5.04, 10A-1-5.05,
5 10A-1-5.06, 10A-1-5.07, and 10A-1-5.08; to add Section
6 10A-1-5.10; to amend Sections 10A-1-5.11, 10A-1-5.12,
7 10A-1-5.31, 10A-1-5.32, 10A-1-5.33, 10A-1-6.02, 10A-1-7.01,
8 10A-1-7.02, 10A-1-7.03, 10A-1-7.04, 10A-1-7.05, and
9 10A-1-7.06, 10A-1-7.07, 10A-1-7.11, 10A-1-7.12, 10A-1-7.13,
10 10A-1-7.14, 10A-1-7.22, 10A-1-7.23, 10A-1-7.24, 10A-1-7.31,
11 10A-1-7.32, 10A-1-7.34, 10A-1-7.36, 10A-1-7.37, 10A-1-8.01,
12 10A-1-8.02, and 10A-1-8.03, to amend and renumber Section
13 10A-1-9.01 as 10A-1-9.02, to add a new Section 10A-1-9.01, and
14 to amend Sections 10A-1-9.21, 10A-1-9.22, 10A-5A-1.02,
15 10A-5A-1.06, 10A-5A-4.09, 10A-5A-7.02, 10A-5A-10.08,
16 10A-9A-1.07, 10A-9A-10.09, and 10A-17-1.02 of the Code of
17 Alabama 1975, to revise and replace the Alabama Partnership
18 Act; and to provide that the procedures for formation, powers,
19 governance, and dissolution are applicable to limited
20 liability limited partnerships, limited liability
21 partnerships, foreign limited liability partnerships, and
22 foreign limited liability limited partnerships that function
23 in the state; to repeal Section 10A-1-7.33 and Chapter 8 of
24 Title 10A, comprised of Sections 10A-8-1.01 to 10A-8-11.04,
25 inclusive, Code of Alabama 1975; and to add Chapter 8A to
26 Title 10A of the Code of Alabama 1975.
27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 10A-1-1.02, 10A-1-1.03,
2 10A-1-1.06, 10A-1-1.08, 10A-1-1.12, 10A-1-2.02, 10A-1-2.11,
3 10A-1-3.04, 10A-1-3.05, 10A-1-3.06, 10A-1-3.17, 10A-1-3.32,
4 10A-1-3.33, 10A-1-3.41, 10A-1-3.42, 10A-1-4.01, 10A-1-4.02,
5 10A-1-4.12, 10A-1-4.25, 10A-1-4.31, 10A-1-5.01, 10A-1-5.02,
6 10A-1-5.03, 10A-1-5.04, 10A-1-5.05, 10A-1-5.06, 10A-1-5.07,
7 and 10A-1-5.08 of the Code of Alabama 1975, are amended to
8 read as follows:

9 "§10A-1-1.02.

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

17 "(b) The provisions of this chapter shall apply to
18 entities formed under or governed by Chapter 16, Chapter 17,
19 Chapter 20, and Chapter 30 only as provided therein or
20 expressly provided in this chapter.

21 "(c) If a provision of this chapter conflicts with a
22 provision in another chapter of this title, the provision of
23 the other chapter, to the extent of the conflict, supersedes
24 the provision of this chapter.

25 "~~(d) Any section of any act enacted at the 2009 and~~
26 ~~2010 Regular Sessions in substantive conflict with any~~

1 ~~provision of Act 2009-513 shall prevail over Act 2009-513~~
2 ~~whether enacted before or after Act 2009-513.~~

3 ~~"(e) When codifying Act 2009-513 and acts of the~~
4 ~~2009 and 2010 Regular Sessions or any special session~~
5 ~~occurring before the 2011 Regular Session, the Code~~
6 ~~Commissioner shall place the provisions of other acts relating~~
7 ~~to the subject of Act 2009-513 within the structure of Title~~
8 ~~10A as specified by Act 2009-513. Actions taken by the Code~~
9 ~~Commissioner in complying with this requirement shall include,~~
10 ~~but not be limited to, placing a section that is amended and~~
11 ~~renumbered by Act 2009-513 into the code in the substantive~~
12 ~~form as amended by the other act but assigning it the code~~
13 ~~section number contained in Act 2009-513 and assigning a~~
14 ~~section number based on the numbering system contained in Act~~
15 ~~2009-513 for any section amended by another act that is~~
16 ~~repealed by Act 2009-513.~~

17 "§10A-1-1.03.

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

20 "(1) AFFILIATE. A person who controls, is controlled
21 by, or is under common control with another person. An
22 affiliate of an individual includes the spouse, or a parent or
23 sibling thereof, of the individual, or a child, grandchild,
24 sibling, parent, or spouse of any thereof, of the individual,
25 or an individual having the same home as the individual, or a
26 trust or estate of which an individual specified in this
27 sentence is a substantial beneficiary; a trust, estate,

1 incompetent, conservatee, protected person, or minor of which
2 the individual is a fiduciary; or an entity of which the
3 individual is director, general partner, agent, employee or
4 the governing authority or member of the governing authority.

5 "(2) ASSOCIATE. When used to indicate a relationship
6 with:

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

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

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

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

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

19 "(D) a governing person or an affiliate or officer
20 of the person.

21 "(3) ASSOCIATION. Includes, but is not limited to,
22 an unincorporated nonprofit association as defined in ~~Section~~
23 ~~10A-17-1.02(2)~~ Chapter 17 and an unincorporated professional
24 association as defined in ~~Section 10A-30-1.01(2)~~ Article 1 of
25 Chapter 30.

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

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

6 "(6) CERTIFICATE OF DISSOLUTION. Any document such
7 as a certificate of dissolution, statement of dissolution, or
8 articles of dissolution, required or permitted to be filed
9 publicly with respect to an entity's dissolution and winding
10 up of its business, activity, activities, not for profit
11 activity, or affairs.

12 "~~(6)~~(7) CERTIFICATE OF FORMATION.

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

16 "(B) if appropriate, a restated certificate of
17 formation and all amendments of an original or restated
18 certificate of formation.

19 "~~(7)~~(8) CERTIFICATE OF OWNERSHIP. An instrument
20 evidencing an ownership interest or membership interest in an
21 entity.

22 "~~(8) CERTIFICATE OF TERMINATION. Any document, such~~
23 ~~as articles of dissolution in the case of a corporation, or~~
24 ~~certificate of cancellation, in the case of a limited~~
25 ~~partnership, required by law to be filed publicly with respect~~
26 ~~to an entity's dissolution and the winding up of its affairs~~
27 ~~or the end of its existence. In the case of an entity whose~~

1 ~~separate existence ceases as a result of a merger, the~~
2 ~~articles of merger shall constitute the certificate of~~
3 ~~termination.~~

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

7 "(10) CERTIFICATION. Duly authenticated by the
8 ~~proper officer of the state or county under the laws of which~~
9 ~~a domestic or foreign entity is formed or filing officer of~~
10 the jurisdiction the laws of which govern the internal affairs
11 of an entity.

12 "(11) CONTRIBUTION. A tangible or intangible benefit
13 that a person transfers to an entity in consideration for an
14 ownership interest in the entity or otherwise in the person's
15 capacity as an owner or a member. ~~In the case of an entity to~~
16 ~~which Section 234 of the Constitution of Alabama of 1901, now~~
17 ~~appearing as Section 234 of the Official Recompilation of the~~
18 ~~Constitution of Alabama of 1901, as amended, applies, the~~
19 ~~benefit that may constitute a contribution transferred in~~
20 ~~exchange for an ownership interest or transferred in the~~
21 ~~transferor's capacity as an owner or member shall be limited~~
22 ~~to money, work or labor done, or property actually received.~~
23 ~~For entities to which Section 234 does not apply, the A~~
24 benefit that may constitute a contribution transferred in
25 exchange for an ownership interest or transferred in the
26 transferor's capacity as an owner or member may include cash,
27 property, services rendered, a contract for services to be

1 performed, a promissory note or other obligation of a person
2 to pay cash or transfer property to the entity, or securities
3 or other interests in or obligations of an entity. In either
4 case, the benefit does not include cash or property received
5 by the entity:

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

9 "(B) that the person intends to be a loan to the
10 entity.

11 "(12) CONVERSION.

12 "(A) the continuance of a domestic entity as a
13 foreign entity of any type;

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

16 "(C) the continuance of a domestic entity of one
17 type as a domestic entity of another type.

18 "(13) CONVERTED ENTITY. An entity resulting from a
19 conversion. ~~The term converted entity is synonymous with the~~
20 ~~term resulting entity.~~

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

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

26 "(16) CORPORATION. Includes a domestic or foreign
27 business corporation ~~within the meaning of Section~~

1 ~~10A-2-1.40(3) or Section 10A-2-1.40(9), a~~ as defined in
2 Chapter 2, a domestic or foreign nonprofit corporation within
3 ~~the meaning of Section 10A-3-1.02(7) or Section 10A-3-1.02(4),~~
4 ~~a~~ as defined in Chapter 3, a domestic or foreign professional
5 corporation within the meaning of Section 10A-4-1.03(3) or
6 ~~Section 10A-4-1.03(4)~~ as defined in Chapter 4, and those
7 entities specified in Chapter 20 as corporate.

8 "(17) COURT. Every court and judge having
9 jurisdiction in a case.

10 "(18) DAY. When used in the computation of time
11 excludes the first day and includes the last day of the period
12 so computed, unless the last day is a Saturday, Sunday, or
13 legal holiday, in which event the period runs until the end of
14 the next day that is not a Saturday, a Sunday, or a legal
15 holiday. When the period of time to be computed is less than 7
16 days, intermediate Saturdays, Sundays, and legal holidays
17 shall be excluded.

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

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

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

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

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

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

8 "(23) DOMESTIC ENTITY. An organization formed and
9 existing under this title.

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

11 "(25) ELECTRONIC. Relating to technology having
12 electrical, digital, magnetic, wireless, optical,
13 electromagnetic, or similar capabilities.

14 "~~(25)~~ (26) ELECTRONIC SIGNATURE. An electronic
15 signature as that term is defined in the Alabama Electronic
16 Transactions Act, Chapter 1A of Title 8, or any successor
17 statute.

18 "(27) ELECTRONIC TRANSMISSION or ELECTRONICALLY
19 TRANSMITTED. Any form or process of communication not directly
20 involving the physical transfer of paper or another tangible
21 medium, which (i) is suitable for the retention, retrieval,
22 and reproduction of information by the recipient, and (ii) is
23 retrievable in paper form by the recipient through an
24 automated process used in conventional commercial practice.

25 "(28) ELECTRONIC WRITING. Information that is stored
26 in an electronic or other nontangible medium and is

1 retrievable in paper form through an automated process used in
2 conventional commercial practice.

3 ~~"(26)~~ (29) ENTITY. A domestic entity or foreign
4 entity.

5 ~~"(27)~~ (30) FILING ENTITY. A domestic entity that is a
6 corporation, limited partnership, including a limited
7 liability partnership, limited liability company, professional
8 association, employee cooperative corporation, or real estate
9 investment trust.

10 ~~"(28)~~ (31) FILING INSTRUMENT. An instrument,
11 document, or statement that is required or authorized by this
12 title to be filed by or for an entity with the filing officer
13 in accordance with Article 4.

14 ~~"(29)~~ (32) FILING OFFICER. The officer with whom a
15 filing instrument is required or permitted to be filed under
16 Article 4 or under any other provision of this title.

17 ~~"(30)~~ (33) FOREIGN. With respect to an entity, that
18 the entity is formed and existing under the laws of a
19 jurisdiction other than this state.

20 ~~"(31)~~ (34) FOREIGN ENTITY. An organization formed and
21 existing under the laws of a jurisdiction other than this
22 state.

23 ~~"(32)~~ (35) FOREIGN FILING ENTITY. A foreign entity
24 that registers or is required to register as a foreign entity
25 under ~~Section 10A-1-7.01(a)(1)~~ Article 7.

1 "~~(33)~~(36) FOREIGN GOVERNMENTAL AUTHORITY. A
2 governmental official, agency, or instrumentality of a
3 jurisdiction other than this state.

4 "(37) FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIP.
5 A foreign limited liability limited partnership as defined in
6 Chapter 9A.

7 "(38) FOREIGN LIMITED LIABILITY PARTNERSHIP. A
8 foreign limited liability partnership as defined in Chapter
9 8A.

10 "~~(34)~~(39) FOREIGN LIMITED PARTNERSHIP. A foreign
11 limited partnership ~~within the meaning of Section~~
12 ~~10A-9A-1.02(4)~~ as defined in Chapter 9A.

13 "~~(35)~~(40) FOREIGN NONFILING ENTITY. A foreign entity
14 that is not a foreign filing entity.

15 "~~(36)~~(41) FUNDAMENTAL BUSINESS TRANSACTION. A
16 merger, interest exchange, conversion, or sale of all or
17 substantially all of an entity's assets.

18 "~~(37)~~(42) GENERAL PARTNER.

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

20 "(B) a person who is admitted to a limited
21 partnership as a general partner in accordance with the
22 governing documents of the limited partnership.

23 "~~(38)~~(43) GENERAL PARTNERSHIP. A partnership ~~within~~
24 ~~the meaning of Section 10A-8-1.02(3)~~ as defined in Chapter 8A.
25 The term includes a registered limited liability partnership
26 ~~within the meaning of Section 10A-8-1.02(7)~~as defined in
27 Chapter 8A.

1 "~~(39)~~(44) GOVERNING AUTHORITY. A person or group of
2 persons who are entitled to manage and direct the affairs of
3 an entity under this title and the governing documents of the
4 entity, except that if the governing documents of the entity
5 or this title divide the authority to manage and direct the
6 affairs of the entity among different persons or groups of
7 persons according to different matters, governing authority
8 means the person or group of persons entitled to manage and
9 direct the affairs of the entity with respect to a matter
10 under the governing documents of the entity or this title. The
11 term includes the board of directors of a corporation, by
12 whatever name known, or other persons authorized to perform
13 the functions of the board of directors of a corporation, the
14 general partners of a general partnership or limited
15 partnership, ~~the managers of a limited liability company that~~
16 ~~is managed by managers, the members~~ the persons who have
17 direction and oversight of a limited liability company, ~~that~~
18 ~~is managed by members who are entitled to manage the company,~~
19 and the trust managers of a real estate investment trust. The
20 term does not include an officer who is acting in the capacity
21 of an officer.

22 "~~(40)~~(45) GOVERNING DOCUMENTS.

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

24 "(i) the certificate of formation for a domestic
25 filing entity or the document or agreement under which a
26 domestic nonfiling entity is formed; and

1 "(ii) the other documents or agreements, including
2 bylaws, partnership agreements of ~~limited~~ partnerships,
3 ~~operating~~ limited liability company agreements of limited
4 liability companies, or similar documents, adopted by the
5 entity under this title to govern the formation or the
6 internal affairs of the entity; or

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

11 "~~(41)~~ (46) GOVERNING PERSON. A person serving as part
12 of the governing authority of an entity.

13 "~~(42)~~ (47) INDIVIDUAL. A natural person and the
14 estate of an incompetent or deceased natural person.

15 "~~(43)~~ (48) INSOLVENCY. The inability of a person to
16 pay the person's debts as they become due in the usual course
17 of business or affairs.

18 "~~(44)~~ (49) INSOLVENT. A person who is unable to pay
19 the person's debts as they become due in the usual course of
20 business or affairs.

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

1 "~~(46)~~ (51) JURISDICTION OF FORMATION.

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

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

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

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

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

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

24 "(i) the jurisdiction the laws of which are chosen
25 in the entity's governing documents to govern its internal
26 affairs if that jurisdiction bears a reasonable relation to
27 the owners or members or to the domestic or foreign nonfiling

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

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

7 "~~(47)~~ (52) LAW. Unless the context requires
8 otherwise, both statutory and common law.

9 "~~(48)~~ (53) LICENSE. A license, certificate of
10 registration, or other legal authorization.

11 "~~(49)~~ (54) LICENSING AUTHORITY. The state court,
12 state regulatory licensing board, or other like agency which
13 has the power to issue a license or other legal authorization
14 to render professional services.

15 "~~(50)~~ (55) LIMITED LIABILITY COMPANY. A limited
16 liability company ~~within the meaning of~~ as defined in Chapter
17 5A.

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

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

23 "~~(51)~~ (58) LIMITED PARTNER. A person who has been
24 admitted to a limited partnership as a limited partner as
25 provided by:

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

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

6 "~~(52)~~ (59) LIMITED PARTNERSHIP. A limited partnership
7 ~~within the meaning of Section 10A-9-1.02(11) or~~
8 ~~10A-9A-1.02(8), as applicable as defined in Chapter 9A. The~~
9 term includes a limited liability limited partnership as
10 defined in Chapter 9A.

11 "~~(53)~~ (60) MANAGERIAL OFFICIAL. An officer or a
12 governing person.

13 "~~(54)~~ (61) MEMBER.

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

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

19 "(C) in the case of an employee cooperative
20 corporation governed by Chapter 11, a natural person who, as
21 provided in ~~Section 10A-11-1.02(5)~~ Chapter 11, has been
22 accepted for membership in and owns a membership share in an
23 employee cooperative;

24 "(D) in the case of a nonprofit association, a
25 person who, as provided in ~~Section 10A-17-1.02(1)~~ Chapter 17,
26 may participate in the selection of persons authorized to

1 manage the affairs of the nonprofit association or in the
2 development of its policy.

3 ~~"(55) (62)~~ MERGER.

4 ~~"(A) the division of a domestic entity into two or
5 more new domestic entities or other organizations or into a
6 surviving domestic entity and one or more new domestic or
7 foreign entities or non-code organizations; or~~

8 ~~"(B) the~~ The combination of one or more domestic
9 entities with one or more domestic entities or non-code
10 organizations resulting in:

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

13 ~~"(ii) (B)~~ the creation of one or more new domestic
14 entities or non-code organizations, or one or more surviving
15 domestic entities or non-code organizations; or

16 ~~"(iii) (C)~~ one or more surviving domestic entities or
17 non-code organizations and the creation of one or more new
18 domestic entities or non-code organizations.

19 ~~"(56) (63)~~ NON-CODE ORGANIZATION. An organization
20 other than a domestic entity.

21 ~~"(57) (64)~~ NONFILING ENTITY. A domestic entity that
22 is not a filing entity. The term includes a domestic general
23 partnership, a ~~registered~~ limited liability partnership, and a
24 nonprofit association.

25 ~~"(58) (65)~~ NONPROFIT ASSOCIATION. An unincorporated
26 nonprofit association ~~within the meaning of Section~~
27 ~~10A-17-1.02(2)~~ as defined in Chapter 17. The term does not

1 include a general partnership which has filed a statement of
2 not for profit partnership in accordance with Chapter 8A, a
3 limited partnership which is carrying on a not for profit
4 purpose, or a limited liability company which is carrying on a
5 not for profit purpose.

6 "~~(59)~~ (66) NONPROFIT CORPORATION. A domestic or
7 foreign nonprofit corporation within the meaning of Section
8 10A-3-1.02(7) or Section 10A-3-1.02(4) as defined in Chapter
9 3.

10 "~~(60)~~ (67) NONPROFIT ENTITY. An entity that is a
11 nonprofit corporation, nonprofit association, or other entity
12 that is organized solely for one or more nonprofit purposes.

13 "~~(61)~~ (68) OFFICER. An individual elected, appointed,
14 or designated as an officer of an entity by the entity's
15 governing authority or under the entity's governing documents.

16 "~~(62)~~ (69) ORGANIZATION. A corporation, limited
17 partnership, or general partnership, limited liability
18 company, business trust, real estate investment trust, joint
19 venture, joint stock company, cooperative, association, bank,
20 insurance company, credit union, savings and loan association,
21 or other organization, regardless of whether the organization
22 is for profit, not for profit, nonprofit, domestic, or
23 foreign.

24 "~~(63)~~ (70) ORGANIZER. A person, who need not be an
25 owner or member of the entity, who, having the capacity to
26 contract, is authorized to execute documents in connection

1 with the formation of the entity. The term includes an
2 incorporator.

3 "~~(64)~~ (71) OWNER.

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

6 "(B) with respect to a foreign or domestic
7 partnership, a partner;

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

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

12 "~~(65)~~ (72) OWNERSHIP INTEREST. An owner's interest in
13 an entity. The term includes the owner's share of profits and
14 losses or similar items and the right to receive
15 distributions. The term does not include an owner's right to
16 participate in management or participate in the direction or
17 oversight of the entity. An ownership interest is personal
18 property.

19 "~~(66)~~ (73) PARENT ENTITY or PARENT ORGANIZATION. An
20 entity or organization that:

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

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

25 "~~(67)~~ (74) PARTNER. A limited partner or general
26 partner.

1 "~~(68)~~ (75) PARTNERSHIP. Includes a general
2 partnership, a ~~registered~~ limited liability partnership, a
3 foreign ~~registered~~ limited liability partnership, a limited
4 partnership, a foreign limited partnership, a limited
5 liability limited partnership ~~within the meaning of Section~~
6 ~~10A-9-1.02(9) and Section 10A-9A-1.02(6)~~, and a foreign
7 limited liability limited partnership ~~within the meaning of~~
8 ~~Section 10A-9-1.02(6) and Section 10A-9A-1.02(3)~~.

9 "~~(69)~~ (76) PARTNERSHIP AGREEMENT. Any agreement
10 (whether referred to as a partnership agreement or otherwise),
11 written, oral or implied, of the partners as to the activities
12 and affairs of a general partnership or a limited partnership.
13 The partnership agreement includes any amendments to the
14 partnership agreement. In the case of limited partnerships
15 formed prior to October 1, 1998, partnership agreement
16 includes the certificate of partnership.

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

19 "~~(71)~~ (77) PARTY TO THE MERGER. A domestic entity or
20 non-code organization that under a plan of merger is ~~divided~~
21 ~~or~~ combined by a merger. The term does not include a domestic
22 entity or non-code organization that is not to be ~~divided or~~
23 combined into or with one or more domestic entities or
24 non-code organizations, regardless of whether ownership
25 interests of the entity are to be issued under the plan of
26 merger.

1 "~~(72)~~(78) PERSON. An individual ~~or,~~ including the
2 estate of an incompetent or deceased individual, or an
3 organization, whether created by the laws of this state or
4 another state or foreign country, including, without
5 limitation, a general partnership, ~~registered~~ limited
6 liability partnership, limited partnership, limited liability
7 limited partnership, limited liability company, corporation,
8 professional corporation, professional association, trustee,
9 personal representative, fiduciary, as defined in Section
10 19-3-150 or person performing in any similar capacity,
11 business trust, estate, trust, association, joint venture,
12 government, governmental subdivision, agency, or
13 instrumentality, or any other legal or commercial entity.

14 "~~(73)~~(79) PRESIDENT.

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

17 "(B) the officer or committee of persons authorized
18 to perform the functions of the principal executive officer of
19 an entity without regard to the designated name of the officer
20 or committee.

21 "~~(74)~~(80) PROFESSIONAL ASSOCIATION. A professional
22 association ~~within the meaning of Section 10A-30-1.01~~ as
23 defined in Chapter 30.

24 "~~(75)~~(81) PROFESSIONAL CORPORATION. A domestic or
25 foreign professional corporation ~~within the meaning of Section~~
26 ~~10A-4-1.03(2) or Section 10A-4-1.03(3)~~ as defined in Chapter
27 4.

1 "~~(76)~~ (82) PROFESSIONAL ENTITY. A professional
2 association ~~or~~ and a professional corporation.

3 "~~(77)~~ (83) PROFESSIONAL SERVICE. Any type of service
4 that may lawfully be performed only pursuant to a license
5 issued by a state court, state regulatory licensing board, or
6 other like agency pursuant to state laws.

7 "~~(78)~~ (84) PROPERTY. Includes all property, whether
8 real, personal, or mixed, or tangible and or intangible
9 property and an , or any right or interest in that property
10 therein.

11 "~~(79)~~ (85) REAL ESTATE INVESTMENT TRUST. An
12 unincorporated trust, association, or other entity ~~within the~~
13 ~~meaning of Section 10A-10-1.02(1)~~ as defined in Chapter 10.

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

17 "~~(81)~~ (86) SECRETARY.

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

20 "(B) the officer or committee of persons authorized
21 to perform the functions of secretary of an entity without
22 regard to the designated name of the officer or committee.

23 "~~(82)~~ (87) SECRETARY OF STATE. The Secretary of State
24 of the State of Alabama.

25 "~~(83)~~ ~~SIGNATURE. Any symbol executed or adopted by a~~
26 ~~person with present intention to authenticate a writing.~~

1 ~~Unless the context requires otherwise, the term includes an~~
2 ~~electronic signature and a facsimile of a signature.~~

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

5 "(A) to execute or adopt a tangible symbol to a
6 writing, and includes any manual, facsimile, or conformed
7 signature; or

8 "(B) to attach to or logically associate with an
9 electronic transmission an electronic sound, symbol, or
10 process, and includes an electronic signature in an electronic
11 transmission.

12 ~~"(84)~~ (89) STATE. Includes, when referring to a part
13 of the United States, a state or commonwealth, and its
14 agencies and governmental subdivisions, and a territory or
15 possession, and its agencies and governmental subdivisions, of
16 the United States.

17 ~~"(85)~~ (90) SUBSCRIBER. A person who agrees with or
18 makes an offer to an entity to purchase by subscription an
19 ownership interest in the entity.

20 ~~"(86)~~ (91) SUBSCRIPTION. An agreement between a
21 subscriber and an entity, or a written offer made by a
22 subscriber to an entity before or after the entity's
23 formation, in which the subscriber agrees or offers to
24 purchase a specified ownership interest in the entity.

25 ~~"(87)~~ (92) SUBSIDIARY. An entity or organization at
26 least 50 percent of:

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

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

5 "~~(88)~~ (93) TREASURER.

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

8 "(B) the officer or committee of persons authorized
9 to perform the functions of treasurer of an entity without
10 regard to the designated name of the officer or committee.

11 "~~(89)~~ (94) TRUSTEE. A person who serves as a trustee
12 of a trust, including a real estate investment trust.

13 "~~(90)~~ (95) UNCERTIFICATED OWNERSHIP INTEREST. An
14 ownership interest in a domestic entity that is not
15 represented by a certificate ~~in bearer or registered form.~~

16 "~~(91)~~ (96) VICE PRESIDENT.

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

19 "(B) the officer or committee of persons authorized
20 to perform the functions of the president of the entity on the
21 death, absence, or resignation of the president or on the
22 inability of the president to perform the functions of office
23 without regard to the designated name of the officer or
24 committee.

25 "~~(92)~~ (97) WRITING or WRITTEN. Information that is
26 inscribed on a tangible medium or that is stored in an

1 electronic or other medium and is retrievable in perceivable
2 form.

3 "§10A-1-1.06.

4 "To the extent not inconsistent with the
5 Constitution of Alabama of 1901, and other statutes of this
6 state wherein the terms may be found, and as the context
7 requires, in this title or any other statute of this state:

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

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

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

7 "(3) a reference to certificate of merger includes
8 articles of merger and statement of merger and similarly, a
9 reference to articles of merger includes certificate of merger
10 and statement of merger, and similarly, a reference to
11 statement of merger includes certificate of merger and
12 articles of merger;

13 "(4) a reference to authorized capital stock
14 includes authorized shares;

15 "(5) a reference to capital stock includes
16 authorized and issued shares, issued shares, and stated
17 capital;

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

22 "(7) a reference to stock and shares of stock
23 includes shares;

24 "(8) a reference to stockholder includes
25 shareholder; and

26 "(9) a reference to no par stock includes shares
27 without par value.

1 "§10A-1-1.08.

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

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

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

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

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

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

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

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

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

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

7 "§10A-1-1.12.

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

15 "§10A-1-2.02.

16 "A domestic entity may not engage in a business, or
17 activity, not for profit activity, or any other activity,
18 whether or not for profit, that:

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

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

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

1 "§10A-1-2.11.

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

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

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

13 "(3) purchase, lease, or otherwise acquire, receive,
14 own, hold, improve, use, and deal in and with property or an
15 interest in property;

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

18 "(5) make contracts and guaranties;

19 "(6) incur liabilities, borrow money, issue notes,
20 bonds, and other obligations which may be convertible into or
21 include the option to purchase other securities or ownership
22 interests in the entity, and secure any obligations, or the
23 obligations of others for whom it can make guarantees, whether
24 or not a guarantee is made, by mortgaging or pledging its
25 property, franchises, or income;

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

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

3 "(9) acquire its own ownership interests, regardless
4 of whether redeemable, and hold the ownership interests as
5 treasury ownership interests or cancel or dispose of the
6 ownership interests;

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

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

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

15 "(13) lend money to, and otherwise assist, its
16 managerial officials, owners, members, or employees as
17 necessary or appropriate, provided, however, a nonprofit
18 entity shall not have the power to lend money to its officers
19 or directors;

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

23 "(15) pay pensions and establish pension plans,
24 pension trusts, profit sharing plans, share bonus plans, and
25 incentive plans for managerial officials, owners, members, or
26 employees or former managerial officials, owners, members, or
27 employees;

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

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

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

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

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

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

14 "§10A-1-3.04.

15 ~~One~~ Unless provided otherwise in a chapter of this
16 title governing a filing entity, one or more organizers of a
17 filing entity must sign the certificate of formation of the
18 filing entity, ~~except that each general partner must sign the~~
19 ~~certificate of formation of a domestic limited partnership.~~

20 "§10A-1-3.05.

21 "Unless provided otherwise in a chapter of this
22 title governing a filing entity:

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

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

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

26 "(3) for filing entities other than limited
27 partnerships, the purpose or purposes for which the filing

1 entity is formed, which may be stated to be or include any
2 lawful purpose for that type of entity;

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

5 "(5) the street address and, if different, the
6 mailing address of the initial registered office of the filing
7 entity and the name of the initial registered agent of the
8 filing entity at the office;

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

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

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

14 "(7) if the filing entity is formed under a plan of
15 conversion or merger, a statement to that effect and, if
16 formed under a plan of conversion, the name, address, date of
17 formation, prior form of organization, and jurisdiction of
18 formation of the converting entity; and

19 "(8) any other information required by this title
20 including, without limitation, any information required by the
21 specific chapter of this title governing the filing entity or
22 by Article 8 to be included in the certificate of formation
23 for the filing entity.

24 "(b) The certificate of formation may contain other
25 provisions not inconsistent with law relating to the
26 organization, ownership, governance, business, or affairs of
27 the filing entity.

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

4 "§10A-1-3.06.

5 "The formation and existence of a domestic ~~filing~~
6 entity that is a converted entity in a conversion or that is
7 to be created under a plan of merger takes effect and
8 commences on the effectiveness of the conversion or merger, as
9 appropriate.

10 "§10A-1-3.17.

11 "(a) A restated certificate of formation must
12 accurately state the text of the previous certificate of
13 formation, regardless of whether the certificate of formation
14 is an original, corrected, or restated certificate, and
15 include:

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

18 "(2) each new amendment to the certificate being
19 restated.

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

21 "(1) the name and address of each organizer other
22 than the name and address of each general partner of a limited
23 partnership; and

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

26 "(c) A restated certificate of formation that does
27 not make new amendments requiring owner approval to the

1 certificate of formation being restated must be accompanied
2 by:

3 "(1) a statement that (i) the restated certificate
4 of formation accurately states the text of the certificate of
5 formation being restated, as amended, restated, and corrected,
6 except for information omitted under subsection (b) ~~and that~~ ,
7 (ii) the restated certificate does not make new amendments
8 requiring owner approval, and, ~~if it does not, that~~ (iii) the
9 governing persons have adopted the restatement in the manner
10 required by this title and the governing documents of the
11 entity; and

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

14 "(d) A restated certificate of formation that makes
15 new amendments requiring owner approval to the certificate of
16 formation being restated must:

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

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

21 "(3) be accompanied by a statement that each
22 amendment has been approved in the manner required by this
23 title and the governing documents of the entity, including any
24 information required by this article to be set forth in an
25 amendment to the certificate of formation as to the owner
26 approval of the amendment;

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

3 "(A) accurately states the text of the certificate
4 of formation being restated and each amendment to the
5 certificate of formation being restated that is in effect, as
6 further amended by the restated certificate of formation; and

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

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

12 "§10A-1-3.32.

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

25 "(b) With respect to an entity covered by this
26 section, the books and records maintained under the chapter of
27 this title applicable to the entity and any other books and

1 records of the entity, wherever situated, are subject to
2 inspection and copying at the reasonable request, and at the
3 expense of, any owner or member or the owner's or member's
4 agent or attorney during regular business hours. The right of
5 access extends to the legal representative of a deceased owner
6 or member or owner or member under legal disability. The
7 entity shall also provide former owners and members with
8 access to its books and records pertaining to the period
9 during which they were owners or members.

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

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

21 "§10A-1-3.33.

22 "(a) An entity covered by Section 10A-1-3.32 shall
23 provide governing persons and their agents and attorneys
24 access to its books and records, including the books and
25 records required to be maintained under the chapter of this
26 title applicable to the entity and other books and records of
27 the entity for any purpose reasonably related to the governing

1 person's service as a governing person. The right of access
2 shall include the right to inspect and copy books and records
3 during ordinary business hours. An entity may impose a
4 reasonable charge covering the costs of labor and material for
5 copies of documents furnished.

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

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

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

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

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

26 "(2) the person's purpose for inspecting the
27 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
26 form of its ownership interests from certificated to
27 uncertificated, a certificated ownership interest subject to

1 the change becomes an uncertificated ownership interest only
2 after the certificate is surrendered to the domestic entity.

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

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

10 "§10A-1-3.42.

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

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

20 "(1) the designations, preferences, limitations, and
21 relative rights of the ownership interests of each class or
22 series to the extent they have been determined and the
23 authority of the governing authority to make those
24 determinations as to subsequent classes or series; or

25 "(2) that the information required by subsection (1)
26 is stated in the domestic entity's governing documents and
27 that the domestic entity, on written request to the entity's

1 principal place of business or registered office, will provide
2 a free copy of that information to the record holder of the
3 certificate.

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

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

8 "(2) the name of the person to whom the certificate
9 is issued;

10 "(3) the number and class of ownership interests and
11 the designation of the series, if any, represented by the
12 certificate; and

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

16 "(d) A certificate representing ownership interests
17 that is subject to a restriction, placed by or agreed to by
18 the domestic entity under this title on the transfer or
19 registration of the transfer of the ownership interests must
20 conspicuously note the existence of the restriction on the
21 front or back of the certificate. Even if not so noted, a
22 restriction is enforceable against a person with actual
23 knowledge of the restriction.

24 "(e) Abbreviations may be used in the inscribing of
25 certificates representing ownership interests. Without
26 limiting the use of other abbreviations, however, the
27 following or substantially similar abbreviations may be used

1 in the inscribing of such certificates, and shall be construed
2 as though they were written out in full and shall be accorded
3 the meaning ascribed herein.

4 "Abbreviation: _____ Meaning:

5 TEN COM _____ As tenants in common.

6 "JTWROS _____ As joint

7 tenants with rights of
8 survivorship and not as tenants
9 in common.

10 "JT TEN _____ As joint

11 "tenants with rights of survivorship and not as
12 tenants in common.

13 "CUSTODIAN FOR, UTMA _____ As custodian for

14 _____ (name of minor) under
15 the Uniform Transfers to Minor
16 Act.

17 "§10A-1-4.01.

18 "(a) A filing instrument must be:

19 "(1) signed by the person or persons required by
20 this title or the applicable chapter to execute, and to
21 verify, if required by the applicable chapter, the filing
22 instrument; and

23 "(2) delivered, together with one exact or conformed
24 copy and the additional exact or conformed copies as required
25 by Section 10A-1-4.02(b) or (e) or other provision of this
26 title, to the judge of probate or Secretary of State, as the
27 case may be under the provisions of Section 10A-1-4.02, in

1 person or by mail or courier, or, if permitted by the
2 respective filing officer, by facsimile or electronic
3 transmission or any other comparable form of delivery.

4 "(b) A person authorized by this title to sign a
5 filing instrument for an entity is not required to show
6 evidence of the person's authority as a requirement for
7 filing.

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

12 "(d) If a person required by this title to execute
13 any filing instrument fails or refuses to do so, any person
14 who is adversely affected by the failure or refusal may
15 petition the circuit court for the judicial circuit in which
16 the county is located where under this title the filing
17 instrument would be filed, or if it would be filed with the
18 Secretary of State, in the circuit court in the county in
19 which the registered agent is located, and if no registered
20 agent is required, in the circuit court in the county in which
21 the entity has its principal place of business in this state,
22 and if the entity does not have a place of business in this
23 state, in the Circuit Court of Montgomery County, to direct
24 the execution of the filing instrument. If the court finds
25 that it is proper for the filing instrument to be executed and
26 that any person so designated has failed or refused to execute
27 the filing instrument, it shall order the judge of probate of

1 the county or the Secretary of State, as the case may be, to
2 record an appropriate filing instrument.

3 "§10A-1-4.02.

4 "(a) The following filing instruments shall be
5 delivered to the judge of probate for filing, except as the
6 chapter applicable to an entity or other provision of this
7 title provides for filing by the Secretary of State or another
8 filing officer:

9 "(1) certificates of formation ~~on~~ or any amendments
10 or restatements thereof;

11 "(2) certificates of ~~termination~~ dissolution, other
12 than a statement of dissolution of a general partnership or a
13 statement of cancellation by a limited liability partnership;

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

15 "(4) certificates of correction to any filing
16 instrument required to be delivered to the office of the judge
17 of probate for filing; and

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

21 "(b) Any of the following filing instruments
22 delivered to the office of the judge of probate for filing
23 shall be accompanied by an additional exact or conformed copy
24 to permit the judge of probate to transmit to the Secretary of
25 State a certified copy thereof as required by subsection (g):

26 "(1) certificates of formation;

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

3 "(3) restated certificates of formation;

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

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

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

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

10 "(1) certificates, ~~or~~ articles, or statements of
11 merger, statements of conversion, and articles of share
12 exchange;

13 "(2) ~~registration~~ statements or registrations of a
14 foreign entity for authority to transact business in this
15 state and any statements, notices, or certificates of
16 withdrawal or termination or statements, notices, or
17 certificates evidencing the same or required or authorized
18 under Article 7 of this chapter;

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

24 "(4) for corporations created by an act of the
25 Legislature prior to the adoption of the Constitution of
26 Alabama of 1901, or for entities which have resulted from a
27 merger, share exchange, or conversion, all filing instruments

1 required by this title to be delivered to the judge of probate
2 for filing shall be delivered to the Secretary of State for
3 filing;

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

7 "(6) articles of correction of any filing instrument
8 required or permitted to be delivered to the Secretary of
9 State for filing; ~~and~~

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

13 "~~(7)~~ (8) any other filing instrument required or
14 permitted to be filed under this title and not expressly
15 required or permitted to be delivered to the Secretary of
16 State or judge of probate or other designated filing office
17 for filing.

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

20 "~~(e)~~ (d) Certificates ~~of merger, articles, or~~
21 statements of merger or articles of share exchange, and
22 statements of conversion delivered to the Secretary of State
23 for filing shall be accompanied by the additional number of
24 exact or conformed copies of articles as may be required for
25 purposes of subsection ~~(g)~~ (f) hereof.

26 "~~(f)~~ (e) If the judge of probate or Secretary of
27 State, as the case may be, finds that a filing instrument

1 delivered under this section and Section 10A-1-4.01
2 substantially conforms to the provisions of this title that
3 apply to the entity and that all required fees have been paid,
4 and if, in the case of a certificate of formation or an
5 amendment to a certificate of formation that would change the
6 name of the entity, the judge of probate finds that the name
7 of the entity has been reserved under ~~Section 10A-1-5.11~~
8 Article 5 of this chapter, the judge of probate or Secretary
9 of State, as the case may be, shall file it immediately upon
10 delivery by:

11 "(1) endorsing "filed," together with his or her
12 name and official title and the date and time of receipt on
13 the instrument and all copies required hereunder and on the
14 receipt for the filing fee;

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

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

22 "~~(g)~~ (f) In the case of any of the filing
23 instruments described in subsection (b), the judge of probate
24 shall within 10 days transmit a certified copy of the filing
25 instrument to the Secretary of State. In the case of
26 certificates, or articles, or statements of merger, statements
27 of conversion, or articles of share exchange, the Secretary of

1 State shall promptly transmit a certified copy thereof to the
2 office of the judge of probate of the county in which each
3 domestic entity's certificate of formation, if any, is filed.

4 ~~"(h)~~ (g) If the judge of probate or Secretary of
5 State, as the case may be, refuses to file a filing
6 instrument, he or she shall return it to the domestic or
7 foreign entity or its representative within seven days after
8 the filing instrument was delivered, together with a brief,
9 written explanation of the reason for his or her refusal.

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

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

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

18 "(3) create a presumption that the filing instrument
19 is valid or invalid or that information contained in the
20 filing instrument is correct or incorrect.

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

27 "§10A-1-4.12.

1 "(a) Except as otherwise provided by Section
2 10A-1-4.14, a filing instrument may take effect at a specified
3 date and time after the time the instrument would otherwise
4 take effect as provided by this title for the entity filing
5 the instrument.

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

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

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

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

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

23 "(d) If a filing instrument is required to, or may
24 be, delivered to two or more filing officers, the date that
25 the filing instrument is delivered to the first filing officer
26 shall be deemed to be the date the instrument was delivered to

1 the filing officer for filing for the purpose of determining
2 the 90 days in subsection (b) of this section.

3 "§10A-1-4.25.

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

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

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

21 "§10A-1-4.31.

22 "(a) The judge of probate or the Secretary of State,
23 as the case may be, shall collect the following fees when the
24 filing instruments described in this title are delivered to
25 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-		
23	istration including		
24	registration <u>a statement</u>	\$150	No fee

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

1 "~~(11)~~ (10) Any other
2 filing instrument re-
3 quired or permitted to
4 be filed under this ti-
5 tle \$25 \$25

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

20 "(c) There is hereby established in the State
21 Treasury a fund to be known and designated as the Secretary of
22 State Entity Fund. All funds, fees, charges, costs, and
23 collections accruing to or collected by the Secretary of State
24 under the foregoing provisions of this section or any other
25 fees collected by the Secretary of State relating to entities

1 shall be deposited into the State Treasury to the credit of
2 the Secretary of State Entity Fund except as so provided in
3 subsection (e).

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

11 "(e) Seventy percent of funds collected by the
12 Secretary of State in relation to entities during the fiscal
13 year shall be deposited to the credit of the State General
14 Fund.

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

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

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

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

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

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

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

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

14 "§10A-1-5.01.

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

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

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

25 "(3) Common law.

26 "§10A-1-5.02.

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

7 "§10A-1-5.03.

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

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

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

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

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 use of a name not distinguishable on the
23 records of the Secretary of State, and submits an undertaking
24 in form satisfactory to the Secretary of State to change its
25 name to a name that is distinguishable on the records of the
26 Secretary of State from the name for which application was
27 made.

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

14 "§10A-1-5.04.

15 "(a) The name of a corporation or foreign
16 corporation registered to transact business in this state must
17 contain:

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

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

20 "(b) Subsection (a) does not apply to a nonprofit
21 corporation or foreign nonprofit corporation, or to banks,
22 trust companies, savings and loan associations, or insurance
23 companies.

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

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

3 "§10A-1-5.05.

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

7 "(b) The name of a limited partnership that is not a
8 limited liability limited partnership must contain the phrase
9 "limited partnership" or "Limited," or the abbreviation
10 "L.P.," "LP," or "Ltd." and must not contain the phrase
11 "limited liability limited partnership" or the abbreviation
12 "LLLP" or "L.L.L.P."

13 "(c) The name of a limited liability limited
14 partnership must contain the phrase "limited liability limited
15 partnership" or the abbreviation "LLLP" or "L.L.L.P." and must
16 not contain the abbreviation "L.P.," "LP," or "Ltd."

17 "(d) Subject to Section 10A-1-7.07, this section
18 applies to any foreign limited partnership transacting
19 business in this state, having a certificate of authority to
20 transact business in this state, or applying for a certificate
21 of authority.

22 "(e) The name of a limited partnership may not
23 contain the following words: "bank," "banking," "banker,"
24 "trust," "insurance," "insurer," "corporation,"
25 "incorporated," or any abbreviation of such words.

26 "§10A-1-5.06.

1 "The name of a limited liability company or a
2 foreign limited liability company ~~doing~~ registered to transact
3 business in this state must contain the words "Limited
4 Liability Company" or the abbreviation "L.L.C." or "LLC".

5 "§10A-1-5.07.

6 "~~(a)~~ The name of a ~~registered~~ limited liability
7 partnership or a foreign limited liability partnership
8 registered to transact business in this state shall contain
9 the words "~~Registered~~ Limited Liability Partnership" or the
10 abbreviation "L.L.P." or "LLP".

11 "~~(b) If a person purports to enter into a contract~~
12 ~~or other undertaking on behalf of a partnership that is a~~
13 ~~registered limited liability partnership and does not disclose~~
14 ~~to the other party that part of the registered limited~~
15 ~~liability partnership's name that complies with subsection~~
16 ~~(a), then that person is personally liable on the contract or~~
17 ~~undertaking, unless that person can show that in making the~~
18 ~~contract or accepting the undertaking the other party did not~~
19 ~~rely on the partnership being a partnership without registered~~
20 ~~limited liability partnership status. Any partner of a~~
21 ~~registered limited liability partnership who consents to a~~
22 ~~person not making the disclosure described in this subsection~~
23 ~~is also personally liable on the contract or undertaking,~~
24 ~~unless that partner can make the showing described in this~~
25 ~~subsection."~~

26 "§10A-1-5.08.

1 "The name of a domestic professional corporation or
2 of a foreign professional corporation registered to transact
3 business in ~~Alabama~~ this state must contain the words
4 "professional corporation" or the abbreviation "P.C." or "PC"
5 and shall otherwise conform to any rule promulgated by a
6 licensing authority having jurisdiction of a professional
7 service described in the certificate of formation of the
8 corporation."

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

11 (a) The name of a general partnership that has filed
12 a statement of partnership in accordance with Section
13 10A-8A-2.02 must include the words "general partnership" or
14 the abbreviation "G.P." or "GP."

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

19 Section 3. Sections 10A-1-5.11, 10A-1-5.12,
20 10A-1-5.31, 10A-1-5.32, 10A-1-5.33, 10A-1-6.02, 10A-1-7.01,
21 10A-1-7.02, 10A-1-7.03, 10A-1-7.04, 10A-1-7.05, and
22 10A-1-7.06, 10A-1-7.07, 10A-1-7.11, 10A-1-7.12, 10A-1-7.13,
23 10A-1-7.14, 10A-1-7.22, 10A-1-7.23, 10A-1-7.24, 10A-1-7.31,
24 10A-1-7.32, 10A-1-7.34, 10A-1-7.36, 10A-1-7.37, 10A-1-8.01,
25 10A-1-8.02, 10A-1-8.03, 10A-1-9.01, and 10A-1-9.02, of the
26 Code of Alabama 1975, are amendeded to read as follows:

27 "§10A-1-5.11.

1 "(a) ~~A person shall~~ To reserve the exclusive use of
2 an entity name, including a fictitious name for a foreign
3 entity whose name is not available, ~~by delivering a person~~
4 must deliver an application to the Secretary of State for
5 filing. Any person may file an application with the Secretary
6 of State to reserve the exclusive use of a name under this
7 article.

8 "(b) The application must set forth the name and
9 address of the applicant and the name proposed to be reserved
10 and must be:

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

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

14 "(c) The name may also be reserved by electronic
15 means, subject to the requirements as the Secretary of State
16 may establish for reservation of names by any means, including
17 requirements for payment of the fee for name reservation.

18 "§10A-1-5.12.

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

22 "(1) the name of an existing filing entity ~~or~~
23 registered; the name of a general partnership that has an
24 effective statement of partnership, statement of not for
25 profit partnership, or statement of limited liability
26 partnership with an effective registration on file with the
27 Secretary of State under Chapter 8A;

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

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

4 "(b) Subsection (a) does not apply if the other
5 entity or the person for whom the name is reserved consents in
6 writing to the subsequent reservation of a name not
7 distinguishable on the records of the Secretary of State, and
8 submits an undertaking in form satisfactory to the Secretary
9 of State to change its name to a name that is distinguishable
10 on the records of the Secretary of State from the name applied
11 for or, if the conflict is with a reserved or registered name,
12 transfers its reservation to the applicant pursuant to Section
13 10A-1-5.16.

14 "§10A-1-5.31.

15 "(a) Each filing entity, and each foreign filing
16 entity, ~~each foreign registered limited liability partnership~~
17 ~~registered pursuant to Article 7, and any registered~~ with a
18 registration under Article 7, and each general partnership
19 that has an effective statement of partnership, statement of
20 not for profit partnership, or statement of limited liability
21 partnership that does not maintain a place of business in this
22 state on file with the Secretary of State in accordance with
23 Chapter 8A, shall designate and continuously maintain in this
24 state:

25 "(1) a registered agent; and

26 "(2) a registered office.

27 "(b) A registered agent:

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

4 "(2) may be:

5 "(A) an individual who is a resident of this state;
6 or

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

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

11 "(c) The registered office:

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

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

17 "(3) may not be solely a mailbox service or a
18 telephone answering service.

19 "§10A-1-5.32.

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

1 "(b) The statement must contain:

2 "(1) the name of the entity;

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

4 "(3) the street address of the entity's registered
5 agent;

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

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

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

14 "(7) a recitation that the street address of the
15 registered office and the street address of the registered
16 agent's business are the same.

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

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

23 "(2) in the case of a ~~domestic registered~~ general
24 partnership with an effective statement of partnership,
25 statement of not for profit partnership, or statement of
26 limited liability partnership on file with the Secretary of
27 State under Chapter 8A, effective to change its registered

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

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

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

19 "§10A-1-5.33.

20 "(a) The registered agent of any entity required by
21 Section 10A-1-5.31 to designate and maintain a registered
22 agent or registered office may change its name, its address as
23 the address of the entity's registered office, or both, by
24 delivering to the Secretary of State for filing a statement of
25 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
26 State, effective to ~~make the change set forth in the statement~~
27 its registered agent or registered office, or both, without

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

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

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

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

16 "§10A-1-6.02.

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

19 "(1) general partnership;

20 "(2) limited liability company;

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

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

23 "(5) business corporation.

24 "(b) The governing documents of a general
25 partnership, ~~or~~ limited liability company, limited
26 partnership, ~~or~~ nonprofit corporation, or business corporation

1 may adopt provisions of this article or may contain
2 enforceable provisions relating to:

3 "(1) indemnification;

4 "(2) advancement or reimbursement of expenses;

5 "(3) insurance; or

6 "(4) other arrangements.

7 "§10A-1-7.01.

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

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

22 "(b) For purposes of this Article 7, the terms
23 transact business and transacting business shall include
24 conducting a business, activity, not for profit activity, and
25 any other activity, whether or not for profit.

1 "~~(a)~~ (c) To transact business in this state, a
2 foreign entity must register under this chapter if the foreign
3 entity:

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

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

8 "~~(2)~~ (3) affords limited liability under the law of
9 its jurisdiction of formation for any owner or member.

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

13 "§10A-1-7.02.

14 "(a) A foreign entity not described by Section
15 10A-1-7.01~~(a)~~ (c) may transact business in this state without
16 registering under this chapter.

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

20 "(c) A foreign entity is not required to register
21 under this chapter if other law of this state or of federal
22 law authorizes the foreign entity to transact the particular
23 business authorized by law in this state.

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

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

4 "§10A-1-7.03.

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

11 "§10A-1-7.04.

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

19 "(2) A foreign limited liability partnership
20 registers by delivering to the Secretary of State for filing a
21 statement of foreign limited liability partnership in
22 accordance with the procedures in Article 4.

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

26 "(1) the foreign entity's name or, if that name is
27 not available for use in this state or otherwise would not

1 comply with Article 5, a name that satisfies the requirements
2 of Section 10A-1-7.07 under which the entity will transact
3 business in this state;

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

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

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

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

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

12 "(7) the street address and mailing address, if
13 different, of the principal office of the foreign ~~filing~~
14 entity and;

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

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

1 ~~"(d) In the case of a foreign corporation filing an~~
2 ~~application pursuant to this section, the foreign corporation~~
3 ~~shall also, to the extent required by the Constitution of~~
4 ~~Alabama of 1901, file a copy of its articles or certificate of~~
5 ~~incorporation or association or other certificate of formation~~
6 ~~and all amendments thereto duly certified by the Secretary of~~
7 ~~State or other official having custody of corporate records in~~
8 ~~the state or other jurisdiction under whose law it is~~
9 ~~incorporated.~~

10 "(c) The statement of foreign limited liability
11 partnership must state:

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

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

20 "(3) the date of the foreign limited liability
21 partnership's formation;

22 "(4) that the foreign limited liability partnership
23 exists as a valid foreign limited liability partnership under
24 the laws of the jurisdiction which governs the foreign limited
25 liability partnership's partnership agreement and under which
26 it is a limited liability partnership;

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

3 "(6) the street address and mailing address, if
4 different, of the principal office of the foreign limited
5 liability partnership;

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

10 "(d) The application for registration of a foreign
11 entity described in Section 10A-1-7.01(b) other than a foreign
12 limited liability partnership shall be executed by one or more
13 persons authorized to execute an application for registration.
14 The statement of foreign limited liability partnership shall
15 be executed by one or more partners authorized to execute a
16 statement of foreign limited liability partnership.

17 "(e) The status of the foreign entity after
18 registration and the liability of its owners, managers,
19 members, or managerial officials shall not be adversely
20 affected by error or subsequent changes in the information
21 stated in the application for registration or statement of
22 foreign limited liability partnership, as applicable.

23 "(f) The fact that an application for registration
24 or a statement of foreign limited liability partnership, as
25 applicable, is on file with the Secretary of State is notice
26 that the foreign entity is authorized to transact business in
27 this state and as notice of all facts required to be set forth

1 in the application for registration or the statement of
2 foreign limited liability partnership, as applicable.

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

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

13 "§10A-1-7.05.

14 "(a) The application for registration of a foreign
15 entity and the statement of foreign limited liability
16 partnership takes effect in accordance with Article 4 of this
17 chapter. The registration of a foreign entity ~~is effective~~
18 ~~when the application filed under Article 4 takes effect. The~~
19 ~~registration~~ remains in effect until the registration
20 terminates, is withdrawn, or is revoked.

21 "(b) Except in a proceeding to revoke the
22 registration of a foreign entity or as otherwise provided by
23 the law of Alabama, the Secretary of State's issuance of an
24 acknowledgment that the foreign entity has filed an
25 application for registration or a statement of foreign limited
26 liability partnership, as applicable, is conclusive evidence
27 of the authority of the foreign ~~filing~~ entity to transact

1 business in this state under the foreign entity's name or
2 under another name stated in the application, for registration
3 in accordance with Section 10A-1-7.04(b)(1) or stated in the
4 statement of foreign limited liability partnership in
5 accordance with Section 10A-1-7.04(c)(1), as applicable.

6 "§10A-1-7.06.

7 "(a) If any statement in ~~the~~ an application for
8 registration ~~of a~~ or a statement of foreign entity limited
9 liability partnership was false when made or any arrangements
10 or other facts described have changed, making the application
11 for registration or statement of foreign limited liability
12 partnership, as applicable, inaccurate in any respect, the
13 foreign entity shall file with the Secretary of State an
14 amendment correcting the false or inaccurate statement. A
15 foreign ~~filing~~ entity must amend its registration to change
16 its name if the name has changed. If the ~~entity's~~ name of a
17 foreign entity as changed is not available in this state or
18 otherwise does not satisfy the requirements of Article 5, the
19 foreign entity, pursuant to the requirements of Section
20 10A-1-7.07, must adopt a name that complies with Article 5
21 under which it will transact business in this state.

22 "(b) A foreign ~~filing~~ entity may amend its
23 application for registration or statement of foreign limited
24 liability partnership by filing an application for amendment
25 of registration as provided by Article 4.

26 "(c) The application for amendment must be filed
27 promptly on the discovery that any statement in the

1 application for registration or statement of foreign limited
2 liability partnership, as applicable, was false when made, but
3 not later than 60 days after the discovery. The application
4 for amendment must be filed promptly after any arrangements
5 other facts described in the application have changed, making
6 the application inaccurate in any respect, but not later than
7 90 days after the change.

8 "§10A-1-7.07.

9 "If the name of a foreign entity does not satisfy
10 the requirements of Article 5, the foreign entity, for use in
11 this state, may:

12 "(1) if a corporation, add to its corporate name the
13 word "corporation" or "incorporated" or an abbreviation of one
14 of the words;

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

17 "(3) if a limited partnership that is not a limited
18 liability limited partnership, add to its partnership name the
19 word "limited" or the abbreviation "Ltd." or the phrase
20 "limited partnership" or the abbreviation "L.P." or "LP" but
21 its name must not contain the phrase "limited liability
22 limited partnership" or the abbreviation "LLLP" or "L.L.L.P.";

23 "(4) if a limited partnership that is a limited
24 liability limited partnership, add to its partnership name the
25 phrase "limited liability limited partnership" or the
26 abbreviation "LLLP" or "L.L.L.P." and must not contain the
27 abbreviation "Ltd.," "L.P.," or "LP."

1 "(5) if a limited liability company, add to its
2 company name the phrase "limited liability company" or the
3 abbreviation "L.L.C." or "LLC";

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

7 "(7) if a ~~registered~~ limited liability partnership,
8 add to its partnership name the phrase "~~registered~~ limited
9 liability partnership" or the abbreviation "L.L.P." or "LLP";
10 and

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

16 "(9) if a general partnership that is authorized by
17 the laws of the jurisdiction that govern its partnership
18 agreement to file the equivalent of a statement of not for
19 profit partnership as provided under Chapter 8A, add to its
20 name the phrase "not for profit general partnership" or the
21 abbreviation "N.G.P." or "NGP"; and

22 "~~(8)~~ (10) use a fictitious name available for use in
23 this state that satisfies the requirements of Article 5, if it
24 delivers to the Secretary of State for filing a copy of the
25 resolution of its governing authority, certified by its
26 secretary, adopting the fictitious name.

27 "§10A-1-7.11.

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

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

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

9 "(2) the type of entity and the entity's
10 jurisdiction of formation and, in the case of a foreign
11 limited liability partnership, the jurisdiction which laws
12 govern the foreign limited liability partnership and its
13 partnership agreement;

14 "(3) the street address and mailing address, if
15 different, of the principal office of the foreign ~~filing~~
16 entity;

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

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

20 "(A) revokes the authority of the foreign entity's
21 registered agent in this state to accept service of process;
22 and

23 "(B) consents that service of process in any action,
24 suit, or proceeding stating a cause of action arising in this
25 state during the time the foreign ~~filing~~ entity was authorized
26 to transact business in this state may be made on the foreign
27 ~~filing~~ entity in accordance with the Alabama Rules of Civil

1 Procedure and any other notice or demand required or permitted
2 by law to be served on the foreign entity may be served in a
3 manner similar to the procedure provided for the service of
4 process by the Alabama Rules of Civil Procedure;

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

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

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

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

20 "(d) If the existence or separate existence of a
21 foreign ~~filing~~ entity registered in this state terminates
22 ~~because of dissolution, termination, merger, conversion, or~~
23 ~~other circumstances~~, a certificate by an authorized
24 governmental official of the entity's jurisdiction of
25 formation that evidences the termination shall be filed with
26 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;

26 "(5) an organizer, governing person, or agent of the
27 foreign entity signed a document he or she knew was false in

1 any material respect with intent that the document be
2 delivered to the Secretary of State for filing; or

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

9 "§10A-1-7.13.

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

20 "(b) If the foreign entity does not correct each
21 ground for revocation or demonstrate to the reasonable
22 satisfaction of the Secretary of State that each ground
23 determined by the Secretary of State does not exist within 60
24 days after service of the notice is perfected under subsection
25 (a), the Secretary of State may revoke the foreign entity's
26 registration by signing a certificate of revocation that
27 recites the ground or grounds for revocation and its effective

1 date. The Secretary of State shall file the original of the
2 certificate and serve a copy on the foreign entity by serving
3 its registered agent, which service may be by registered mail,
4 or, if the foreign entity has no registered agent or its
5 registered agent cannot with reasonable diligence be served,
6 by serving the foreign entity by any method permitted under
7 Sections 10A-1-5.35 and 10A-1-5.36.

8 "(c) The authority of a foreign entity to transact
9 business in this state ceases on the date shown on the
10 certificate revoking its ~~certificate of authority~~
11 registration.

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

21 "§10A-1-7.14.

22 "(a) A foreign entity may appeal the Secretary of
23 State's revocation of its registration to the Circuit Court of
24 Montgomery County within 30 days after service of the
25 certificate of revocation is perfected under Section
26 10A-1-7.13. The foreign entity appeals by petitioning the
27 court to set aside the revocation and attaching to the

1 petition copies of the Secretary of State's acknowledgment of
2 its application for registration, ~~if any,~~ or statement of
3 foreign limited liability partnership, as applicable, and the
4 Secretary of State's certificate of revocation.

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

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

11 "§10A-1-7.22.

12 "(a) The failure of a foreign filing entity to
13 register to transact business in this state or to appoint and
14 maintain a registered agent in this state shall not impair the
15 validity of any contract or act of the foreign entity and
16 shall not prevent the foreign entity from defending any action
17 or proceeding in any court of this state, but the foreign
18 entity shall not maintain any action or proceeding in any
19 court of this state until it has delivered to the Secretary of
20 State for filing an application for registration or a
21 statement of foreign limited liability partnership, as
22 applicable, in accordance with Section 10A-1-7.04. A foreign
23 filing entity, by transacting business in this state without
24 filing an application for registration or a statement of
25 foreign limited liability partnership, as applicable, appoints
26 the Secretary of State as its agent for service of process
27 with respect to causes of action arising out of the

1 transaction of business or activities in this state. The
2 liability of the owners, members, and managerial officials of
3 a foreign filing entity is governed by the laws of the
4 jurisdiction under whose laws it was formed or under which it
5 is governed, and any limitations on that liability are not
6 waived solely by reason of having transacted business in this
7 state without filing an application for registration or a
8 statement of foreign limited liability partnership, as
9 applicable.

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

13 "§10A-1-7.23.

14 "The Secretary of State may collect from a foreign
15 filing entity a late filing fee equal to the application for
16 registration fee for the or the statement of foreign limited
17 liability partnership fee, as applicable, for the foreign
18 filing entity for each year of delinquency if the foreign
19 filing entity has transacted business in this state for more
20 than 90 days. The Secretary of State may condition the
21 effectiveness of a registration on the payment of the late
22 filing fee.

23 "§10A-1-7.24.

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

1 "§10A-1-7.31.

2 "A foreign entity may not conduct in this state a
3 business, or activity, not for profit activity, or any other
4 activity, whether or not for profit, that is not permitted by
5 this title to be transacted by the domestic entity to which it
6 most closely corresponds, unless other law of this state
7 authorizes the entity to conduct the business, or activity,
8 not for profit activity, or any other activity, whether or not
9 for profit.

10 "§10A-1-7.32.

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

15 "§10A-1-7.34.

16 "A vote cast or consent provided by a foreign ~~filing~~
17 entity with respect to its ownership or membership interest in
18 a domestic entity of which the foreign ~~filing~~ entity is a
19 lawful owner or member, and the foreign ~~filing~~ entity's
20 participation in the management and control of the business
21 and affairs of the domestic entity to the extent of the
22 participation of other owners or members, are not invalidated
23 if the foreign ~~filing~~ entity does not register to transact
24 business in this state, subject to all law governing a
25 domestic entity, including the antitrust law of this state.

26 "§10A-1-7.36.

1 "Foreign entities that have complied with the
2 constitution and laws of this state as to ~~doing~~ transacting
3 business ~~herein~~ in this state shall have the same right of
4 eminent domain and the same remedies for enforcing the rights
5 as domestic entities of like kind and character possess.

6 "§10A-1-7.37.

7 "Any foreign entity which has complied with the
8 constitution and laws of this state for ~~doing~~ transacting
9 business ~~herein~~ in this state and which is engaged in
10 constructing or operating a streetcar, electric light,
11 telegraph, telephone or power lines, pipelines, or works in an
12 adjoining state may extend its lines, tracks, ways, pipelines,
13 or works into this state and connect with other lines,
14 pipelines, ways or works of similar or like character and, for
15 that purpose, may have and exercise the same rights,
16 privileges, immunities and remedies as to right of eminent
17 domain and condemnation proceedings as are had and exercised
18 by domestic entities engaged in like or similar business.

19 "§10A-1-8.01.

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

22 "(1) CORPORATIONS.

23 "a. The terms and conditions of a conversion of a
24 corporation other than a nonprofit corporation must be
25 approved by all of the corporation's shareholders ~~except~~ or as
26 otherwise provided in the corporation's governing documents;
27 but in no case may the vote required for shareholder approval

1 be set at less than a majority of the votes entitled to be
2 cast by each voting group entitled by law to vote separately
3 on the conversion. If the governing documents provide for
4 approval of a conversion by less than all of a corporation's
5 shareholders, approval of the conversion shall constitute
6 corporate action subject to dissenter's rights pursuant to
7 Article 13 of Chapter 2 of the Alabama Business Corporation
8 Law. No conversion of a corporation to a general or limited
9 partnership may be effected without the consent in writing of
10 each shareholder who will have personal liability with respect
11 to the converted entity, notwithstanding any provision in the
12 governing documents of the converting corporation providing
13 for less than unanimous shareholder approval for the
14 conversion.

15 "b. The terms and conditions of a conversion of a
16 nonprofit corporation must be approved by all the
17 corporation's members entitled to vote thereon, if it is a
18 nonprofit corporation with members with voting rights, ~~except~~
19 or as otherwise provided in the corporation's governing
20 documents; but in no case may the governing documents provide
21 for approval by less than a majority of the members entitled
22 to vote thereon. If the converting nonprofit corporation has
23 no members, or no members entitled to vote thereon, the terms
24 and conditions of the conversion must be approved by a
25 unanimous vote of the board of directors of the converting
26 nonprofit corporation, ~~except~~ or as otherwise provided in the
27 governing documents; but in no case may the governing

1 documents provide for approval by less than a majority of the
2 board of directors.

3 "(2) LIMITED PARTNERSHIPS. The terms and conditions
4 of a conversion of a limited partnership must be approved by
5 all of the partners or as otherwise provided in the
6 partnership agreement. No conversion of a limited partnership
7 to a general partnership may be effected without the consent
8 in writing of each limited partner who will have personal
9 liability with respect to the converted entity,
10 notwithstanding any provision in the limited partnership
11 agreement of the converting limited partnership providing for
12 approval of the conversion by less than all partners.

13 "(3) LIMITED LIABILITY COMPANIES. The terms and
14 conditions of a conversion of a limited liability company must
15 be approved by all of the limited liability company's members
16 or as otherwise provided in the limited liability company's
17 governing documents. No conversion of a limited liability
18 company to a general or limited partnership may be effected
19 without the consent in writing of each member who will have
20 personal liability with respect to the converted entity,
21 notwithstanding any provision in the governing documents of
22 the converting limited liability company providing for less
23 than unanimous member approval for the conversion.

24 "(4) GENERAL PARTNERSHIPS, INCLUDING ~~REGISTERED~~
25 LIMITED LIABILITY PARTNERSHIPS. The terms and conditions of a
26 conversion of a general partnership must be approved by all of
27 the partners or as otherwise provided in the partnership

1 agreement. No conversion of a ~~registered~~ limited liability
2 partnership to a general or limited partnership may be
3 effected without the consent in writing of each partner who
4 will have personal liability with respect to the converted
5 entity, notwithstanding any provision in the partnership
6 agreement of the converting ~~registered~~ limited liability
7 partnership providing for less than unanimous partner approval
8 for the conversion.

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

22 "(6) OTHER ENTITY. The terms and conditions of a
23 conversion of any entity not specified above must be approved
24 by all owners of the converting entity. No conversion of any
25 entity shall be effected without the consent in writing of any
26 owner of the converting entity who has limited liability and

1 who shall become an owner without limited liability protection
2 of the converted entity.

3 "(7) ENTITY WITHOUT OWNERS. If the converting entity
4 does not have owners, the terms and conditions of the
5 conversion must be unanimously approved by the governing
6 authority of the converting entity.

7 "(b) After the conversion is approved pursuant to
8 subsection (a), the following documentation and filing
9 requirements apply:

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

15 "a. constitute a certificate of formation or amended
16 and restated certificate of formation, as the case may be, for
17 the converted entity; and

18 "b. shall satisfy the requirements of Section
19 10A-1-4.02(a).

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

24 "a. The name and type of entity of the converted
25 entity and the jurisdiction of its governing statute and its
26 unique identifying number or other designation as assigned by
27 the Secretary of State, if any.

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

2 "c. A statement that the converting entity has been
3 converted into the converted entity.

4 "d. The public office where the certificate of
5 formation, if any, of the converting entity is filed and the
6 date of the filing thereof.

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

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

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

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

25 "(1) Upon the filing of the statement of conversion
26 in accordance with Section 10A-1-4.02(c) (1), except as
27 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.

26 "(2)a. All property, real, personal, and mixed owned
27 by the converting entity; all rights, immunities, and

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

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

17 "(3) All debts, obligations, and other liabilities
18 of the converting entity shall continue as the debts,
19 obligations, and liabilities of the converted entity and the
20 converted entity shall continue to be responsible and liable
21 for all the liabilities and obligations of the converting
22 entity. Neither the rights of creditors, nor any liens upon
23 the property of the converting entity, shall be impaired by
24 the conversion, and an owner of the converted entity shall
25 continue to be liable for all obligations of the converting
26 entity for which the owner was personally liable before the
27 conversion.

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

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

10 "b. An owner with limited liability protection who
11 becomes an owner without limited liability protection is
12 liable for an obligation of the converted entity incurred
13 after conversion to the extent provided for by the laws
14 applicable to the converted entity.

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

22 "§10A-1-8.02.

23 "(a) Pursuant to an approved plan of merger, a
24 corporation, limited partnership, limited liability company,
25 general partnership, real estate investment trust, or any
26 other entity may merge with any other entity or entities,

1 whether the other entity or entities are the same or another
2 form of entity, as provided in this section.

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

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

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

8 "(3) The form of the surviving entity and the status
9 in the surviving entity of each owner of an entity that is a
10 party to the merger.

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

12 "(5) The manner and basis of converting the
13 interests of each party to the merger into interests or
14 obligations of the surviving entity, or into money or other
15 property in whole or part.

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

17 "(1) Amendments to the certificate of formation of
18 the surviving entity.

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

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

21 "(1) CORPORATIONS.

22 a. In the case of a corporation, other than a
23 nonprofit corporation, that is a party to a merger, the plan
24 of merger must be approved in accordance with the procedures
25 and by the shareholder vote required by Section 10A-2-11.03 or
26 Section 10A-2-11.04. If the governing documents of the
27 corporation provide for approval of a merger by less than all

1 of the corporation's shareholders, approval of the merger
2 shall constitute corporate action subject to dissenter's
3 rights pursuant to Article 13 of Chapter 2. No merger of a
4 corporation into a general or limited partnership may be
5 effected without the consent in writing of each shareholder
6 who will have personal liability with respect to the resulting
7 or surviving entity, notwithstanding any provision in the
8 governing documents of the corporation that is a party to the
9 merger providing for less than unanimous shareholder approval
10 for the conversion.

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

25 "(2) LIMITED PARTNERSHIPS. In the case of a limited
26 partnership that is a party to the merger, the plan of merger
27 must be approved in writing by all of the partners or as

1 otherwise provided in the partnership agreement. No merger of
2 a limited partnership with a general partnership in which the
3 general partnership is the surviving or resulting entity may
4 be effected without the consent in writing of each limited
5 partner who will have personal liability with respect to the
6 surviving or resulting entity, notwithstanding any provision
7 in the limited partnership agreement of the merging limited
8 partnership providing for approval of the merger by less than
9 all partners.

10 "(3) LIMITED LIABILITY COMPANIES. In the case of a
11 limited liability company that is a party to the merger, the
12 plan of merger must be approved in writing by all of the
13 limited liability company's members or as otherwise provided
14 in the limited liability company's governing documents. No
15 merger of a limited liability company with a general or
16 limited partnership that is the surviving or resulting entity
17 may be effected without the consent in writing of each member
18 who will have personal liability with respect to the surviving
19 or resulting entity, notwithstanding any provision in the
20 governing documents of the merging limited liability company
21 providing for less than unanimous shareholder approval for a
22 merger.

23 "(4) GENERAL PARTNERSHIPS, INCLUDING ~~REGISTERED~~
24 LIMITED LIABILITY PARTNERSHIPS. In the case of a general
25 partnership that is a party to the merger, the plan of merger
26 must be approved in writing by all of the partners or as
27 otherwise provided in the partnership agreement. No merger of

1 a ~~registered~~ limited liability partnership into a general or
2 limited partnership may be effected without the consent in
3 writing of each partner who will have personal liability with
4 respect to the surviving or resulting entity, notwithstanding
5 any provision in the partnership agreement of the ~~registered~~
6 limited liability partnership providing for less than
7 unanimous partner approval for a merger.

8 "(5) REAL ESTATE INVESTMENT TRUST. In the case of a
9 real estate investment trust that is a party to the merger,
10 the plan of merger must be approved in writing by all of the
11 trust's shareholders ~~except~~ or as otherwise provided in the
12 trust's declaration of trust, but in no case may the vote
13 required for shareholder approval be set at less than a
14 majority of all the votes entitled to be cast. No merger of a
15 real estate investment trust with a general or limited
16 partnership that is to be the surviving or resulting entity
17 may be effected without the consent in writing of each
18 shareholder who will have personal liability with respect to
19 the surviving or resulting business entity.

20 "(6) OTHER ENTITY. In the case of an entity other
21 than a corporation, limited partnership, limited liability
22 company, general partnership, or real estate investment trust
23 that is a party to the merger, by approval in writing of all
24 owners of the entity. No merger of any entity shall be
25 effected without the consent in writing of any owner who has
26 limited liability as an owner of an entity party to the

1 merger, and who will have personal liability with respect to
2 the surviving or resulting entity.

3 "(e) After a plan of merger is approved and before
4 the merger takes effect, the plan may be amended or abandoned
5 as provided in the plan, or if the plan does not provide for
6 amendment or abandonment, in the same manner as required for
7 the approval of the plan of merger originally.

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

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

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

14 "a. A delayed effective date is specified in the
15 statement of merger.

16 "b. If either the converted entity or the merging
17 entity is a foreign entity, then any filing required under the
18 governing statute of such foreign entity to effectuate the
19 merger is filed before the effective date specified in the
20 statement of merger.

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

26 "(g) The certificate of merger shall include the
27 following:

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

4 "(2) The public office where the certificate of
5 formation, if any, of each of the parties to the merger is
6 filed.

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

10 "(4) If the surviving or resulting entity is one in
11 which one or more owners lack limited liability protection, a
12 statement that each owner of an entity party to the merger who
13 is to be an owner of the surviving or resulting entity without
14 limited liability protection has consented in writing to the
15 merger as required by this article.

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

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

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

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

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

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

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

7 "(1) Every other entity party to the merger merges
8 into the surviving entity which shall be deemed to be the
9 resulting entity of the merger and the separate existence of
10 every entity, other than the surviving or resulting entity,
11 ceases.

12 "(2) All property, real, personal, and mixed owned
13 by each of the merged entities; all rights, immunities, and
14 franchises of the merged entities, of a public as well as a
15 private nature; and all debts and obligations due the merged
16 entities, are taken and deemed to be transferred and vested in
17 the surviving or resulting entity without the necessity of any
18 deed or other instrument of conveyance to the surviving or
19 resulting entity and without payment and without collection by
20 any filing officer of any deed or other transfer tax or fee. A
21 certified copy of the certificate of merger may be filed in
22 the real estate records in the office of the judge of probate
23 in any county in which any entity a party to the merger owned
24 real property, to be recorded without payment and without
25 collection by the judge of probate of any deed or other
26 transfer tax or fee. The judge of probate shall, however, be
27 entitled to collect the filing fees prescribed by Section

1 12-19-90. Any filing shall evidence chain of title, but lack
2 of filing does not affect the resulting entity's title to any
3 real property.

4 "(3) The surviving or resulting entity shall be
5 responsible and liable for all the liabilities and obligations
6 of the entities that are parties to the merger; however,
7 neither the rights of creditors nor any liens upon the
8 property of the entities that are parties to the merger shall
9 be impaired by the merger.

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

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

1 "(6) a. An owner of an entity with limited liability
2 protection remains liable, if at all, for an obligation
3 incurred prior to the merger by an entity that ceases to exist
4 as a result of the merger only to the extent, if any, that the
5 owner would have been liable under the laws applicable to
6 owners of the form of entity that ceased to exist if the
7 merger had not occurred.

8 "b. An owner with limited liability protection who,
9 as a result of the merger, becomes an owner without limited
10 liability protection of the surviving or resulting entity is
11 liable for an obligation of the surviving or resulting entity
12 incurred after merger to the extent provided for by the laws
13 applicable to the surviving or resulting entity.

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

22 "§10A-1-8.03.

23 ~~"This article is not exclusive but is cumulative to~~
24 ~~other laws and provisions of this title relating to mergers~~
25 ~~and conversion. Entities, including corporations, limited~~
26 ~~partnerships, limited liability companies, general~~
27 ~~partnerships, and real estate investment trusts, may be~~

1 ~~converted or merged in any other manner provided by law,~~
2 ~~including other provisions of this title. This article does~~
3 ~~not preclude any entity from being converted or merged under~~
4 ~~law other than this chapter.~~"

5 Section 4. Section 10A-1-9.01 of the Code of Alabama
6 1975, is amended and renumbered to read as follows:

7 "~~§10A-1-9.01.~~ §10A-1-9.02.

8 "In this article, the following terms have the
9 following meanings:

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

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

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

18 §10A-1-9.01.

19 This article does not apply to limited liability
20 companies, general partnerships, and limited partnerships.

21 Section 6. Sections 10A-1-9.21, 10A-1-9.22,
22 10A-5A-1.02, 10A-5A-1.06, 10A-9A-1.07, and 10A-17-1.02 of the
23 Code of Alabama 1975, are amended to read as follows:

24 "§10A-1-9.21.

25 "(a) A dissolved domestic entity, ~~except as~~
26 ~~otherwise provided in subsection (e),~~ may dispose of the known
27 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 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
26 enforce the claim within 90 days from the effective date of
27 the rejection notice.

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

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

10 "§10A-1-9.22.

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

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

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

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

26 "(3) State that if not sooner barred, a claim
27 against the dissolved domestic entity will be barred unless a

1 proceeding to enforce the claim is commenced within two years
2 after the publication of the notice.

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

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

12 "(2) A claimant whose claim was timely sent to the
13 dissolved domestic entity but not acted on; by the dissolved
14 domestic entity; and

15 "(3) A claimant whose claim is contingent ~~or based~~
16 ~~on an event occurring after the effective date of dissolution~~
17 at the effective date of the dissolution of the dissolved
18 domestic entity, or is based on an event occurring after the
19 effective date of the dissolution of the dissolved domestic
20 entity.

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

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

26 "(2) ~~If the assets have been distributed in~~
27 ~~liquidation,~~ against an owner of the dissolved domestic entity

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

16 "(e) A dissolved domestic entity that published a
17 notice under this section may file an application with the
18 circuit court in the county in which the dissolved domestic
19 entity's principal place of business is located and if the
20 dissolved domestic entity does not have a principal place of
21 business within this state, in the county in which the
22 dissolved domestic entity's most recent registered office is
23 located, for a determination of the amount and form of
24 security to be provided for payment of claims that are
25 contingent or have not been made known to the dissolved
26 domestic entity or that are based on an event occurring after
27 the effective date of the dissolution of the dissolved

1 domestic entity but that, based on the facts known to the
2 dissolved domestic entity, are reasonably estimated to arise
3 after the effective date of the dissolution of the dissolved
4 domestic entity. Provision need not be made for any claim that
5 is or is reasonably anticipated to be barred under subsection
6 (c).

7 "(f) Within ten days after the filing of the
8 application provided for in subsection (e), notice of the
9 proceeding shall be given by the dissolved domestic entity to
10 each potential claimant as described in subsection (e).

11 "(g) The circuit court under subsection (e) may
12 appoint a guardian ad litem to represent all claimants whose
13 identities are unknown in any proceeding brought under this
14 section. The reasonable fees and expenses of the guardian,
15 including all reasonable expert witness fees, shall be paid by
16 the dissolved domestic entity.

17 "(h) Provision by the dissolved domestic entity for
18 security in the amount and the form ordered by the circuit
19 court under subsection (e) shall satisfy the dissolved
20 domestic entity's obligation with respect to claims that are
21 contingent, have not been made known to the dissolved domestic
22 entity, or are based on an event occurring after the effective
23 date of the dissolution of the dissolved domestic entity, and
24 those claims may not be enforced against a person owning an
25 ownership interest to whom assets have been distributed by the
26 dissolved domestic entity after the effective date of the
27 dissolution of the dissolved domestic entity.

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

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

6 "(j) If a claim has been satisfied, disposed of, or
7 barred under Section 10A-1-9.21, this section, or other law,
8 the person or persons designated to wind up the affairs of a
9 dissolved domestic entity, and the owners of the ownership
10 interests receiving assets from the dissolved domestic entity,
11 shall not be liable for that claim.

12 "§10A-5A-1.02.

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

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

20 "(b) "Constituent limited liability company" means a
21 constituent organization that is a limited liability company.

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

24 "(d) "Converted organization" means the organization
25 into which a converting organization converts pursuant to
26 Article 10.

1 "(e) "Converting limited liability company" means a
2 converting organization that is a limited liability company.

3 "(f) "Converting organization" means an organization
4 that converts into another organization pursuant to Article
5 10.

6 "(g) "Disqualified person" means any person who is
7 not a qualified person.

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

12 "(i) "Foreign limited liability company" means a
13 limited liability company governed by the laws of a
14 jurisdiction other than this state which would be a limited
15 liability company if governed by the laws of this state.

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

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

21 "~~(k)~~ (l) "Limited liability company agreement" means
22 any agreement (whether referred to as a limited liability
23 company agreement, operating agreement or otherwise), written,
24 oral or implied, of the member or members as to the activities
25 and affairs of a limited liability company or series thereof.
26 The limited liability company agreement of a limited liability
27 company having only one member shall not be unenforceable by

1 reason of there being only one person who is a party to the
2 limited liability company agreement. The limited liability
3 company agreement includes any amendments to the limited
4 liability company agreement.

5 ~~"(l)~~ (m) "Member" means a person admitted under
6 Section 10A-5A-4.01 and not dissociated under Section
7 10A-5A-6.02.

8 ~~"(m)~~ (n) "Organization" means a general partnership,
9 including a limited liability partnership; limited
10 partnership, including a limited liability limited
11 partnership; limited liability company; business trust;
12 corporation; nonprofit corporation; professional corporation;
13 or any other person having a governing statute. The term
14 includes domestic and foreign organizations whether or not
15 organized for profit.

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

17 "(1) for a general partnership or foreign general
18 partnership, its partnership agreement and if applicable, its
19 registration as a limited liability partnership or a foreign
20 limited liability partnership;

21 "(2) for a limited partnership or foreign limited
22 partnership, its certificate of formation and partnership
23 agreement, or comparable writings as provided in its governing
24 statute;

25 "(3) for a limited liability company or foreign
26 limited liability company, its certificate of formation and

1 limited liability company agreement, or comparable writings as
2 provided in its governing statute;

3 "(4) for a business or statutory trust or foreign
4 business or statutory trust its agreement of trust and
5 declaration of trust, or comparable writings as provided in
6 its governing statute;

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

12 "(6) for a nonprofit corporation or foreign
13 nonprofit corporation, its certificate of formation, bylaws,
14 and other agreements that are authorized by its governing
15 statute, or comparable writings as provided in its governing
16 statute;

17 "(7) for a professional corporation or foreign
18 professional corporation, its certificate of formation,
19 bylaws, and other agreements among its shareholders that are
20 authorized by its governing statute, or comparable writings as
21 provided in its governing statute; and

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

26 "~~(o)~~ (p) "Qualified person," with respect to a
27 limited liability company rendering professional services in

1 this state, means a person authorized by this state or a
2 regulatory authority of this state to own a ~~transferrable~~
3 transferable interest in that limited liability company.

4 "~~(p)~~ (q) "Surviving organization" means an
5 organization into which one or more other organizations are
6 merged under Article 10, whether the organization pre-existed
7 the merger or was created pursuant to the merger.

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

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

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

17 "§10A-5A-1.06.

18 "(a) It is the policy of this chapter and this state
19 to give maximum effect to the principles of freedom of
20 contract and to the enforceability of limited liability
21 company agreements.

22 "(b) Unless displaced by particular provisions of
23 this chapter, the principles of law and equity supplement this
24 chapter.

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

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

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

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

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

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

25 "§10A-5A-4.09.

26 "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
26 liability company who, without reasonable cause, refuses to
27 allow any member or the member's agent or attorney to inspect

1 or copy any books or records of the limited liability company
2 for any proper purpose shall be personally liable to the
3 member for a penalty in an amount not to exceed 10 percent of
4 the fair market value of the transferable interest of the
5 member, in addition to any other damages or remedy.

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

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

20 "(e) A member or dissociated member may exercise
21 rights under this section through an agent or attorney, or in
22 the case of an individual under legal disability, a legal
23 representative. Any restriction or condition imposed by the
24 limited liability company agreement or under subsection (g)
25 applies both to the agent, attorney, or legal representative
26 and to the member or dissociated member.

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

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

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

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

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

25 "§10A-5A-7.02.

26 "Notwithstanding Section 10A-1-9.12:

1 "(a) A dissolved limited liability company continues
2 its existence as a limited liability company but may not carry
3 on any activities and affairs except as is appropriate to wind
4 up and liquidate its activities and affairs, 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
9 discharging its liabilities;

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

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

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

16 "(1) deliver for filing a statement of dissolution
17 to the filing officer provided for in subsection (e) setting
18 forth:

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

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

23 "(C) That the limited liability company has
24 dissolved.

25 "(D) Any other information the limited liability
26 company deems appropriate.

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

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

6 "(4) transfer the limited liability company's
7 assets;

8 "(5) resolve disputes by mediation or arbitration;
9 and

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

12 "(c) The dissolution of a limited liability company
13 does not:

14 "(1) transfer title to the limited liability
15 company's property;

16 "(2) prevent the commencement of a proceeding by or
17 against the limited liability company in its limited liability
18 company name;

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

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

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

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

1 "(e) If a limited liability company is not an
2 organization described in Section 10A-1-4.02(c) (4), then that
3 limited liability company shall deliver the statement of
4 dissolution for filing to the judge of probate in whose office
5 the original certificate of formation is filed. If a limited
6 liability company is an organization described in
7 Section 10A-1-4.02(c) (4), then that limited liability company
8 shall deliver the statement of dissolution for filing to the
9 Secretary of State.

10 "§10A-5A-10.08.

11 "(a) When a merger becomes effective:

12 "(1) the surviving organization continues or, in the
13 case of a surviving organization created pursuant to the
14 merger, comes into existence;

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

18 "(3) all property owned by, and every contract right
19 possessed by, each constituent organization, or series
20 thereof, that ceases to exist vests in the surviving
21 organization without ~~reservation~~ transfer, reversion, or
22 impairment and the title to any property and contract rights
23 vested by deed or otherwise in the surviving organization
24 shall not revert, ~~or~~ be in any way impaired, or be deemed to
25 be a transfer by reason of the merger;

26 "(4) all debts, obligations, ~~or~~ and other
27 liabilities of each constituent organization, or series

1 thereof, ~~that ceases to exist~~ continue as other than the
2 surviving organization, are debts, obligations, ~~or~~ and other
3 liabilities of the surviving organization, and neither the
4 rights of creditors, nor any liens upon the property of any
5 constituent organization, shall be impaired by the merger;

6 "(5) an action or proceeding pending by or against
7 any constituent organization, or series thereof, continues as
8 if the merger had not occurred and the name of the surviving
9 organization may be, but need not be, substituted in any
10 pending proceeding for the name of any constituent
11 organization whose separate existence ceased in the merger;

12 "(6) except as prohibited by law other than this
13 chapter, or the terms of the merger, all of the rights,
14 privileges, franchise, immunities, powers, and purposes of
15 each constituent organization, or series thereof, other than
16 the surviving organization, vest in the surviving
17 organization;

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

21 "(8) except as otherwise agreed, if a constituent
22 limited liability company ceases to exist, the merger does not
23 dissolve the limited liability company and does not dissolve a
24 series thereof;

25 "(9) if the surviving organization is created
26 pursuant to the merger:

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

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

6 "(10) if the surviving organization existed before
7 the merger, any amendments provided for in the statement of
8 merger for the organizational ~~document~~ documents that created
9 the organization become effective.

10 "(11) the transferable interests of each limited
11 liability company that is a constituent organization to the
12 merger, and the ownership interests of each organization that
13 is not a limited liability company, but is a constituent
14 organization to the merger, that are to be converted in
15 accordance with the terms of the merger into transferable
16 interests, ownership interests, other securities, obligations,
17 rights to acquire transferable interests, ownership interests,
18 or other securities, cash, other property, or any combination
19 of the foregoing, are converted, and the former holder of such
20 transferable interests or ownership interests is entitled only
21 to the rights provided to that former holder by those terms or
22 the statute governing that former holder's constituent
23 organization; and

24 "(12) if the surviving organization exists before
25 the merger:

1 "(i) all property and contract rights of the
2 surviving organization remain its property and contract rights
3 without transfer, reversion, or impairment;

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

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

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

23 "§10A-9A-1.07.

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

1 "(b) Unless displaced by particular provisions of
2 this chapter, the principles of law and equity supplement this
3 chapter.

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

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

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

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

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

3 "~~(h) Sections 10A-1-1.03(73), (81), (88), and (91)~~
4 The terms president, vice president, secretary, and treasurer
5 as defined in Chapter 1 shall have no application to this
6 chapter.

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

9 "§10A-9A-10.09.

10 "(a) When a merger becomes effective:

11 "(1) the surviving organization continues or, in the
12 case of a surviving organization created pursuant to the
13 merger, comes into existence;

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

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

25 "(4) all debts, obligations, ~~or~~ and other
26 liabilities of each constituent organization ~~that ceases to~~
27 ~~exist continue as~~ other than the surviving organization are

1 debts, obligations, ~~or~~ and other liabilities of the surviving
2 organization and neither the rights of creditors, nor any
3 liens upon the property of any constituent organization, shall
4 be impaired by the merger;

5 "(5) an action or proceeding pending by or against
6 any constituent organization, or series thereof, continues as
7 if the merger had not occurred and the name of the surviving
8 organization may be, but need not be, substituted in any
9 pending proceeding for the name of any constituent
10 organization whose separate existence ceased in the merger;

11 "(6) except as prohibited by law other than this
12 chapter, or the terms of the merger, all of the rights,
13 privileges, franchise, immunities, powers, and purposes of
14 each constituent organization, other than the surviving
15 organization, vest in the surviving organization;

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

19 "(8) except as otherwise agreed, if a constituent
20 limited partnership ceases to exist, the merger does not
21 dissolve the limited partnership;

22 "(9) if the surviving organization is created
23 pursuant to the merger:

24 "(A) if it is a limited partnership, the certificate
25 of formation becomes effective; or

1 "(B) if it is an organization other than a limited
2 partnership, the organizational ~~document~~ documents that
3 ~~creates~~ create the organization ~~becomes~~ become effective; and

4 "(10) if the surviving organization existed before
5 the merger, any amendments provided for in the statement of
6 merger for the organizational ~~document~~ documents that created
7 the organization become effective;

8 "(11) the transferable interests of each limited
9 partnership that is a constituent organization to the merger,
10 and the ownership interests of each organization that is not a
11 limited partnership, but is a constituent organization to the
12 merger, that are to be converted in accordance with the terms
13 of the merger into transferable interest, ownership interests,
14 other securities, obligations, rights to acquire transferable
15 interest, ownership interests, or other securities, cash,
16 other property, or any combination of the foregoing, are
17 converted, and the former holder of such transferable
18 interests or ownership interests is entitled only to the
19 rights provided to that former holder by those terms or the
20 statute governing that former holder's constituent
21 organization; and

22 "(12) if the surviving organization exists before
23 the merger:

24 "(i) all the property and contract rights of the
25 surviving organization remain its property and contract rights
26 without transfer, reversion, or impairment;

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

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

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

20 "§10A-17-1.02.

21 "In this chapter:

22 "(1) "Member" means a person who, under the rules or
23 practices of a nonprofit association, may participate in the
24 selection of persons authorized to manage the affairs of the
25 nonprofit association or in the development of policy of the
26 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.

24 Notwithstanding Section 10A-1-1.03, as used in this
25 chapter, unless the context otherwise requires, the following
26 terms mean:

1 (1) "Business" includes every trade, occupation, and
2 profession for profit.

3 (2) "Disqualified person" means any person who is
4 not a qualified person.

5 (3) "Distribution" except as otherwise provided in
6 Section 10A-8A-4.09(f), means a transfer of money or other
7 property from a partnership to another person on account of a
8 transferable interest.

9 (4) "Foreign limited liability partnership" means a
10 foreign partnership whose partners have limited liability for
11 the debts, obligations, or other liabilities of the foreign
12 partnership under a provision similar to Section
13 10A-8A-3.06(c).

14 (5) "Foreign partnership" means a partnership
15 governed by the laws of a jurisdiction other than this state
16 which would be a partnership if governed by the laws of this
17 state. The term includes a foreign limited liability
18 partnership.

19 (6) "Limited liability partnership", except in the
20 phrase "foreign limited liability partnership", means a
21 partnership that has filed a statement of limited liability
22 partnership under Section 10A-8A-10.01, and does not have a
23 similar statement in effect in any other jurisdiction.

24 (7) "Not for profit activity" includes every
25 undertaking not for profit.

26 (8) "Partner" means a person that:

1 (A) has become a partner in a partnership under
2 Section 10A-8A-4.02 or was a partner in a partnership when the
3 partnership became subject to this chapter; and

4 (B) has not dissociated as a partner under Section
5 10A-8A-6.01.

6 (9) "Partnership" means an association of two or
7 more persons formed under Section 10A-8A-2.01, predecessor
8 statute, or comparable law of another jurisdiction or becomes
9 subject to the laws of this state pursuant to Section
10 10A-8A-1.06, to carry on any business or not for profit
11 activity, and includes, for all purposes of the laws of this
12 state, a limited liability partnership.

13 (10) "Partnership agreement" means any agreement
14 (whether referred to as a partnership agreement or otherwise),
15 written, oral or implied, of the partners as to the business
16 or not for profit activity of a partnership. The partnership
17 agreement includes any amendments to the partnership
18 agreement.

19 (11) "Partnership at will" means a partnership in
20 which the partners have not agreed to remain partners until
21 the expiration of a definite term or the completion of a
22 particular undertaking.

23 (12) "Person dissociated as a partner" means a
24 person dissociated as a partner of a partnership.

25 (13) "Qualified person," with respect to a
26 partnership rendering professional services in this state,
27 means a person authorized by this state or a regulatory

1 authority of this state to own a transferable interest in that
2 partnership.

3 (14) "Required information" means the information
4 that a partnership is required to maintain under Section
5 10A-8A-1.11.

6 (15) "Statement" means a statement of partnership
7 under Section 10A-8A-2.02, a statement of not for profit
8 partnership under Section 10A-8A-2.02, a statement of
9 authority under Section 10A-8A-3.03, a statement of denial
10 under Section 10A-8A-3.04, a statement of dissociation under
11 Section 10A-8A-7.04, a statement of dissolution under Section
12 10A-8A-8.02 or under Section 10A-8A-8.03, a certificate of
13 reinstatement under Section 10A-8A-8.11, a statement of
14 limited liability partnership under Section 10A-8A-10.01, a
15 statement of cancellation under Section 10A-8A-10.01, or any
16 other document required or permitted to be delivered to the
17 Secretary of State for filing under this chapter, or an
18 amendment or cancellation of any of the foregoing.

19 (16) "Transfer" means an assignment, conveyance,
20 deed, bill of sale, lease, mortgage, security interest,
21 encumbrance, gift, or transfer by operation of law.

22 (17) "Transferable interest" means a partner's right
23 to receive distributions from a partnership.

24 (18) "Transferee" means a person to which all or
25 part of a transferable interest has been transferred, whether
26 or not the transferor is a partner.

27 §10A-8A-1.03. Knowledge and notice.

1 (a) A person knows a fact when the person:
2 (1) has actual knowledge of it; or
3 (2) is deemed to know it under law other than this
4 chapter.

5 (b) A person has notice of a fact when the person:
6 (1) knows of it;
7 (2) receives notice of it;
8 (3) has reason to know the fact from all of the
9 facts known to the person at the time in question; or
10 (4) is deemed to have notice of the fact under
11 subsection (d).

12 (c) A person notifies or gives notice to another
13 person by taking steps reasonably required to inform the other
14 person in ordinary course, whether or not the other person
15 knows the fact.

16 (d) A person is deemed to have notice of a
17 partnership's:

18 (1) statement of partnership, 90 days after a
19 statement of partnership under Section 10A-8A-2.02 becomes
20 effective;

21 (2) statement of not for profit partnership, 90 days
22 after a statement of not for profit partnership under Section
23 10A-8A-2.02 becomes effective;

24 (3) statement of authority, with respect to
25 (i) authority not involving property and
26 (ii) property other than real property, 90 days
27 after a statement of authority under Section 10A-8A-3.03

1 becomes effective; and with respect to real property in
2 accordance with Section 10A-8A-3.03(g);

3 (4) statement of denial, with respect to property
4 other than real property, 90 days after a statement of denial
5 under Section 10A-8A-3.04 becomes effective;

6 (5) dissociation, 90 days after a statement of
7 dissociation under Section 10A-9A-7.04 becomes effective;

8 (6) dissolution, 90 days after a statement of
9 dissolution under Section 10A-9A-8.02 or Section 10A-9A-8.03
10 becomes effective;

11 (7) reinstatement, 90 days after a certificate of
12 reinstatement under Section 10A-9A-8.11 becomes effective;

13 (8) merger or conversion under Article 9 or under
14 Article 8 of Chapter 1, 90 days after the statement of merger
15 or conversion becomes effective;

16 (9) statement of limited liability partnership, 90
17 days after a statement of limited liability partnership under
18 Section 10A-8A-10.01 becomes effective; or

19 (10) statement of cancellation, 90 days after a
20 statement of cancellation under Section 10A-8A-10.01 becomes
21 effective.

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

27 §10A-8A-1.04. Nature and purpose.

1 (a) A partnership is a separate legal entity. A
2 partnership's status for tax purposes shall not affect its
3 status as a separate legal entity formed under this chapter. A
4 partnership is the same entity regardless of whether the
5 partnership has a statement of limited liability partnership
6 under Section 10A-8A-10.01 stating that the partnership is a
7 limited liability partnership. A partner has no interest in
8 any specific property of a partnership.

9 (b) A partnership may carry on any lawful business
10 and may carry on any lawful not for profit activity if it
11 complies with Section 10A-8A-2.02(b).

12 §10A-8A-1.05. Powers; indemnification.

13 (a) A partnership shall possess and may exercise all
14 the powers and privileges granted and enumerated by Chapter 1
15 or by any other law or by its partnership agreement, together
16 with any powers incidental thereto, including those powers and
17 privileges necessary or convenient to the conduct, promotion,
18 or attainment of the business or not for profit activity of
19 the partnership and including the power to sue, be sued, and
20 defend in its own name and to maintain an action against a
21 partner for harm caused to the partnership by a breach of the
22 partnership agreement or violation of a duty to the
23 partnership.

24 (b) A partnership may indemnify and hold harmless a
25 partner or other person, pay in advance or reimburse expenses
26 incurred by a partner or other person, and purchase and
27 maintain insurance on behalf of a partner or other person.

1 §10A-8A-1.06. Governing law.

2 (a) Except as otherwise provided in subsections (b),
3 (c), and (d) of this section, the law of the jurisdiction in
4 which the partnership has its principal office governs the
5 partnership agreement and the relations among the partners and
6 between the partners and the partnership.

7 (b) The law of this state governs the (i) internal
8 affairs of a limited liability partnership, including the
9 relations among the partners and between the partners and the
10 partnership, (ii) the liability of a partner as a partner for
11 the debts, obligations, or other liabilities of a limited
12 liability partnership, and (iii) the authority of the partners
13 of a limited liability partnership.

14 (c) The law of the jurisdiction in which a foreign
15 limited liability partnership has filed its statement of
16 limited liability partnership or similar writing governs the
17 (i) internal affairs of that foreign limited liability
18 partnership, including the relations among the partners and
19 between the partners and the partnership, (ii) the liability
20 of a partner as a partner for the debts, obligations, or other
21 liabilities of a foreign limited liability partnership, and
22 (iii) the authority of the partners of a foreign limited
23 liability partnership.

24 (d) If (i) a partnership agreement provides for the
25 application of the laws of this state, and (ii) the
26 partnership delivers to the Secretary of State for filing a
27 statement of partnership in accordance with Section

1 10A-8A-2.02(a), a statement of not for profit partnership in
2 accordance with Section 10A-8A-2.02(b), or a statement of
3 limited liability partnership in accordance with Section
4 10A-8A-10.01, then the partnership agreement shall be governed
5 by and construed under the laws of this state.

6 §10A-8A-1.07. Supplemental principles of law; rate
7 of interest.

8 (a) It is the policy of this chapter and this state
9 to give maximum effect to the principles of freedom of
10 contract and to the enforceability of partnership agreements.

11 (b) Unless displaced by particular provisions of
12 this chapter, the principles of law and equity supplement this
13 chapter.

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

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

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

26 (f) Sections 7-9A-406 and 7-9A-408 of the Uniform
27 Commercial Code, and all successor statutes thereto, do not

1 apply to any interest in a partnership, including all rights,
2 powers, and interests arising under a partnership agreement or
3 this chapter. This provision prevails over Sections 7-9A-406
4 and 7-9A-408 of the Uniform Commercial Code, and all successor
5 statutes thereto, and is expressly intended to permit the
6 enforcement of the provisions of a partnership agreement that
7 would otherwise be ineffective under Sections 7-9A-406 and
8 7-9A-408 of the Uniform Commercial Code, and all successor
9 statutes thereto.

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

12 (h) The terms president, vice-president, secretary,
13 and treasurer as defined in Chapter 1 shall have no
14 application to this chapter.

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

17 §10A-8A-1.08. Effect of partnership agreement;
18 nonwaivable provisions.

19 (a) Except as otherwise provided in subsections (b)
20 and (c):

21 (1) the partnership agreement governs relations
22 among the partners as partners and between the partners and
23 the partnership; and

24 (2) to the extent the partnership agreement does not
25 otherwise provide for a matter described in subsection (a)(1),
26 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
26 of, the partnership agreement shall be subject to specified
27 penalties or specified consequences; and

1 (B) at the time or upon the happening of events
2 specified in the partnership agreement, a partner or
3 transferee may be subject to specified penalties or specified
4 consequences.

5 (5) A penalty or consequence that may be specified
6 under paragraph (4) of this subsection may include and take
7 the form of reducing or eliminating the defaulting partner's
8 or transferee's proportionate transferable interest in a
9 partnership, subordinating the partner's or transferee's
10 transferable interest to that of non-defaulting partners or
11 transferees, forcing a sale of that transferable interest,
12 forfeiting the defaulting partner's or transferee's
13 transferable interest, the lending by other partners or
14 transferees of the amount necessary to meet the defaulting
15 partner's or transferee's commitment, a fixing of the value of
16 the defaulting partner's or transferee's transferable interest
17 by appraisal or by formula and redemption or sale of the
18 transferable interest at that value, or other penalty or
19 consequence.

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

23 (c) A partnership agreement may not:

24 (1) vary the nature of the partnership as a separate
25 legal entity under Section 10A-8A-1.04(a);

26 (2) vary a partnership's power under Section
27 10A-8A-1.05 to sue, be sued, and defend in its own name;

1 (3) vary the law applicable to a limited liability
2 partnership under Section 10A-8A-1.06;

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

5 (5) vary the requirements of Section 10A-8A-2.03;

6 (6) unreasonably restrict the right of access to
7 books and records under Section 10A-8A-4.10, but the
8 partnership agreement may impose reasonable restrictions on
9 the availability and use of information obtained under those
10 sections and may define appropriate remedies, including
11 liquidated damages, for a breach of any reasonable restriction
12 on use;

13 (7) eliminate the implied contractual covenant of
14 good faith and fair dealing as provided under Section
15 10A-8A-1.08 (b) (1);

16 (8) eliminate or limit the liability of a partner or
17 other person for any act or omission that constitutes a bad
18 faith violation of the implied contractual covenant of good
19 faith and fair dealing as provided under Section
20 10A-8A-1.08 (b) (2);

21 (9) waive the requirements of Section
22 10A-8A-4.04 (e);

23 (10) reduce the limitations period specified under
24 Section 10A-8A-4.09 (e) for an action commenced under other
25 applicable law;

1 (11) waive the prohibition on issuance of a
2 certificate of a transferable interest in bearer form under
3 Section 10A-8A-5.02(c);

4 (12) vary the power of a person to dissociate as a
5 partner under Section 10A-8A-6.02(a) except that the
6 partnership agreement may require that the notice under
7 Section 10A-8A-6.01(1) be in a writing or in a specific form
8 thereof;

9 (13) vary the right of a court to expel a partner in
10 the events specified in Section 10A-8A-6.01(5);

11 (14) vary the power of a court to decree dissolution
12 in the circumstances specified in Section 10A-8A-8.01(4) or
13 (5);

14 (15) vary the requirement to wind up the
15 partnership's business or not for profit activity as specified
16 in Section 10A-8A-8.01(4), (5), (6), or (7);

17 (16) vary the right of a partner to approve or
18 consent to the cancellation of a statement of limited
19 liability partnership as specified in Section 10A-8A-10.01(m);
20 or

21 (17) vary the rights of a partner under Section
22 10A-8A-9.10.

23 §10A-8A-1.09. Partnership agreement; effect on
24 partnership and persons admitted as partners.

25 (a) A partnership is bound by and may enforce the
26 partnership agreement, whether or not the partnership has
27 itself manifested assent to the partnership agreement.

1 (b) A person that is admitted as a partner of a
2 partnership becomes a party to and assents to the partnership
3 agreement except as provided in Section 10A-8A-5.02(g).

4 (c) Two or more persons intending to be the initial
5 partners of a partnership may make an agreement providing that
6 upon the formation of the partnership, the agreement will
7 become the partnership agreement.

8 §10A-8A-1.10. Partnership agreement; effect on third
9 parties and relationship to writings effective on behalf of
10 partnership.

11 (a) If a partnership agreement provides for the
12 manner in which it may be amended, including by requiring the
13 approval of a person who is not a party to the partnership
14 agreement or the satisfaction of conditions, it may be amended
15 only in that manner or as otherwise permitted by law, except
16 that the approval of any person may be waived by that person
17 and any conditions may be waived by all persons for whose
18 benefit those conditions were intended.

19 (b) A partnership agreement may provide rights to
20 any person, including a person who is not a party to the
21 partnership agreement, to the extent set forth in the
22 partnership agreement.

23 (c) The obligations of a partnership and its
24 partners to a person in the person's capacity as a transferee
25 or dissociated partner are governed by the partnership
26 agreement. A transferee and a dissociated partner are bound by
27 the partnership agreement.

1 (d) If a writing that has been delivered by a
2 partnership for filing in accordance with Chapter 1 and has
3 become effective conflicts with a provision of the partnership
4 agreement:

5 (1) the partnership agreement prevails as to
6 partners, dissociated partners, and transferees; and

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

9 §10A-8A-1.11. Required information.

10 A partnership shall maintain the following
11 information:

12 (1) A current list of the full name and last known
13 street and mailing address of each partner, in alphabetical
14 order.

15 (2) Copies of any filed statement.

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

19 (4) Copies of the then effective partnership
20 agreement and any amendment thereto, in each case to the
21 extent made in a writing.

22 (5) Copies of any financial statement of the
23 partnership for the three most recent years.

24 (6) Unless contained in a partnership agreement made
25 in a writing, a writing stating:

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

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

7 (C) any events upon the happening of which the
8 partnership is to be dissolved and its business or not for
9 profit activity wound up.

10 §10A-8A-1.12. Transactions of partner with
11 partnership.

12 A partner may lend money to and transact other
13 business or not for profit activity with the partnership and
14 has the same rights and obligations with respect to the loan
15 or other transaction as a person that is not a partner.

16 §10A-8A-1.13. Consent and proxies of partners.
17 Action requiring the consent of partners under this chapter
18 may be taken without a meeting, and a partner may appoint a
19 proxy to consent or otherwise act for the partner by signing a
20 writing of appointment, either personally or by the partner's
21 attorney in fact.

22 Article 2. Formation of Partnership; Property.

23 §10A-8A-2.01. Formation of partnership.

24 (a) Except as otherwise provided in subsection (b),
25 the association of two or more persons:

1 (i) to carry on as co-owners a business for profit
2 forms a partnership, whether or not the persons intend to form
3 a partnership; or

4 (ii) to carry on any not for profit activity, forms
5 a partnership when (A) the persons intend to form a
6 partnership and (B) the persons deliver to the Secretary of
7 State for filing a statement of not for profit partnership in
8 accordance with Section 10A-8A-2.02(b) setting forth their
9 intention to form a partnership to carry on a not for profit
10 activity.

11 (b) An association formed under a statute other than
12 this chapter, a predecessor statute, or a comparable statute
13 of another jurisdiction is not a partnership under this
14 chapter.

15 (c) In determining whether a partnership is formed
16 under Section 10A-8A-2.01(a)(i), the following rules apply:

17 (1) Joint tenancy, tenancy in common, tenancy by the
18 entirety, joint property, common property, or part ownership
19 does not by itself establish a partnership, even if the
20 co-owners share profits made by the use of the property.

21 (2) The sharing of gross returns does not by itself
22 establish a partnership, even if the persons sharing them have
23 a joint or common right or interest in property from which the
24 returns are derived.

25 (3) A person who receives a share of the profits of
26 a business is presumed to be a partner in the business, unless
27 the profits were received in payment:

- 1 (i) of a debt by installments or otherwise;
- 2 (ii) for services as an independent contractor or of
3 wages or other compensation to an employee;
- 4 (iii) of rent;
- 5 (iv) of an annuity or other retirement or health
6 benefit to a beneficiary, representative, or designee of a
7 deceased or retired partner;
- 8 (v) of interest or other charge on a loan, even if
9 the amount of payment varies with the profits of the business,
10 including a direct or indirect present or future ownership of
11 the collateral, or rights to income, proceeds, or increase in
12 value derived from the collateral; or
- 13 (vi) for the sale of the goodwill of a business or
14 other property by installments or otherwise.

15 §10A-8A-2.02. Statement of partnership; statement of
16 not for profit partnership.

17 (a) A partnership other than a partnership that has
18 an effective statement of not for profit partnership or an
19 effective statement of limited liability partnership on file
20 with the Secretary of State may deliver to the Secretary of
21 State for filing a statement of partnership for the purpose of
22 having its partnership agreement governed by the laws of this
23 state in accordance with Section 10A-8A-1.06(d) and providing
24 notice of its existence in accordance with Section
25 10A-8A-1.03(d) (1). A statement of partnership must contain all
26 of the following:

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

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

5 (3) the street and mailing address of its principal
6 office;

7 (4) the street and mailing address of a registered
8 office and the name of the registered agent at that office for
9 service of process in this state which the partnership shall
10 be required to maintain;

11 (5) a statement that the partnership was formed for
12 the purpose of carrying out a for profit business;

13 (6) a statement that the partnership has two or more
14 partners; and

15 (7) a statement that the partnership agreement is
16 governed by the laws of this state, and if the partnership
17 agreement is a written partnership agreement, a declaration
18 that the written partnership agreement has a provision stating
19 that the partnership agreement is governed by the laws of this
20 state.

21 (b) A partnership other than a partnership that has
22 an effective statement of partnership or an effective
23 statement of limited liability partnership on file with the
24 Secretary of State may deliver to the Secretary of State for
25 filing a statement of not for profit partnership for the
26 purpose of setting forth the partners' intention to form a
27 partnership to carry on a not for profit activity in

1 accordance with Section 10A-8A-2.01(a)(ii), having its
2 partnership agreement governed by the laws of this state in
3 accordance with Section 10A-8A-1.06(d), and providing notice
4 of its existence in accordance with Section 10A-8A-1.03(d)(2).
5 A statement of not for profit partnership must contain all of
6 the following:

7 (1) the name of the partnership which name must
8 comply with Article 5 of Chapter 1;

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

11 (3) the street and mailing address of its principal
12 office;

13 (4) the street and mailing address of a registered
14 office and the name of the registered agent at that office for
15 service of process in this state which the partnership shall
16 be required to maintain;

17 (5) a statement that the partnership was formed for
18 the purpose of carrying out a not for profit activity in
19 accordance with Section 10A-8A-2.01(a)(ii);

20 (6) a statement that the partnership has two or more
21 partners; and

22 (7) a statement that the partnership agreement is
23 governed by the laws of this state, and if the partnership
24 agreement is a written partnership agreement, a declaration
25 that the written partnership agreement has a provision stating
26 that the partnership agreement is governed by the laws of this
27 state.

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

4 (d) A statement of partnership and a statement of
5 not for profit partnership shall be executed by two or more
6 partners authorized to execute the statement of partnership or
7 statement of not for profit partnership.

8 (e) A statement of partnership and a statement of
9 not for profit partnership shall be accompanied by a fee for
10 the Secretary of State in the amount prescribed by Section
11 10A-1-4.31.

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

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

18 (h) A partnership that has filed a statement of
19 partnership is for all purposes the same entity that existed
20 before the statement of partnership was filed and continues to
21 be a partnership under the laws of this state.

22 (i) A statement of partnership and a statement of
23 not for profit partnership are filing instruments for the
24 purposes of Chapter 1.

25 §10A-8A-2.03. Execution, filing, and recording of
26 statements.

1 (a) A statement may be delivered to the Secretary of
2 State for filing. A certified copy of a statement of authority
3 that was filed by the Secretary of State may be delivered to a
4 judge of probate for filing in accordance with Section
5 10A-8A-3.03(f) and (g). A certified copy of a statement that
6 is filed in an office in another jurisdiction may be delivered
7 to the Secretary of State for filing, and once filed by the
8 Secretary of State, in the case of a statement of authority
9 which is intended to have a similar effect to that of a
10 statement of authority under Section 10A-8A-3.03(f) or (g),
11 may be delivered to the judge of probate for filing in
12 accordance with Section 10A-8A-3.03(f) or (g). Either filing
13 has the effect provided in this chapter with respect to
14 partnership property located in or transactions that occur in
15 this state.

16 (b) A certified copy of statement of authority filed
17 in the office of the Secretary of State and delivered to the
18 judge of probate for filing in the county or counties in which
19 the partnership has real property, without more, shall have
20 the effect of a recorded statement under this chapter with
21 respect to real property located in that county or those
22 counties. Any statement of authority recorded under the
23 preceding sentence that is not a certified copy of a statement
24 of authority filed in the office of the Secretary of State
25 does not have the effect provided for recorded statements of
26 authority in this chapter.

1 (c) Except as specifically provided otherwise in
2 this chapter, a statement filed by a partnership must be
3 executed by at least two partners. Other statements must be
4 executed by a partner or other person authorized by this
5 chapter. An individual who executes a statement as, or on
6 behalf of, a partner or other person named as a partner in a
7 statement shall personally declare under penalty of perjury
8 that the contents of the statement are accurate.

9 (d) Except as specifically provided otherwise in
10 this chapter, a person authorized by this chapter to file a
11 statement may amend or cancel the statement by filing an
12 amendment or cancellation that names the partnership,
13 identifies the statement, and states the substance of the
14 amendment or cancellation.

15 (e) A person who files a statement pursuant to this
16 section shall promptly send a copy of the statement to every
17 partner and to any other person named in the statement.
18 Failure to send a copy of a statement to a partner or other
19 person does not limit the effectiveness of the statement as to
20 a person not a partner.

21 (f) The Secretary of State may collect a fee for
22 filing or providing a certified copy of a statement in the
23 amount prescribed in Section 10A-1-4.31. The office of the
24 judge of probate may collect a fee for recording a certified
25 copy of statement in the amount prescribed in Section
26 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
26 property of the person's capacity as a partner or of the
27 existence of a partnership.

1 (d) Property acquired in the name of one or more of
2 the partners, without an indication in the instrument
3 transferring title to the property of the person's capacity as
4 a partner or of the existence of a partnership and without use
5 of partnership assets, is presumed to be separate property,
6 even if used for partnership purposes.

7 Article 3. Relations of Partners to Persons Dealing
8 with Partnership.

9 §10A-8A-3.01. Partner agent of partnership.

10 Subject to the effect of a statement of authority
11 under Section 10A-8A-3.03:

12 (1) Each partner is an agent of the partnership for
13 the purpose of its business or not for profit activity. An act
14 of a partner, including the execution of an instrument in the
15 partnership name, for apparently carrying on in the ordinary
16 course the partnership business or not for profit activity, or
17 business or not for profit activity of the kind carried on by
18 the partnership, binds the partnership, unless the partner had
19 no authority to act for the partnership in the particular
20 matter and the person with whom the partner was dealing knew
21 or had notice that the partner lacked authority.

22 (2) An act of a partner which is not apparently for
23 carrying on in the ordinary course the partnership business or
24 not for profit activity, or business or not for profit
25 activity of the kind carried on by the partnership, binds the
26 partnership only if the act was authorized by the other
27 partners.

1 §10A-8A-3.02. Transfer of partnership property.

2 (a) Partnership property may be transferred as
3 follows:

4 (1) Subject to the effect of a statement of
5 authority under Section 10A-8A-3.03, partnership property held
6 in the name of the partnership may be transferred by an
7 instrument of transfer executed by a partner in the
8 partnership name.

9 (2) Partnership property held in the name of one or
10 more partners with an indication in the instrument
11 transferring the property to them of their capacity as
12 partners or of the existence of a partnership, but without an
13 indication of the name of the partnership, may be transferred
14 by an instrument of transfer executed by the persons in whose
15 name the property is held.

16 (3) Partnership property held in the name of one or
17 more persons other than the partnership, without an indication
18 in the instrument transferring the property to them of their
19 capacity as partners or of the existence of a partnership, may
20 be transferred by an instrument of transfer executed by the
21 persons in whose name the property is held.

22 (b) A partnership may recover partnership property
23 from a transferee only if it proves that execution of the
24 instrument of initial transfer did not bind the partnership
25 under Section 10A-8A-3.01 and:

26 (1) as to a subsequent transferee who gave value for
27 property transferred under subsections (a)(1) and (2), proves

1 that the subsequent transferee knew or had received notice
2 that the person who executed the instrument of initial
3 transfer lacked authority to bind the partnership; or

4 (2) as to a transferee who gave value for property
5 transferred under subsection (a) (3), proves that the
6 transferee knew or had notice that the property was
7 partnership property and that the person who executed the
8 instrument of initial transfer lacked authority to bind the
9 partnership.

10 (c) A partnership may not recover partnership
11 property from a subsequent transferee if the partnership would
12 not have been entitled to recover the property, under
13 subsection (b), from any earlier transferee of the property.

14 §10A-8A-3.03. Statement of Authority.

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

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

18 (A) if the partnership has not filed a statement of
19 partnership, a statement of not for profit partnership, or a
20 statement of limited liability partnership, (i) the street and
21 mailing addresses of its principal office and (ii) if the
22 Secretary of State has assigned a unique identifying number or
23 other designation to the partnership, that number or
24 designation; or

25 (B) if the partnership has filed a statement of
26 partnership, a statement of not for profit partnership, or a
27 statement of limited liability partnership, (i) the street

1 address and mailing address of its principal office, (ii) the
2 name, street address, and mailing address of its registered
3 agent, and (iii) the unique identifying number or other
4 designation assigned to the partnership by the Secretary of
5 State.

6 (2) with respect to any position that exists in or
7 with respect to the partnership, may state the authority, or
8 limitations on the authority, of all persons holding the
9 position to:

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

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

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

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

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

20 (b) To amend or cancel a statement of authority
21 filed by the Secretary of State, a partnership must deliver to
22 the Secretary of State for filing an amendment or cancellation
23 stating:

24 (1) the name of the partnership;

25 (2) if the partnership has not filed a statement of
26 partnership, a statement of not for profit partnership, or a

1 statement of limited liability partnership, the street and
2 mailing addresses of the partnership's principal office;

3 (3) if the partnership has filed a statement of
4 partnership, a statement of not for profit partnership, or a
5 statement of limited liability partnership, the name and
6 street and mailing addresses of its registered agent;

7 (4) the date the statement of authority being
8 affected became effective; and

9 (5) the contents of the amendment or a declaration
10 that the statement of authority is canceled.

11 (c) A statement of authority affects only the power
12 of a person to bind a partnership to persons that are not
13 partners.

14 (d) Subject to subsection (c) and Section
15 10A-8A-1.03(d) (3) and except as otherwise provided in
16 subsections (f), (g), and (h), a limitation on the authority
17 of a person or a position contained in an effective statement
18 of authority is not by itself evidence of any person's
19 knowledge or notice of the limitation.

20 (e) Subject to subsection (c), a grant of authority
21 not pertaining to transfers of real property and contained in
22 an effective statement of authority is conclusive in favor of
23 a person that gives value in reliance on the grant, except to
24 the extent that when the person gives value:

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

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

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

4 (f) Subject to subsection (c), an effective
5 statement of authority that grants authority to transfer real
6 property held in the name of the partnership, a certified copy
7 of which statement of authority is recorded in the office of
8 the judge of probate in the county in which the real property
9 is located, is conclusive in favor of a person that gives
10 value in reliance on the grant without knowledge to the
11 contrary, except to the extent that when the person gives
12 value:

13 (1) the statement of authority has been canceled or
14 restrictively amended under subsection (b), and a certified
15 copy of the cancellation or restrictive amendment has been
16 recorded in the office of the judge of probate in the county
17 in which the real property is located; or

18 (2) a limitation on the grant is contained in
19 another statement of authority that became effective after the
20 statement of authority containing the grant became effective,
21 and a certified copy of the later-effective statement is
22 recorded in the office of the judge of probate in the county
23 in which the real property is located.

24 (g) Subject to subsection (c), if a certified copy
25 of an effective statement of authority containing a limitation
26 on the authority to transfer real property held in the name of
27 a partnership is recorded in the office of the judge of

1 probate in the county in which the real property is located,
2 all persons are deemed to know of the limitation with respect
3 to the real property located in that county.

4 (h) Subject to subsection (i), an effective
5 statement of dissolution is a cancellation of any filed
6 statement of authority for the purposes of subsection (f) and
7 is a limitation on authority for purposes of subsection (g).

8 (i) After a statement of dissolution becomes
9 effective, a partnership may deliver to the Secretary of State
10 for filing and, if appropriate, may record a statement of
11 authority that is designated as a post-dissolution statement
12 of authority. The statement operates as provided in
13 subsections (f) and (g).

14 (j) Unless canceled earlier, an effective statement
15 of authority is canceled by operation of law five years after
16 the date on which the statement, or its most recent amendment,
17 becomes effective. The cancellation is effective without
18 recording under subsection (f) or (g).

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

22 §10A-8A-3.04. Statement of denial.

23 A person named in a filed statement of authority
24 granting that person authority may deliver to the Secretary of
25 State for filing a statement of denial that:

1 (1) provides the name of the partnership and the
2 caption of the statement of authority to which the statement
3 of denial pertains; and

4 (2) denies the grant of authority.

5 A statement of denial is a limitation on authority
6 as provided in Section 10A-8A-3.03.

7 §10A-8A-3.05. Partnership liable for partner's
8 actionable conduct.

9 (a) A partnership is liable for loss or injury
10 caused to a person, or for a penalty incurred, as a result of
11 a wrongful act or omission, or other actionable conduct, of a
12 partner acting in the ordinary course of business or not for
13 profit activity of the partnership or with authority of the
14 partnership.

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

22 §10A-8A-3.06. Partner's liability.

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

1 (b) A person admitted as a partner into an existing
2 partnership is not personally liable for any partnership
3 obligation incurred before the person's admission as a
4 partner.

5 (c) Except as set forth in subsection (b) of Section
6 10A-8A-10.02, a debt, obligation, or other liability of a
7 partnership incurred while the partnership is a limited
8 liability partnership is solely the debt, obligation, or other
9 liability of the limited liability partnership. Except as set
10 forth in subsection (b) of Section 10A-8A-10.02, a partner in
11 a limited liability partnership is not personally liable or
12 accountable, directly or indirectly, including by way of
13 indemnification, contribution, assessment, or otherwise, for
14 debts, obligations, and liabilities of, or chargeable to, the
15 limited liability partnership, or another partner or partners,
16 whether arising in tort, contract, or otherwise, solely by
17 reason of being such a partner or acting, or omitting to act,
18 in such capacity, which such debts, obligations and
19 liabilities occur, are incurred or are assumed while the
20 partnership is a limited liability partnership. This
21 subsection applies (1) despite anything inconsistent in the
22 partnership agreement that existed immediately before the
23 partnership becomes a limited liability partnership, and (2)
24 regardless of the dissolution of the limited liability
25 partnership.

26 (d) Subsection (c) of this section shall not affect
27 the liability of a limited liability partnership to the extent

1 of partnership assets for partnership debts, obligations and
2 liabilities.

3 (e) A partner in a limited liability partnership is
4 not a necessary or proper party to a proceeding by or against
5 a limited liability partnership, the object of which is to
6 recover any debts, obligations, or liabilities of, or
7 chargeable to, the limited liability partnership, unless the
8 partner is personally liable therefor under subsection (b) of
9 Section 10A-8A-10.02.

10 §10A-8A-3.07. Actions by and against partnership and
11 partners.

12 (a) A partnership may sue and be sued in the name of
13 the partnership.

14 (b) An action may be brought against the partnership
15 and, except as provided in Section 10A-8A-3.06, against any or
16 all of the partners in the same action or in separate actions.

17 (c) A judgment against a partnership is not by
18 itself a judgment against a partner. A judgment against a
19 partnership may not be satisfied from a partner's assets
20 unless there is also a judgment against the partner.

21 (d) A judgment creditor of a partner may not levy
22 execution against the assets of the partner to satisfy a
23 judgment based on a claim against the partnership unless the
24 claim is for a debt, obligation, or liability for which the
25 partner is personally liable as provided in Section
26 10A-8A-3.06 and either:

1 (1) a judgment based on the same claim has been
2 obtained against the partnership and a writ of execution on
3 the judgment has been returned unsatisfied in whole or in
4 part;

5 (2) the partnership is a debtor in bankruptcy;

6 (3) the partner has agreed that the creditor need
7 not exhaust partnership assets;

8 (4) a court grants permission to the judgment
9 creditor to levy execution against the assets of a partner
10 based on a finding that partnership assets subject to
11 execution are clearly insufficient to satisfy the judgment,
12 that exhaustion of partnership assets is excessively
13 burdensome, or that the grant of permission is an appropriate
14 exercise of the court's equitable powers; or

15 (5) liability is imposed on the partner by law or
16 contract independent of the existence of the partnership.

17 (e) This section applies to any partnership
18 liability or obligation resulting from a representation by a
19 partner or purported partner under Section 10A-8A-3.08.

20 §10A-8A-3.08. Liability of purported partner.

21 Except as provided in Section 10A-8A-3.06:

22 (a) If a person, by words or conduct, purports to be
23 a partner, or consents to being represented by another as a
24 partner, in a partnership or with one or more persons not
25 partners, the purported partner is liable to a person to whom
26 the representation is made, if that person, relying on the
27 representation, enters into a transaction with the actual or

1 purported partnership. If the representation, either by the
2 purported partner or by a person with the purported partner's
3 consent, is made in a public manner, the purported partner is
4 liable to a person who relies upon the purported partnership
5 even if the purported partner is not aware of being held out
6 as a partner to the claimant. If partnership liability
7 results, the purported partner is liable with respect to that
8 liability as if the purported partner were a partner. If no
9 partnership liability results, the purported partner is liable
10 with respect to that liability jointly and severally with any
11 other person consenting to the representation.

12 (b) If a person is thus represented to be a partner
13 in an existing partnership, or with one or more persons not
14 partners, the purported partner is an agent of persons
15 consenting to the representation to bind them to the same
16 extent and in the same manner as if the purported partner were
17 a partner, with respect to persons who enter into transactions
18 in reliance upon the representation. If all of the partners of
19 the existing partnership consent to the representation, a
20 partnership act or obligation results. If fewer than all of
21 the partners of the existing partnership consent to the
22 representation, the person acting and the partners consenting
23 to the representation are jointly and severally liable.

24 (c) A person is not liable as a partner merely
25 because the person is named by another in a statement of
26 authority.

1 (d) A person does not continue to be liable as a
2 partner merely because of a failure to file a statement of
3 dissociation or to amend a statement of authority to indicate
4 the partner's dissociation from the partnership.

5 (e) Except as otherwise provided in subsections (a)
6 and (b), persons who are not partners as to each other are not
7 liable as partners to other persons.

8 Article 4. Relations of Partners to Each Other and
9 to Partnership.

10 §10A-8A-4.01. Partner's rights and duties.

11 (a) Each partner is deemed to have an account that
12 is:

13 (1) credited with an amount equal to the money plus
14 the value of any other property, net of the amount of any
15 liabilities, the partner contributes to the partnership and
16 the partner's share of the partnership profits; and

17 (2) charged with an amount equal to the money plus
18 the value of any other property, net of the amount of any
19 liabilities, distributed by the partnership to the partner and
20 the partner's share of the partnership losses provided that a
21 partner shall not be charged with any share of partnership
22 loss attributable to a debt, obligation or liability for which
23 the partner is not personally liable under Section 10A-8A-3.06
24 unless the loss is satisfied out of partnership assets.

25 (b) Each partner is entitled to an equal share of
26 the partnership profits and, subject to the limitations in
27 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.

26 (h) A partner is not entitled to remuneration for
27 services performed for the partnership, except for reasonable

1 compensation for services rendered in winding up the business
2 or not for profit activity of the partnership.

3 (i) A difference arising as to a matter in the
4 ordinary course of business or not for profit activity of a
5 partnership may be decided by a majority of the partners. An
6 act outside the ordinary course of business or not for profit
7 activity of a partnership and an amendment to the partnership
8 agreement may be undertaken only with the consent of all of
9 the partners.

10 (j) This section does not affect the obligations of
11 a partnership to other persons under Section 10A-8A-3.01.

12 §10A-8A-4.02. Admission of partner.

13 (a) The initial partners of a partnership are
14 admitted as partners upon the formation of the partnership.

15 (b) After formation, a person is admitted as a
16 partner of the partnership:

17 (1) as provided in the partnership agreement;

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

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

21 (4) as provided in Section 10A-8A-8.01(6) or
22 10A-8A-8.01(7).

23 (c) Each person to be admitted as a partner to a
24 partnership formed under either Section 10A-8A-2.01(a) (i) or
25 10A-8A-2.01(a) (ii) may be admitted as a partner without:

26 (1) acquiring a transferable interest; or

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

3 §10A-8A-4.03. Form of contribution. A contribution
4 by a partner may be made to a partnership as agreed by the
5 partners.

6 §10A-8A-4.04. Liability for contribution.

7 (a) A partner's obligation to make a contribution to
8 a partnership is not excused by the partner's death,
9 disability, or other inability to perform personally.

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

19 (c) The obligation of a partner to make a
20 contribution to a partnership may be compromised only by
21 consent of all partners. A conditional obligation of a partner
22 to make a contribution to a partnership may not be enforced
23 unless the conditions of the obligation have been satisfied or
24 waived as to or by that partner. Conditional obligations
25 include contributions payable upon a discretionary call of a
26 partnership before the time the call occurs.

1 (d) A creditor of a limited liability partnership
2 which extends credit or otherwise acts in reliance on an
3 obligation described in subsection (a), without notice of any
4 compromise under this subsection, may enforce the original
5 obligation.

6 (e) A promise by a partner to make a contribution to
7 a partnership is not enforceable unless set forth in a writing
8 signed by the partner.

9 §10A-8A-4.05. Sharing of distributions before
10 dissolution. All partners shall share equally in any
11 distributions made by a partnership before its dissolution and
12 winding up.

13 §10A-8A-4.06. Interim distributions. Subject to
14 Section 10A-8A-7.01, a partner has a right to a distribution
15 before the dissolution and winding up of a partnership as
16 provided in the partnership agreement. A decision to make a
17 distribution before the dissolution and winding up of the
18 partnership is a decision in the ordinary course of the
19 business or not for profit activity of the partnership.

20 §10A-8A-4.07. Distribution in kind. A partner does
21 not have a right to demand and receive a distribution from a
22 partnership in any form other than money. Except as otherwise
23 provided in Section 10A-8A-8.07, a partnership may distribute
24 an asset in kind if each partner receives a percentage of the
25 asset in proportion to the partner's share of distributions.

26 §10A-8A-4.08. Right to distribution. If a partner
27 becomes entitled to receive a distribution, the partner has

1 the status of, and is entitled to all remedies available to, a
2 creditor of the partnership with respect to the distribution.
3 However, the partnership's obligation to make a distribution
4 is subject to offset for any amount owed to the partnership by
5 the partner or dissociated partner on whose account the
6 distribution is made.

7 §10A-8A-4.09. Limitations on distribution and
8 liability for improper distributions.

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

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

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

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

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

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

25 (g) This section shall not apply to distributions
26 made in accordance with Section 10A-8A-8.09.

1 §10A-8A-4.10. Right of partner and former partner to
2 information.

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

4 (a) Subject to subsection (f), a partner, without
5 having any particular purpose for seeking the information, may
6 inspect and copy during regular hours at a reasonable location
7 specified by the partnership, required information and any
8 other records maintained by the partnership regarding the
9 partnership's business or not for profit activity and
10 financial condition.

11 (b) Subject to subsection (f), each partner and the
12 partnership shall furnish to a partner:

13 (1) without demand, any information concerning the
14 partnership's business or not for profit activity reasonably
15 required for the proper exercise of the partner's rights and
16 duties under the partnership agreement or this chapter; and

17 (2) on demand, any other information concerning the
18 partnership's business or not for profit activity, except to
19 the extent the demand or the information demanded is
20 unreasonable or otherwise improper under the circumstances.

21 (c) Subject to subsections (e) and (f), on 10 days'
22 demand made in a writing received by the partnership, a person
23 dissociated as a partner may have access to the information
24 and records described in subsection (a) at the location
25 specified in subsection (a) if:

26 (1) the information or writing pertains to the
27 period during which the person was a partner;

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

3 (3) it is determined that:

4 (i) the person seeks the information for a purpose
5 reasonably related to the person's interest as a partner;

6 (ii) the person's demand describes with reasonable
7 particularity the information sought and the purpose for
8 seeking the information; and

9 (iii) the information sought is directly connected
10 to the person's purpose.

11 (d) Within 10 days after receiving a demand pursuant
12 to subsection (c), the partnership in a writing shall inform
13 the person that made the demand:

14 (1) what information the partnership will provide in
15 response to the demand;

16 (2) when and where the partnership will provide the
17 information;

18 (3) if the partnership declines to provide any
19 demanded information, the partnership's reasons for declining;
20 and

21 (4) what, if any, restrictions will be imposed
22 pursuant to the partnership agreement or subsection (f).

23 (e) If a partner dies, Section 10A-8A-5.04 applies.

24 (f) In addition to any restriction or condition
25 stated in its partnership agreement, a partnership, as to a
26 matter within the ordinary course of its business or not for
27 profit activity, may:

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

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

15 In any dispute concerning the reasonableness of a
16 restriction under this subsection, the partnership has the
17 burden of proving reasonableness.

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

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

1 (i) The rights under this section do not extend to a
2 person as transferee, but the rights under subsection (c) of a
3 person dissociated as a partner may be exercised by the legal
4 representative of an individual who dissociated as a partner
5 under Section 10A-8A-6.01(6).

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

16 §10A-8A-4.11. General standards of partner's
17 conduct.

18 (a) The duties that a partner has to the partnership
19 and to the other partners include the duty of loyalty and the
20 duty of care as described in subsections (b) and (c).

21 (b) A partner's duty of loyalty to the partnership
22 and to the other partners includes each of the following:

23 (1) to account to the partnership and to hold as
24 trustee for it any property, profit, or benefit derived by the
25 partner in the conduct or winding up of the partnership's
26 business or not for profit activity or derived from a use by

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

3 (2) to refrain from dealing with the partnership in
4 the conduct or winding up of the partnership's business or not
5 for profit activity as or on behalf of a party having an
6 interest adverse to the partnership; and

7 (3) to refrain from competing with the partnership
8 in the conduct or winding up of the partnership's business or
9 not for profit activity.

10 (c) A partner's duty of care to the partnership and
11 to the other partners in the conduct or winding up of the
12 partnership's business or not for profit activity includes
13 refraining from engaging in grossly negligent or reckless
14 conduct, intentional misconduct, or a knowing violation of
15 law.

16 (d) A partner shall discharge the duties to the
17 partnership and to the other partners under this chapter and
18 under the partnership agreement and exercise any rights
19 consistently with the implied contractual covenant of good
20 faith and fair dealing.

21 (e) A partner does not violate a duty or obligation
22 under this chapter or under the partnership agreement merely
23 because the partner's conduct furthers the partner's own
24 interest.

25 §10A-8A-4.12. Reliance on reports and information. A
26 partner of a partnership shall be fully protected in relying
27 in good faith upon the records of the partnership and upon

1 information, opinions, reports, or statements presented by
2 another partner or agent of the partnership, or by any other
3 person as to matters the partner reasonably believes are
4 within that other person's professional or expert competence,
5 including information, opinions, reports, or statements as to
6 the value and amount of the assets, liabilities, profits, or
7 losses of the partnership, or the value and amount of assets
8 or reserves or contracts, agreements, or other undertakings
9 that would be sufficient to pay claims and obligations of the
10 partnership, or to make reasonable provision to pay those
11 claims and obligations, or any other facts pertinent to the
12 existence and amount of assets from which distributions to
13 partners or creditors might properly be paid.

14 §10A-8A-4.13. Actions by partnership and partners.

15 (a) Except as provided in Sections 10A-8A-3.06,
16 10A-8A-8.06, or 10A-8A-8.07, a partnership may maintain an
17 action against a partner for a breach of the partnership
18 agreement, or for the violation of a duty to the partnership,
19 causing harm to the partnership.

20 (b) Except as provided in Sections 10A-8A-3.06,
21 10A-8A-8.06, or 10A-8A-8.07, a partner may maintain an action
22 against the partnership or another partner for legal or
23 equitable relief, with or without an accounting as to
24 partnership business or not for profit activity, to:

25 (1) enforce the partner's rights under the
26 partnership agreement;

1 (2) enforce the partner's rights under this chapter,
2 including:

3 (i) the partner's rights under Sections 10A-8A-4.01,
4 10A-8A-4.03, or 10A-8A-4.04;

5 (ii) the partner's right on dissociation to have the
6 partner's transferable interest in the partnership purchased
7 pursuant to Section 10A-8A-7.01 or enforce any other right
8 under Article 6 or 7; or

9 (iii) the partner's right to compel a dissolution
10 and winding up of the partnership's business or not for profit
11 activity under Section 10A-8A-8.01 or enforce any other right
12 under Article 8; or

13 (3) enforce the rights and otherwise protect the
14 interests of the partner, including rights and interests
15 arising independently of the partnership relationship.

16 (c) The accrual of, and any time limitation on, a
17 right of action for a remedy under this section is governed by
18 other law. A right to an accounting upon a dissolution and
19 winding up does not revive a claim barred by law.

20 §10A-8A-4.14. Continuation of partnership beyond
21 definite term or particular undertaking.

22 (a) If a partnership for a definite term or
23 particular undertaking is continued, without an express
24 agreement, after the expiration of the term or completion of
25 the undertaking, the rights and duties of the partners remain
26 the same as they were at the expiration or completion, so far
27 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

25 (B) except as otherwise provided in subsection (d),
26 have access to required information, records, or other

1 information concerning the partnership's business or not for
2 profit activity.

3 (b) A transferee has a right:

4 (1) to receive, in accordance with the transfer,
5 distributions to which the transferor would otherwise be
6 entitled;

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

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

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

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

23 (e) Except as otherwise provided in Sections
24 10A-8A-6.01(4), 10A-8A-6.01(11), and 10A-8A-6.01(12), when a
25 partner transfers a transferable interest, the transferor
26 retains the rights of a partner other than the right to

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

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

6 (g) When a partner transfers a transferable interest
7 to a person that is admitted as a partner with respect to the
8 transferred interest, the transferee is liable for the
9 partner's obligations under Sections 10A-8A-4.04 and
10 10A-8A-4.09 to the extent that the obligations are known to
11 the transferee when the transferee voluntarily accepts
12 admission as a partner.

13 §10A-8A-5.03. Rights of creditor of partner or
14 transferee.

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

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

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

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

23 (d) Subject to subsection (c):

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

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

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

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

22 §10A-8A-5.04. Power of personal representative of
23 deceased partner.

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

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

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

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

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

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

9 (b) for the period of time that the deceased
10 partner's personal representative or other legal
11 representative does not hold the deceased partner's
12 transferable interest, for purposes of settling the estate,
13 exercise the rights of a person dissociated as a partner under
14 Section 10A-8A-4.10.

15 Article 6. Partner's Dissociation.

16 §10A-8A-6.01. Events causing partner's dissociation.

17 A person is dissociated from a partnership as a
18 partner upon the occurrence of any of the following events:

19 (1) the partnership has notice of the person's
20 express will to dissociate as a partner, except that if the
21 person specifies a dissociation date later than the date the
22 partnership had notice, then the person is dissociated as a
23 partner on that later date;

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

26 (3) the person is expelled as a partner pursuant to
27 the partnership agreement;

1 (4) the person is expelled as a partner by the
2 unanimous consent of the other partners if:

3 (A) it is unlawful to carry on the partnership's
4 business or not for profit activity with the person as a
5 partner;

6 (B) there has been a transfer of all of the person's
7 transferable interest in the partnership, other than a
8 transfer for security purposes;

9 (C) the person is an organization and, within 90
10 days after the partnership notifies the person that it will be
11 expelled as a partner because it has filed a statement of
12 dissolution or the equivalent, or its right to conduct
13 business or not for profit activity has been suspended by its
14 jurisdiction of formation, the statement of dissolution or the
15 equivalent has not been revoked or its right to conduct
16 business or not for profit activity has not been reinstated;
17 or

18 (D) the person is an organization and, within 90
19 days after the partnership notifies the person that it will be
20 expelled as a partner because the person has been dissolved
21 and its business or not for profit activity is being wound up,
22 the organization has not been reinstated or the dissolution
23 and winding up have not been revoked or cancelled;

24 (5) on application by the partnership, the person is
25 expelled as a partner by judicial order because the person:

26 (A) has engaged, or is engaging, in wrongful conduct
27 that has adversely and materially affected, or will adversely

1 and materially affect, the partnership's business or not for
2 profit activity;

3 (B) has willfully or persistently committed, or is
4 willfully or persistently committing, a material breach of the
5 partnership agreement or the person's duty or obligation under
6 this chapter or other applicable law; or

7 (C) has engaged, or is engaging, in conduct relating
8 to the business or not for profit activity of the partnership
9 that makes it not reasonably practicable to carry on the
10 business or not for profit activity with the person as
11 partner;

12 (6) in the case of a person who is an individual,
13 and the person dies, there is appointed a guardian or general
14 conservator for the person or there is a judicial
15 determination that the person has otherwise become incapable
16 of performing the person's duties as a partner under this
17 chapter or the partnership agreement;

18 (7) the person becomes a debtor in bankruptcy,
19 executes an assignment for the benefit of creditors, or seeks,
20 consents, or acquiesces to the appointment of a trustee,
21 receiver, or liquidator of the person or of all or
22 substantially all of the person's property;

23 (8) in the case of a person that is a trust or is
24 acting as a partner by virtue of being a trustee of a trust,
25 the trust's entire transferable interest in the partnership is
26 distributed, but not solely by reason of the substitution of a
27 successor trustee;

1 (9) in the case of a person that is an estate or is
2 acting as a partner by virtue of being a personal
3 representative of an estate, the estate's entire transferable
4 interest in the partnership is distributed, but not solely by
5 reason of the substitution of a successor personal
6 representative;

7 (10) in the case of a person that is not an
8 individual, the legal existence of the person otherwise
9 terminates;

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

12 (12) the transfer of a partner's entire remaining
13 transferable interest to a transferee upon the transferee's
14 becoming a partner; or

15 (13) the partnership's participation in a conversion
16 or merger under Article 9, or Article 8 of Chapter 1 of this
17 title if the partnership:

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

19 (B) is the converted or surviving entity but, as a
20 result of the conversion or merger, the person ceases to be a
21 partner.

22 §10A-8A-6.02. Partner's power to dissociate;
23 wrongful dissociation.

24 (a) A person has the power to dissociate as a
25 partner at any time, rightfully or wrongfully, by express will
26 pursuant to Section 10A-8A-6.01(1).

27 (b) A person's dissociation is wrongful only if:

1 (1) it is in breach of an express provision of the
2 partnership agreement; or

3 (2) in the case of a partnership for a definite term
4 or particular undertaking, before the expiration of the term
5 or the completion of the undertaking if any of the following
6 apply:

7 (A) the person dissociates as a partner by express
8 will, unless the dissociation follows not later than 90 days
9 after another person's dissociation by death or otherwise
10 under Section 10A-8A-6.01(6) through (10) or wrongful
11 dissociation under this subsection;

12 (B) the person is expelled as a partner by judicial
13 order under Section 10A-8A-6.01(5);

14 (C) the person is dissociated under Section
15 10A-8A-6.01(7); or

16 (D) in the case of a person that is not a trust
17 other than a business trust, an estate, or an individual, the
18 person is expelled or otherwise dissociated because it
19 willfully dissolved or terminated.

20 (c) A person that wrongfully dissociates as a
21 partner is liable to the partnership and to the other partners
22 for damages caused by the dissociation. The liability is in
23 addition to any debt, obligation, or other liability of the
24 partner to the partnership or the other partners.

25 §10A-8A-6.03. Effect of partner's dissociation.

26 (a) If a person's dissociation results in a
27 dissolution and winding up of the partnership business or not

1 for profit activity, Article 8 applies; otherwise, Article 7
2 applies.

3 (b) Upon a person's dissociation as a partner:

4 (1) the person's right to participate in the
5 management and conduct of the partnership business or not for
6 profit activity terminates, except as provided in Section
7 10A-8A-8.03;

8 (2) the person's duty of loyalty under Section
9 10A-8A-4.11(b) (3) terminates; and

10 (3) the person's duty of loyalty under Section
11 10A-8A-4.11(b) (1) and (2) and duty of care under Section
12 10A-8A-4.11(c) continue only with regard to matters arising
13 and events occurring before the person's dissociation, unless
14 the partner participates in winding up the partnership's
15 business or not for profit activity pursuant to Section
16 10A-8A-8.03.

17 Article 7. Person's Dissociation as a Partner when
18 Business or Not for Profit Activity Not Wound Up.

19 §10A-8A-7.01. Purchase of transferable interest of a
20 person dissociated as a partner.

21 (a) If a person is dissociated as a partner from a
22 partnership without resulting in a dissolution and winding up
23 of the partnership business or not for profit activity under
24 Section 10A-8A-8.01, the partnership shall cause that person's
25 transferable interest in the partnership owned by that person
26 at the time of dissociation to be purchased for a buyout price
27 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
26 person dissociated as a partner the amount the partnership

1 estimates to be the buyout price and accrued interest, reduced
2 by any offsets and accrued interest under subsection (c).

3 (f) If a deferred payment is authorized under
4 subsection (h), the partnership may tender a written offer to
5 pay the amount it estimates to be the buyout price and accrued
6 interest, reduced by any offsets under subsection (c), stating
7 the time of payment, the amount and type of security for
8 payment, and the other terms and conditions of the obligation.

9 (g) The payment or tender required by subsection (e)
10 or (f) must be accompanied by the following:

11 (1) a written statement of partnership assets and
12 liabilities as of the date of dissociation;

13 (2) the latest available partnership balance sheet
14 and income statement, if any;

15 (3) a written explanation of how the estimated
16 amount of the payment was calculated; and

17 (4) written notice which shall state that the
18 payment is in full satisfaction of the obligation to purchase
19 unless, within 120 days after the written notice, the person
20 dissociated as a partner commences an action to determine the
21 buyout price of that person's transferable interest, any
22 offsets under subsection (c), or other terms of the obligation
23 to purchase.

24 (h) A person that wrongfully dissociates as a
25 partner before the expiration of a definite term or the
26 completion of a particular undertaking is not entitled to
27 payment of any portion of the buyout price until the

1 expiration of the term or completion of the undertaking,
2 unless the person establishes to the satisfaction of the court
3 that earlier payment will not cause undue hardship to the
4 business or not for profit activity of the partnership. A
5 deferred payment under this subsection must bear interest and,
6 to the extent it would not cause undue hardship to the
7 business or not for profit activity of the partnership, be
8 adequately secured.

9 (i) A person dissociated as a partner may maintain
10 an action against the partnership, pursuant to Section
11 10A-8A-4.13(b)(2)(ii), to determine the buyout price of that
12 person's transferable interest under subsection (b), any
13 offsets under subsection (c), or other terms of the obligation
14 to purchase. The action must be commenced within 120 days
15 after the partnership has tendered payment or an offer to pay
16 or within one year after written demand for payment if no
17 payment or offer to pay is tendered. The court shall determine
18 the buyout price of that person's transferable interest under
19 subsection (b), any offset due under subsection (c), and
20 accrued interest, and enter judgment for any additional
21 payment or refund. If deferred payment is authorized under
22 subsection (h), the court shall also determine the security,
23 if any, for payment and other terms of the obligation to
24 purchase. The court may assess reasonable attorney's fees and
25 the fees and expenses of appraisers or other experts for a
26 party to the action, in amounts the court finds equitable,
27 against a party that the court finds acted arbitrarily,

1 vexatiously, or not in good faith. The finding may be based on
2 the partnership's failure to tender payment or an offer to pay
3 or to comply with subsection (g).

4 §10A-8A-7.02. Power to bind and liability of person
5 dissociated as a partner.

6 (a) For one year after a person dissociates as a
7 partner without resulting in a dissolution and winding up of
8 the partnership business or not for profit activity, the
9 partnership, including a surviving partnership or other
10 surviving entity under Article 9 of this chapter and Article 8
11 of Chapter 1, is bound by an act of the person dissociated as
12 a partner which would have bound the partnership under Section
13 10A-8A-3.01 before dissociation only if at the time of
14 entering into the transaction the other party:

15 (1) reasonably believed that the person dissociated
16 as a partner was then a partner and reasonably relied on such
17 belief in entering into the transaction;

18 (2) did not have notice of the person's dissociation
19 as a partner; and

20 (3) is not deemed to have had knowledge or notice
21 under Section 10A-8A-1.03.

22 (b) A person dissociated as a partner is liable to
23 the partnership for any damage caused to the partnership
24 arising from an obligation incurred by the person dissociated
25 as a partner after dissociation for which the partnership is
26 liable under subsection (a).

1 §10A-8A-7.03. Liability of person dissociated as a
2 partner to other persons.

3 (a) A person's dissociation as a partner does not of
4 itself discharge that person's liability for a partnership
5 obligation incurred before dissociation. A person dissociated
6 as a partner is not liable for a partnership obligation
7 incurred after dissociation, except as provided in subsection
8 (b).

9 (b) A person that dissociates as a partner without
10 resulting in a dissolution and winding up of the partnership
11 business or not for profit activity is liable as a partner to
12 the other party in a transaction entered into by the
13 partnership, or a surviving partnership or other surviving
14 entity under Article 9 of this chapter or Article 8 of Chapter
15 1, within one year after the partner's dissociation, only if
16 the partner is liable for the obligation under Section
17 10A-8A-3.06 and at the time of entering into the transaction
18 the other party:

19 (1) reasonably believed that the person dissociated
20 as a partner was then a partner and reasonably relied on such
21 belief in entering into the transaction;

22 (2) did not have notice of the person's
23 dissociation; and

24 (3) is not deemed to have had knowledge or notice
25 under Section 10A-8A-1.03 of the person's dissociation.

26 (c) By agreement with the partnership creditor and
27 the partners continuing the business or not for profit

1 activity, a person dissociated as a partner may be released
2 from liability for a partnership obligation.

3 (d) A person dissociated as a partner is released
4 from liability for a partnership obligation if a partnership
5 creditor, with notice of the person's dissociation but without
6 the person's consent, agrees to a material alteration in the
7 nature or time of payment of a partnership obligation.

8 §10A-8A-7.04. Statement of dissociation.

9 (a) A person dissociated as a partner or the
10 partnership may file a statement of dissociation stating the
11 name of the partnership and that the person is dissociated as
12 a partner from the partnership.

13 (b) A state of dissociation is a limitation on the
14 authority of a person dissociated as a partner for the purposes
15 of Section 10A-8A-3.03.

16 §10A-8A-7.05. Continued use of partnership name.

17 Continued use of a partnership name, or a person's name that
18 is dissociated as a partner as part thereof, by partners
19 continuing the business or not for profit activity does not of
20 itself make the person dissociated as a partner liable for an
21 obligation of the partners or the partnership continuing the
22 business or not for profit activity.

23 Article 8. Dissolution and Winding Up.

24 §10A-8A-8.01. Events of dissolution.

25 A partnership is dissolved, and its business or not
26 for profit activity must be wound up, upon the occurrence of
27 the first of the following events:

1 (1) in a partnership at will, the partnership knows
2 or has notice of a person's express will to dissociate as a
3 partner, other than a partner that has dissociated under
4 Section 10A-8A-6.01(2) through (10), but, if the person has
5 specified a dissociation date later than the date the
6 partnership knew or had notice, on the later date;

7 (2) in a partnership for a definite term or
8 particular undertaking:

9 (i) within 90 days after a partner's dissociation by
10 death or otherwise under Section 10A-8A-6.01(6) through (10),
11 or a partner's wrongful dissociation under Section
12 10A-8A-6.02(b), at least half of the remaining partners
13 affirmatively consent to dissolve the partnership and wind up
14 the partnership business or not for profit activity, for which
15 purpose a partner's rightful dissociation pursuant to Section
16 10A-8A-6.02(b) (2) (A) constitutes the expression of that
17 partner's will to wind up the business or not for profit
18 activity of the partnership;

19 (ii) the consent of all of the partners to dissolve
20 and wind up the partnership's business or not for profit
21 activity; or

22 (iii) the expiration of the term or the completion
23 of the undertaking;

24 (3) an event or circumstance that the partnership
25 agreement states causes dissolution;

26 (4) on application by a partner, the entry of an
27 order by a court of competent jurisdiction dissolving the

1 partnership on the grounds that it is not reasonably
2 practicable to carry on the partnership's business or not for
3 profit activity in conformity with the partnership agreement;

4 (5) on application by a transferee of a partner's
5 transferable interest, a judicial determination that it is
6 equitable to wind up the partnership business or not for
7 profit activity:

8 (i) after the expiration of the term or completion
9 of the undertaking, if the partnership was for a definite term
10 or particular undertaking at the time of the transfer; or

11 (ii) at any time, if the partnership was a
12 partnership at will at the time of the transfer;

13 (6) the passage of 90 consecutive days during which
14 the partnership does not have at least two partners, unless
15 either of the following applies:

16 (i) The remaining partner agrees in writing within
17 90 days after the dissociation of the last partner, to
18 continue the business or not for profit activity of the
19 partnership and to admit one or more new partners; or

20 (ii) The business or not for profit activity of the
21 partnership is continued and one or more new partners are
22 admitted in the manner stated in the partnership agreement; or

23 (7) the passage of 90 consecutive days during which
24 the partnership does not have any remaining partners, unless
25 either of the following applies:

26 (i) The holders of all of the transferable interests
27 in the partnership agree in writing, within 90 days after the

1 dissociation of the last partner, to continue the business or
2 not for profit activity of the partnership and to admit two or
3 more new partners; or

4 (ii) The business or not for profit activity of the
5 partnership is continued and two or more new partners are
6 admitted in the manner stated in the partnership agreement.

7 §10A-8A-8.02. Effect of dissolution.

8 Notwithstanding Section 10A-1-9.12:

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

13 (1) collecting its assets;

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

16 (3) discharging or making provisions for discharging
17 its liabilities;

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

20 (5) doing every other act necessary to wind up and
21 liquidate its business or not for profit activity.

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

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

26 (A) The name of the partnership;

1 (B) If the partnership has filed a statement of
2 partnership, a statement of not for profit partnership, a
3 statement of authority, or a statement of limited liability
4 partnership, the date of filing its statement of partnership,
5 statement of not for profit partnership, statement of
6 authority, or statement of limited liability partnership, and
7 all amendments and restatements thereof, and the office or
8 offices where filed;

9 (C) That the partnership has dissolved;

10 (D) The name, street address, and mailing address of
11 the partner who will be winding up the business or not for
12 profit activity of the partnership pursuant to Section
13 10A-8A-8.03(a), and if none, the name, street address, and
14 mailing address of the person appointed pursuant to Section
15 10A-8A-8.03(b) or (c) to wind up the business or not for
16 profit activity of the partnership;

17 (E) If the partnership has filed a statement of
18 partnership, a statement of not for profit partnership, or a
19 statement of limited liability partnership, the name, street
20 address, and mailing address of the partnership's registered
21 agent; and

22 (F) Any other information the partnership deems
23 appropriate;

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

26 (3) prosecute, defend, or settle actions or
27 proceedings whether civil, criminal or administrative;

- 1 (4) transfer the partnership's assets;
- 2 (5) resolve disputes by mediation or arbitration;

3 and

- 4 (6) merge or convert in accordance with Article 9 of
- 5 this chapter or Article 8 of Chapter 1.

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

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

- 8 (2) prevent the commencement of a proceeding by or
- 9 against the partnership in its partnership name;

- 10 (3) terminate, abate or suspend a proceeding pending
- 11 by or against the partnership on the effective date of
- 12 dissolution;

- 13 (4) terminate the authority of its registered agent;

14 or

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

17 (d) A statement of dissolution is a filing

18 instrument under Chapter 1.

19 §10A-8A-8.03. Right to wind up business or not for

20 profit activity.

21 (a) If a dissolved partnership has a partner or

22 partners that have not dissociated, that partner or those

23 partners shall wind up the business or not for profit activity

24 of the partnership and shall have the powers set forth in

25 Section 10A-8A-8.04. A person whose dissociation as a partner

26 resulted in the dissolution of the partnership may participate

1 in the winding up as if still a partner, unless the
2 dissociation was wrongful.

3 (b) If a dissolved partnership does not have a
4 partner and no person has the right to participate in winding
5 up under subsection (a), the personal or legal representative
6 of the last person to have been a partner may wind up the
7 partnership's business or not for profit activity. If the
8 representative does not exercise that right, a person to wind
9 up the partnership's business or not for profit activity may
10 be appointed by the affirmative vote or consent of transferees
11 owning a majority of the transferable interests at the time
12 the consent is to be effective.

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

17 (1) on application of a partner or any person
18 entitled under the last sentence of subsection (a) to
19 participate in the winding up of the dissolved partnership, if
20 the applicant establishes good cause;

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

26 (3) on application of a transferee, if the
27 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
26 liable for the debts, liabilities, and other obligations of
27 the partnership solely by reason of having or exercising those

1 powers or otherwise acting to wind up the business or not for
2 profit activity of the dissolved partnership.

3 §10A-8A-8.04. Power to bind partnership after
4 dissolution.

5 (a) After dissolution, a partnership is bound by the
6 act of a partner or by the act of a dissociated partner acting
7 as a partner under Section 10A-8A-8.03(a) which:

8 (1) is appropriate for winding up the partnership's
9 business or not for profit activity; or

10 (2) would have bound the partnership under Section
11 10A-8A-3.01 before dissolution, if, at the time the other
12 party enters into the transaction, the other party does not
13 have notice of the dissolution.

14 (b) Subject to subsection (a), a person dissociated
15 as a partner binds a partnership through an act occurring
16 after dissolution only if:

17 (1) at the time the other party enters into the
18 transaction the other party does not have notice of the
19 dissociation and reasonably believes that the person is a
20 partner; and

21 (2) the act:

22 (A) is appropriate for winding up the partnership's
23 business or not for profit activity; or

24 (B) would have bound the partnership under Section
25 10A-8A-3.01 before dissolution and at the time the other party
26 enters into the transaction the other party does not have
27 notice of the dissolution.

1 §10A-8A-8.05. Liability after dissolution of partner
2 and person dissociated as partner; other partners, and persons
3 dissociated as partners.

4 (a) If a partner having knowledge of the dissolution
5 causes a partnership to incur an obligation under Section
6 10A-8A-8.04(a) by an act that is not appropriate for winding
7 up the partnership's business or not for profit activity, the
8 partner is liable:

9 (1) to the partnership for any damage caused to the
10 partnership arising from the obligation; and

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

15 (b) If a person dissociated as a partner causes a
16 partnership to incur an obligation under Section
17 10A-8A-8.04(b), the person is liable:

18 (1) to the partnership for any damage caused to the
19 partnership arising from the obligation; and

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

24 (c) A person dissociated as a partner is not liable
25 under subsection (b) if:

26 (1) the last sentence of Section 10A-8A-8.03(a)
27 permits the person to participate in winding up; and

1 (2) the act that causes the partnership to be bound
2 under Section 10A-8A-8.04(b) is appropriate for winding up the
3 partnership's business or not for profit activity.

4 §10A-8A-8.06. Known claims against dissolved
5 partnership.

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

7 (a) A dissolved partnership may dispose of any known
8 claims against it by following the procedures described in
9 subsection (b) at any time after the effective date of the
10 dissolution of the partnership.

11 (b) A dissolved partnership may give notice of the
12 dissolution in writing to the holder of any known claim. The
13 notice must:

14 (1) identify the dissolved partnership;

15 (2) describe the information required to be included
16 in a claim;

17 (3) provide a mailing address to which the claim is
18 to be sent;

19 (4) state the deadline, which may not be fewer than
20 120 days from the effective date of the notice, by which the
21 dissolved partnership must receive the claim;

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

24 (6) unless the partnership has been throughout its
25 existence a limited liability partnership, state that the
26 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) Unless sooner barred by any other statute
4 limiting actions, a claim against a dissolved partnership is
5 barred:

6 (1) if a claimant who was given notice under
7 subsection (b) does not deliver the claim to the dissolved
8 partnership by the deadline; or

9 (2) if a claimant whose claim was rejected by the
10 dissolved partnership, does not commence a proceeding to
11 enforce the claim within 90 days from the effective date of
12 the rejection notice.

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

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

20 §10A-8A-8.07. Other claims against dissolved
21 partnership.

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

23 (a) A dissolved partnership may publish notice of
24 its dissolution and request that persons with claims against
25 the dissolved partnership present them in accordance with the
26 notice.

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

1 (1) be published at least one time in a newspaper of
2 general circulation in the county in which the dissolved
3 partnership's principal place of business or not for profit
4 activity in this state is located, and if none, was last
5 located;

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

9 (3) state that if not sooner barred, a claim against
10 the dissolved partnership will be barred unless a proceeding
11 to enforce the claim is commenced within two years after the
12 publication of the notice; and

13 (4) unless the partnership has been throughout its
14 existence a limited liability partnership, state that the
15 barring of a claim against the partnership will also bar any
16 corresponding claim against any partner or person dissociated
17 as a partner which is based on Section 10A-8A-3.06.

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

25 (1) a claimant who was not given notice under
26 Section 10A-8A-8.06;

1 (2) a claimant whose claim was timely sent to the
2 dissolved partnership but not acted on by the dissolved
3 partnership; and

4 (3) a claimant whose claim is contingent at the
5 effective date of the dissolution of the partnership, or is
6 based on an event occurring after the effective date of the
7 dissolution of the partnership.

8 (d) A claim that is not barred under this section,
9 any other statute limiting actions, or Section 10A-8A-8.06 may
10 be enforced:

11 (1) against a partnership, to the extent of its
12 undistributed assets;

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

22 (3) against any person liable on the claim under
23 Sections 10A-8A-3.06, 10A-8A-7.03 and 10A-8A-8.05.

24 (e) A dissolved partnership that published a notice
25 under this section may file an application with a court of
26 competent jurisdiction for a determination of the amount and
27 form of security to be provided for payment of claims that are

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

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

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

19 (h) Provision by the dissolved partnership for
20 security in the amount and the form ordered by the court under
21 subsection (e) shall satisfy the dissolved partnership's
22 obligation with respect to claims that are contingent, have
23 not been made known to the dissolved partnership, or are based
24 on an event occurring after the effective date of the
25 dissolution of the partnership, and those claims may not be
26 enforced against a person owning a transferable interest to
27 whom assets have been distributed by the dissolved partnership

1 after the effective date of the dissolution of the
2 partnership.

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

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

11 §10A-8A-8.08. Liability of partner and person
12 dissociated as partner when claim against partnership. If a
13 claim against a dissolved partnership is barred under Section
14 10A-8A-8.06 or 10A-8A-8.07, any corresponding claim under
15 Sections 10A-8A-3.06, 10A-8A-7.03, and 10A-8A-8.05 is also
16 barred.

17 §10A-8A-8.09. Disposition of assets, when
18 contributions required.

19 Notwithstanding Section 10A-1-9.12, upon the winding
20 up of a partnership, the assets of the partnership, including
21 any obligation under Sections 10A-8A-4.03, 10A-8A-4.04, and
22 10A-8A-4.09, and any contribution required by this section,
23 shall be applied as follows:

24 (a) Payment, or adequate provision for payment,
25 shall be made to creditors, including, to the extent permitted
26 by law, partners who are creditors, in satisfaction of
27 liabilities of the partnership.

1 (b) After a partnership complies with subsection
2 (a), any surplus must be distributed:

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

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

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

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

22 (1) Each person that was a partner when the
23 obligation was incurred and that has not been released from
24 the obligation under Section 10A-8A-7.03(c) and (d) shall
25 contribute to the partnership for the purpose of enabling the
26 partnership to satisfy the obligation. The contribution due
27 from each of those persons is in proportion to the right to

1 receive distributions in the capacity of partner in effect for
2 each of those persons when the obligation was incurred.

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

12 (3) If a person does not make the additional
13 contribution required by paragraph (2), further additional
14 contributions are determined and due in the same manner as
15 provided in that paragraph.

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

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

26 (g) An assignee for the benefit of creditors of a
27 partnership or a partner, or a person appointed by a court to

1 represent creditors of a partnership or a partner, may enforce
2 a person's obligation to contribute under subsection (d).

3 §10A-8A-8.10. Reinstatement after dissolution.

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

7 (a) the consent shall have been obtained from the
8 partners or other persons entitled to consent at the time that
9 is:

10 (1) required for reinstatement under the partnership
11 agreement; or

12 (2) if the partnership agreement does not state the
13 consent required for reinstatement, sufficient for dissolution
14 under the partnership agreement; or

15 (3) if the partnership agreement neither states the
16 consent required for reinstatement nor for dissolution,
17 sufficient for dissolution under this chapter;

18 (b) in the case of a written objection to
19 reinstatement having been delivered to the partnership before
20 or at the time of the consent required by subsection (a) by
21 the partners or other persons having authority under the
22 partnership agreement to bring about or prevent dissolution of
23 the partnership, those partners or persons withdrawing that
24 written objection effective at the time of the consent
25 required by subsection (a);

26 (c) in the case of a partnership dissolved in a
27 judicial proceeding initiated by one or more of the partners

1 pursuant to Section 10A-8A-8.01(4), the consent of each of
2 those partners shall have been obtained and shall be included
3 in the consent required by subsection (a);

4 (d) in the case of a partnership dissolved in a
5 judicial proceeding initiated by one or more of transferees
6 pursuant to Section 10A-8A-8.01(5), the consent of each of
7 those transferees shall have been obtained and shall be
8 included in the consent required by subsection (a); and

9 (e) in the case of a partnership that has filed a
10 statement of dissolution, the filing of a certificate of
11 reinstatement in accordance with Section 10A-8A-8.11.

12 §10A-8A-8.11. Certificate of reinstatement.

13 A partnership that has dissolved, has filed a
14 statement of dissolution, and is seeking to reinstate in
15 accordance with Section 10A-8A-8.10, shall deliver to the
16 Secretary of State for filing a certificate of reinstatement
17 in accordance with the following:

18 (a) A certificate of reinstatement shall be
19 delivered to the Secretary of State for filing. The
20 certificate of reinstatement shall state:

21 (1) the name of the partnership before
22 reinstatement;

23 (2) the name of the partnership following
24 reinstatement, which partnership name shall comply with
25 Section 10A-8A-8.12;

26 (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
26 Secretary of State for filing a statement of partnership, a
27 statement of not for profit partnership, or a statement of

1 limited liability partnership, simultaneously with the
2 certificate of reinstatement.

3 (c) A certificate of reinstatement is a filing
4 instrument under Chapter 1.

5 §10A-8A-8.12. Partnership name upon reinstatement.

6 The name of a partnership following the filing of a
7 certificate of reinstatement shall be determined as follows:

8 (a) if the partnership is listed in the Secretary of
9 State's records as a partnership that has been dissolved, then
10 the name of a partnership following reinstatement shall be
11 that partnership name at the time of reinstatement if that
12 partnership name complies with Article 5 of Chapter 1 at the
13 time of reinstatement; and

14 (b) if that partnership name does not comply with
15 Article 5 of Chapter 1, the name of the partnership following
16 reinstatement shall be that partnership name followed by the
17 word "reinstated."

18 §10A-8A-8.13. Effect of reinstatement.

19 (a) Subject to subsection (b), upon reinstatement,
20 the partnership shall be deemed for all purposes to have
21 continued its business or not for profit activity as if
22 dissolution had never occurred; and each right inuring to, and
23 each debt, obligation, and liability incurred by, the
24 partnership after the dissolution shall be determined as if
25 the dissolution had never occurred.

26 (b) The rights of persons acting in reliance on the
27 dissolution before those persons had notice of the

1 reinstatement shall not be adversely affected by the
2 reinstatement.

3 Article 9. Conversions and Mergers.

4 §10A-8A-9.01. Definitions.

5 Notwithstanding Section 10A-1-1.03, as used in this
6 article, unless the context otherwise requires, the following
7 terms mean:

8 (1) "Constituent organization" means an organization
9 that is party to a merger under this article.

10 (2) "Constituent partnership" means a constituent
11 organization that is a partnership.

12 (3) "Converted organization" means the organization
13 into which a converting organization converts pursuant to this
14 article.

15 (4) "Converting organization" means an organization
16 that converts into another organization pursuant to this
17 article.

18 (5) "Converting partnership" means a converting
19 organization that is a partnership.

20 (6) "Governing statute" of an organization means the
21 statute that governs the organization's internal affairs.

22 (7) "Organization" means a partnership, including a
23 limited liability partnership; limited partnership, including
24 a limited liability limited partnership; limited liability
25 company; business trust; corporation; nonprofit corporation;
26 professional corporation; or any other person having a

1 governing statute. The term includes domestic and foreign
2 organizations whether or not organized for profit.

3 (8) "Organizational documents" means:

4 (A) (i) for a partnership, its partnership agreement
5 and, if applicable, its statement of partnership, statement of
6 not for profit partnership, or statement of limited liability
7 partnership; (ii) for a foreign partnership, its partnership
8 agreement and, if applicable, its statement of foreign limited
9 liability partnership;

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

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

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

22 (E) for a corporation for profit or foreign
23 corporation for profit, its certificate of formation, bylaws,
24 and other agreements among its shareholders that are
25 authorized by its governing statute, or comparable writings as
26 provided in its governing statute;

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

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

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

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

18 §10A-8A-9.02. Conversion.

19 (a) An organization other than a partnership may
20 convert to a partnership, and a partnership may convert to an
21 organization other than a partnership pursuant to this
22 section, Sections 10A-8A-9.03 through 10A-8A-9.05, and a plan
23 of conversion, if:

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

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

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

8 (b) A plan of conversion must be in writing and must
9 include:

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

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

16 (3) the terms and conditions of the conversion,
17 including the manner and basis for converting interests in the
18 converting organization into any combination of money,
19 interests in the converted organization, and other
20 consideration allowed in Section 10A-8A-9.02(c); and

21 (4) the organizational documents of the converted
22 organization.

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

1 converted into cash, property, or rights or securities of or
2 interests in another organization or may be cancelled.

3 (d) If a partnership is the converting organization
4 and that partnership does not have an effective statement of
5 partnership, statement of not for profit partnership, or
6 statement of limited liability partnership on file with the
7 Secretary of State, then that partnership must, before
8 proceeding with a conversion deliver to the Secretary of State
9 for filing, a statement of partnership, statement of not for
10 profit partnership, or statement of limited liability
11 partnership simultaneously with the delivery to the Secretary
12 of State for filing, of a statement of conversion.

13 (e) If an organization is converting to a
14 partnership, the converting organization must deliver to the
15 Secretary of State for filing a statement of partnership,
16 statement of not for profit partnership, or a statement of
17 limited liability partnership in accordance with Section
18 10A-8A-9.04.

19 §10A-8A-9.03. Action on plan of conversion by
20 converting partnership.

21 (a) Subject to Section 10A-8A-9.10, a plan of
22 conversion must be consented to by all the partners of a
23 converting partnership.

24 (b) Subject to Section 10A-8A-9.10 and any
25 contractual rights, after a conversion is approved, and at any
26 time before a filing is made under Section 10A-8A-9.04, a

1 converting partnership may amend the plan or abandon the
2 planned conversion:

3 (1) as provided in the plan; and

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

6 §10A-8A-9.04. Filings required for conversion;
7 effective date.

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

9 (1) if the converting organization is an
10 organization formed under, or its internal affairs are
11 governed by, the laws of this state, the converting
12 organization shall file a statement of conversion in
13 accordance with subsection (c), which statement of conversion
14 must be signed in accordance with Section 10A-8A-2.03 and
15 which must include:

16 (A) the name of the converting organization;

17 (B) the date of the filing of the certificate of
18 formation of the converting organization, if any, and all
19 prior amendments and the filing office or offices, if any,
20 where such is filed;

21 (C) a statement that the converting organization has
22 been converted into the converted organization;

23 (D) the name and type of organization of the
24 converted organization and the jurisdiction of its governing
25 statute;

26 (E) the street and mailing address of the principal
27 office of the converted organization;

1 (F) the date the conversion is effective under the
2 governing statute of the converted organization;

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

5 (H) a statement that the conversion was approved as
6 required by the governing statute of the converted
7 organization; and

8 (I) if the converted organization is a foreign
9 organization not authorized to conduct business or not for
10 profit activity in this state, the street and mailing address
11 of an office for the purposes of Section 10A-8A-9.05(b); and

12 (2) if the converted organization is a partnership,
13 the converting organization shall deliver to the Secretary of
14 State for filing a statement of partnership, statement of not
15 for profit partnership, or statement of limited liability
16 partnership, as applicable, which statement of partnership,
17 statement of not for profit partnership, or statement of
18 limited liability partnership must include, in addition to the
19 information required by Section 10A-8A-2.02 or 10A-8A-10.01,
20 as applicable:

21 (A) a statement that the partnership was converted
22 from the converting organization;

23 (B) the name and type of organization of the
24 converting organization and the jurisdiction of the converting
25 organization's governing statute; and

1 (C) a statement that the conversion was approved in
2 a manner that complied with the converting organization's
3 governing statute.

4 (3) if the converting organization is a partnership
5 and that partnership does not have an effective statement of
6 partnership, statement of not for profit partnership, or
7 statement of limited liability partnership on file with the
8 Secretary of State, then the converting organization must
9 deliver to the Secretary of State for filing, a statement of
10 partnership, statement of not for profit partnership, or
11 statement of limited liability partnership simultaneously with
12 the delivery to the Secretary of State for filing, of a
13 statement of conversion.

14 (b) A conversion becomes effective:

15 (1) if the converted organization is a partnership,
16 when the statement of partnership, statement of not for profit
17 partnership, or statement of limited liability partnership
18 takes effect; and

19 (2) if the converted organization is not a
20 partnership, as provided by the governing statute of the
21 converted organization.

22 (c) If the converting organization is an
23 organization formed under, or its internal affairs are
24 governed by, the laws of this state, then the converting
25 organization shall file the statement of conversion required
26 under subsection (a)(1) and the statement, if any, required

1 under subsection (a) (3) with the Secretary of State in
2 accordance with Section 10A-1-4.02(c) (1).

3 (d) If the converted organization is a partnership,
4 then, notwithstanding Section 10A-1-4.02(b), the converting
5 organization shall file a statement of partnership, statement
6 of not for profit partnership, or statement of limited
7 liability partnership required under subsection (a) (2) with
8 the Secretary of State in accordance with Section
9 10A-1-4.02(c) (5), along with the fees specified in Section
10 10A-1-4.31 subject to subsections (f) (3) and (f) (4).

11 (e) If the converting organization is required to
12 file a statement of conversion and a statement of partnership,
13 statement of not for profit partnership, or statement of
14 limited liability partnership with the Secretary of State,
15 then the converting organization shall file the statement of
16 conversion and the statement of partnership, statement of not
17 for profit partnership, or statement of limited liability
18 partnership with the Secretary of State simultaneously.

19 (f) In the case of a statement of conversion that is
20 to be filed with the Secretary of State pursuant to subsection
21 (c):

22 (1) if the converting organization has a certificate
23 of formation filed with the judge of probate, the Secretary of
24 State shall within 10 days transmit a certified copy of the
25 statement of conversion to the office of the judge of probate
26 in the county in which the certificate of formation for such

1 converting organization was filed along with the proper fee
2 for the judge of probate.

3 (2) if the converting organization did not file its
4 certificate of formation with the judge of probate, but rather
5 in accordance with this title filed its certificate of
6 formation with the Secretary of State, the Secretary of State
7 shall not transmit a certified copy of the statement of
8 conversion to the office of the judge of probate and shall not
9 collect any fee for the judge of probate.

10 (3) if the converting organization is, immediately
11 prior to the conversion becoming effective, an organization
12 described in Section 10A-1-4.02(c) (4), but is not required
13 under this title to file its organizational documents with the
14 judge of probate, the Secretary of State shall not transmit a
15 certified copy of the statement of conversion to the office of
16 the judge of probate and shall not collect any fee for the
17 judge of probate.

18 (4) if the converting organization is a partnership,
19 the Secretary of State shall not transmit a certified copy of
20 the statement of conversion to the office of the judge of
21 probate and shall not collect any fee for the judge of
22 probate.

23 (g) In the case of a statement of partnership,
24 statement of not for profit partnership, or statement of
25 limited liability partnership that is to be filed with the
26 Secretary of State pursuant to subsection (d), the Secretary
27 of State shall not transmit a certified copy of the statement

1 of partnership, statement of not for profit partnership, or
2 statement of limited liability partnership to the office of
3 the judge of probate and shall not collect any fee for the
4 judge of probate, but shall collect the fee provided for the
5 Secretary of State in Section 10A-1-4.31(a)(1).

6 (h) After a conversion becomes effective, if the
7 converted organization is a partnership, then all filing
8 instruments required to be filed under this title regarding
9 that converted organization shall be filed with the Secretary
10 of State.

11 (i) If:

12 (1) the converting organization is a filing entity,
13 a partnership with an effective statement of partnership,
14 statement of not for profit partnership, or statement of
15 limited liability partnership on file with the Secretary of
16 State, a foreign filing entity registered to conduct business
17 or not for profit activity in this state or a qualified
18 foreign limited liability partnership;

19 (2) the converted organization will be a filing
20 entity, a partnership with an effective statement of
21 partnership, statement of not for profit partnership, or
22 statement of limited liability partnership on file with the
23 Secretary of State, a foreign filing entity registered to
24 conduct business or not for profit activity in this state or a
25 qualified foreign limited liability partnership;

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

4 (4) the name of the converted organization complies
5 with Division A of Article 5 of Chapter 1 or Section
6 10A-1-7.07, as the case may be; then notwithstanding Division
7 B of Article 5 of Chapter 1, no name reservation shall be
8 required and the converted organization shall for all purposes
9 of this title be entitled to utilize the name of the
10 converting organization without any further action by the
11 converting organization or the converted organization.

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

22 (k) A statement of conversion is a filing instrument
23 under Chapter 1.

24 (1) Except as set forth in subsections (f) (2),
25 (f) (3), and (f) (4), the filing fees for a statement of
26 conversion shall be the same fee as provided in Section
27 10A-1-4.31(a) (5).

1 §10A-8A-9.05. Effect of conversion.

2 (a) When a conversion takes effect:

3 (1) all property owned by the converting
4 organization remains vested in the converted organization
5 without reservation or impairment and the title to any
6 property vested by deed or otherwise in the converting
7 organization shall not revert or be in any way impaired by
8 reason of the conversion;

9 (2) all debts, obligations, or other liabilities of
10 the converting organization continue as debts, obligations, or
11 other liabilities of the converted organization and neither
12 the rights of creditors, nor the liens upon the property of
13 the converting organization shall be impaired by the
14 conversion;

15 (3) an action or proceeding pending by or against
16 the converting organization continues as if the conversion had
17 not occurred;

18 (4) except as prohibited by law other than this
19 chapter, all of the rights, privileges, immunities, powers,
20 and purposes of the converting organization remain vested in
21 the converted organization;

22 (5) except as otherwise provided in the plan of
23 conversion, the terms and conditions of the plan of conversion
24 take effect;

25 (6) except as otherwise agreed, for all purposes of
26 the laws of this state, the converting organization shall not
27 be required to wind up its business or not for profit activity

1 or pay its liabilities and distribute its assets, and the
2 conversion shall not be deemed to constitute a dissolution of
3 the converting organization;

4 (7) for all purposes of the laws of this state, the
5 rights, privileges, powers, interests in property, debts,
6 liabilities and duties of the converting organization, shall
7 be the rights, privileges, powers, interests in property,
8 debts, liabilities and duties of the converted organization,
9 and shall not be deemed as a consequence of the conversion, to
10 have been transferred to the converted organization;

11 (8) if the converted organization is a partnership,
12 for all purposes of the laws of this state, the partnership
13 shall be deemed to be the same organization as the converting
14 organization, and the conversion shall constitute a
15 continuation of the existence of the converting organization
16 in the form of a partnership;

17 (9) if the converted organization is a partnership,
18 the existence of the partnership shall be deemed to have
19 commenced on the date the converting organization commenced
20 its existence in the jurisdiction in which the converting
21 organization was first created, formed, organized,
22 incorporated, or otherwise came into being;

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

25 (11) If the Secretary of State has assigned a unique
26 identifying number or other designation to the converting
27 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:

25 (1) the governing statute of each of the other
26 organizations authorizes the merger;

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

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

5 (b) A plan of merger must be in writing and must
6 include:

7 (1) the name, type of organization, and mailing
8 address of the principal office of each constituent
9 organization;

10 (2) the name, type of organization, and mailing
11 address of the principal office of the surviving organization
12 and, if the surviving organization is to be created pursuant
13 to the merger, a statement to that effect;

14 (3) the terms and conditions of the merger,
15 including the manner and basis for converting the interests in
16 each constituent organization into any combination of money,
17 interests in the surviving organization, and other
18 consideration as allowed by subsection (c);

19 (4) if the surviving organization is to be created
20 pursuant to the merger, the surviving organization's
21 organizational documents; and

22 (5) if the surviving organization is not to be
23 created pursuant to the merger, any amendments to be made by
24 the merger to the surviving organization's organizational
25 documents.

26 (c) In connection with a merger, rights or
27 securities of or interests in a constituent organization may

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

6 §10A-8A-9.07. Action on plan of merger by
7 constituent partnership.

8 (a) Subject to Section 10A-8A-9.10, a plan of merger
9 must be consented to by all the partners of a constituent
10 partnership.

11 (b) Subject to Section 10A-8A-9.10 and any
12 contractual rights, after a merger is approved, and at any
13 time before a filing is made under Section 10A-8A-9.08, a
14 constituent partnership may amend the plan or abandon the
15 merger:

16 (1) as provided in the plan; and

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

19 §10A-8A-9.08. Filings required for merger; effective
20 date.

21 (a) After each constituent organization has approved
22 the plan of merger, a statement of merger must be signed on
23 behalf of:

24 (1) each constituent partnership, as provided in
25 Section 10A-8A-2.03(a); and

26 (2) each other constituent organization, as provided
27 by its governing statute.

1 (b) A statement of merger under this section must
2 include:

3 (1) the name, type of organization, and mailing
4 address of the principal office of each constituent
5 organization and the jurisdiction of its governing statute;

6 (2) the name, type of organization, and mailing
7 address of the principal office of the surviving organization,
8 the jurisdiction of its governing statute, and, if the
9 surviving organization is created pursuant to the merger, a
10 statement to that effect;

11 (3) the date of the filing of the certificate of
12 formation, if any, and all prior amendments and the filing
13 office or offices, if any, and where such is filed of each
14 constituent organization which was formed under the laws of
15 this state;

16 (4) the date of the filing of the statement of
17 partnership, statement of not for profit partnership, or
18 statement of limited liability partnership, if any, and all
19 prior amendments and the filing office or offices, if any, and
20 where such is filed of each constituent organization which is
21 a partnership;

22 (5) the date the merger is effective under the
23 governing statute of the surviving organization;

24 (6) if the surviving organization is to be created
25 pursuant to the merger:

1 (A) if it will be a partnership, the partnership's
2 statement of partnership, statement of not for profit
3 partnership, or statement of limited liability partnership; or

4 (B) if it will be an organization other than a
5 partnership, any organizational document that creates the
6 organization that is required to be in a public writing;

7 (7) if the surviving organization exists before the
8 merger, any amendments provided for in the plan of merger for
9 the organizational document that are required to be in a
10 public writing;

11 (8) a statement as to each constituent organization
12 that the merger was approved as required by the organization's
13 governing statute;

14 (9) if the surviving organization is a foreign
15 organization not authorized to conduct business or not for
16 profit activity in this state, the street and mailing address
17 of an office for the purposes of Section 10A-8A-9.09(b); and

18 (10) any additional information required by the
19 governing statute of any constituent organization.

20 (c) Prior to the statement of merger being delivered
21 for filing to the Secretary of State in accordance subsection
22 (d), all constituent organizations that are partnerships,
23 other than a partnership that is created pursuant to the
24 merger, must have on file with the Secretary of State a
25 statement of partnership, statement of not for profit
26 partnership, or statement of limited liability partnership.

1 (d) The statement of merger shall be delivered for
2 filing to the Secretary of State in accordance with Section
3 10A-1-4.02(c)(1), along with the fees specified in Section
4 10A-1-4.31, subject to the last two sentences of this
5 subsection (d). For each constituent organization which is
6 formed under the laws of this state pursuant to a certificate
7 of formation and which is not, immediately prior to the merger
8 becoming effective, an organization described in Section
9 10A-1-4.02(c)(4), the Secretary of State shall within 10 days
10 transmit a certified copy of the statement of merger to the
11 office of the judge of probate in the county in which the
12 certificate of formation for each such constituent
13 organization was filed along with the proper fee for the judge
14 of probate. For each constituent organization which is formed
15 under the laws of this state pursuant to a certificate of
16 formation, which is, immediately prior to the merger becoming
17 effective, an organization described in Section
18 10A-1-4.02(c)(4), but which has a certificate of formation
19 filed with the judge of probate, the Secretary of State shall
20 transmit a certified copy of the statement of merger to the
21 office of the judge of probate in the county in which the
22 certificate of formation for each such constituent
23 organization was filed along with the proper fee for the judge
24 of probate. For each constituent organization which (1) is
25 formed under the laws of this state pursuant to a certificate
26 of formation, (2) is, immediately prior to the merger becoming
27 effective, an organization described in Section

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

12 (e) A merger becomes effective under this article:

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

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

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

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

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

26 (g) A certified copy of the statement of merger
27 required to be filed under this section may be filed in the

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

9 (h) A statement of merger is a filing instrument
10 under Chapter 1.

11 (i) Except as provided in the last two sentences of
12 subsection (d), the filing fees for a statement of merger
13 shall be the same fees as provided in Section
14 10A-1-4.31(a)(5).

15 §10A-8A-9.09. Effect of merger.

16 (a) When a merger becomes effective:

17 (1) the surviving organization continues or, in the
18 case of a surviving organization created pursuant to the
19 merger, comes into existence;

20 (2) each constituent organization that merges into
21 the surviving organization ceases to exist as a separate
22 entity;

23 (3) all property owned by, and every contract right
24 possessed by, each constituent organization that ceases to
25 exist vests in the surviving organization without transfer,
26 reversion, or impairment and the title to any property and
27 contract rights vested by deed or otherwise in the surviving

1 organization shall not revert, be in any way impaired, or be
2 deemed to be a transfer by reason of the merger;

3 (4) all debts, obligations, and other liabilities of
4 each constituent organization, other than the surviving
5 organization, are debts, obligations, and other liabilities of
6 the surviving organization, and neither the rights of
7 creditors, nor any liens upon the property of any constituent
8 organization, shall be impaired by the merger;

9 (5) an action or proceeding pending by or against
10 any constituent organization continues as if the merger had
11 not occurred and the name of the surviving organization may
12 be, but need not be, substituted in any pending proceeding for
13 the name of any constituent organization whose separate
14 existence ceased in the merger;

15 (6) except as prohibited by law other than this
16 chapter, or the terms of the merger, all of the rights,
17 privileges, franchises, immunities, powers, and purposes of
18 each constituent organization, other than the surviving
19 organization, vest in the surviving organization;

20 (7) except as otherwise provided in the plan of
21 merger, the terms and conditions of the plan of merger take
22 effect;

23 (8) except as otherwise agreed, if a constituent
24 partnership ceases to exist, the merger does not dissolve the
25 partnership;

26 (9) if the surviving organization is created
27 pursuant to the merger:

1 (A) if it is a partnership, the statement of
2 partnership, statement of not for profit partnership or
3 statement of limited liability partnership becomes effective;
4 or

5 (B) if it is an organization other than a
6 partnership, the organizational documents that create the
7 organization become effective;

8 (10) if the surviving organization existed before
9 the merger, any amendments provided for in the statement of
10 merger for the organizational documents of that organization
11 become effective;

12 (11) the transferable interests of each partnership
13 that is a constituent organization to the merger, and the
14 ownership interests of each organization that is not a
15 partnership, but is a constituent organization to the merger,
16 that are to be converted in accordance with the terms of the
17 merger into transferable interests, ownership interests, other
18 securities, obligations, rights to acquire transferable
19 interests, ownership interests, or other securities, cash,
20 other property, or any combination of the foregoing, are
21 converted, and the former holder of such transferable
22 interests or ownership interests is entitled only to the
23 rights provided to that former holder by those terms or the
24 statute governing that former holder's constituent
25 organization; and

26 (12) if the surviving organization exists before the
27 merger:

1 (i) all the property and contract rights of the
2 surviving organization remain its property and contract rights
3 without transfer, reversion, or impairment;

4 (ii) the surviving organization remains subject to
5 all its debts, obligations, and other liabilities; and

6 (iii) except as provided by law other than this
7 chapter, or the plan of merger, the surviving organization
8 continues to hold all of its rights, privileges, franchises,
9 immunities, powers, and purposes.

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

23 §10A-8A-9.10. Restrictions on approval of mergers,
24 conversions and on relinquishing LLP status.

25 (a) If a partner of a converting or constituent
26 partnership will have personal liability with respect to a
27 converted or surviving organization, approval and amendment of

1 a plan of conversion or plan of merger are ineffective without
2 that partner's consent to the plan.

3 (b) A statement of cancellation of the statement of
4 limited liability partnership filed in connection with a
5 conversion or merger is ineffective without each partner's
6 written consent to such amendment.

7 (c) A partner does not give the consent required by
8 subsection (a) or (b) merely by consenting to a provision of
9 the partnership agreement that permits the partnership
10 agreement to be amended with the consent of fewer than all the
11 partners.

12 §10A-8A-9.11. Liability of partner after conversion
13 or merger.

14 (a) A conversion or merger under this article does
15 not discharge any liability under Section 10A-8A-3.06,
16 10A-8A-7.02, or 10A-8A-7.03 of a person that was a partner in
17 or dissociated as a partner from a converting or constituent
18 partnership, but:

19 (1) the provisions of this chapter pertaining to the
20 collection or discharge of the liability continue to apply to
21 the liability;

22 (2) for the purposes of applying those provisions,
23 the converted or surviving organization is deemed to be the
24 converting or constituent partnership; and

25 (3) if a person is required to pay any amount under
26 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;

25 (ii) the converting or constituent partnership is
26 not a limited liability partnership; and

1 (iii) the person is a partner in the converting or
2 constituent partnership; and

3 (2) a person that was dissociated as a partner from
4 a converting or constituent partnership before the conversion
5 or merger became effective is personally liable for each
6 obligation of the converted or surviving organization arising
7 from a transaction with a third party after the conversion or
8 merger becomes effective, if:

9 (A) immediately before the conversion or merger
10 became effective the converting or surviving partnership was
11 not a limited liability partnership; and

12 (B) at the time the third party enters into the
13 transaction the third party:

14 (i) does not have notice of the dissociation;

15 (ii) does not have notice of the conversion or
16 merger; and

17 (iii) reasonably believes that the converted or
18 surviving organization is the converting or constituent
19 partnership, the converting or constituent partnership is not
20 a limited liability partnership, and the person is a partner
21 in the converting or constituent partnership.

22 §10A-8A-9.12. Power of partners and persons
23 dissociated as partners to bind organization after conversion
24 or merger.

25 (a) An act of a person that immediately before a
26 conversion or merger became effective was a partner in a
27 converting or constituent partnership binds the converted or

1 surviving organization after the conversion or merger becomes
2 effective, if:

3 (1) before the conversion or merger became
4 effective, the act would have bound the converting or
5 constituent partnership under Section 10A-8A-3.01; and

6 (2) at the time the third party enters into the
7 transaction, the third party:

8 (A) does not have notice of the conversion or
9 merger; and

10 (B) 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 (b) An act of a person that before a conversion or
15 merger became effective was dissociated as a partner from a
16 converting or constituent partnership binds the converted or
17 surviving organization after the conversion or merger becomes
18 effective, if:

19 (1) before the conversion or merger became
20 effective, the act would have bound the converting or
21 constituent partnership under Section 10A-8A-3.01 if the
22 person had been a partner; and

23 (2) at the time the third party enters into the
24 transaction, the third party:

25 (A) does not have notice of the dissociation;

26 (B) does not have notice of the conversion or
27 merger; and

1 (C) reasonably believes that the converted or
2 surviving organization is the converting or constituent
3 partnership and that the person is a partner in the converting
4 or constituent partnership.

5 (c) If a person having knowledge of the conversion
6 or merger causes a converted or surviving organization to
7 incur an obligation under subsection (a) or (b), the person is
8 liable:

9 (1) to the converted or surviving organization for
10 any damage caused to the organization arising from the
11 obligation; and

12 (2) if another person is liable for the obligation,
13 to that other person for any damage caused to that other
14 person arising from the liability.

15 §10A-8A-9.13. Article not exclusive. This article is
16 not exclusive. This article does not preclude an entity from
17 being converted or merged under law other than this chapter.

18 Article 10. Limited Liability Partnership.

19 §10A-8A-10.01. Limited liability partnerships;
20 statements; cancellations.

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

23 (b) In order to form a limited liability
24 partnership, the original partnership agreement of the
25 partnership shall state that the partnership is formed as a
26 limited liability partnership, and the partnership shall
27 deliver to the Secretary of State for filing a statement of

1 limited liability partnership in accordance with subsection
2 (d) of this section.

3 (c) In order for an existing partnership to become a
4 limited liability partnership, the terms and conditions on
5 which the partnership becomes a limited liability partnership
6 must be approved by the affirmative approval necessary to
7 amend the partnership agreement and, in the case of a
8 partnership agreement that expressly considers obligations to
9 contribute to the partnership, also the affirmative approval
10 necessary to amend those provisions, and after such approval,
11 the partnership shall deliver to the Secretary of State for
12 filing a statement of limited liability partnership in
13 accordance with subsection (d).

14 (d) A statement of limited liability partnership
15 must contain all of the following:

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

18 (2) the street, and mailing, if different, address
19 of its principal office.

20 (3) the street and mailing address of a registered
21 office and the name of the registered agent at that office for
22 service of process in this state which the partnership shall
23 be required to maintain;

24 (4) a statement that the partnership was formed as a
25 limited liability partnership in accordance with subsection
26 (b) or a statement that the statement of limited liability

1 partnership was approved in accordance with subsection (c);
2 and

3 (5) a statement that the partnership is a limited
4 liability partnership.

5 (e) A statement of limited liability partnership may
6 be amended or restated from time to time in accordance with
7 Section 10A-1-4.26.

8 (f) The statement of limited liability partnership
9 shall be executed by one or more partners authorized to
10 execute the statement of limited liability partnership.

11 (g) The statement of limited liability partnership
12 shall be accompanied by a fee for the Secretary of State in
13 the respective amounts prescribed by Section 10A-1-4.31.

14 (h) The Secretary of State shall file the statement
15 of limited liability partnership of any partnership as a
16 limited liability partnership that submits a completed
17 statement of limited liability partnership with the required
18 fees. The filing by the Secretary of State of a statement of
19 limited liability partnership is conclusive evidence that the
20 partnership has satisfied all conditions required to be a
21 limited liability partnership.

22 (i) The statement of limited liability partnership
23 is effective, and a partnership becomes a limited liability
24 partnership, immediately on the date the statement of limited
25 liability partnership is filed with the Secretary of State or
26 at any later date or time specified in the statement of
27 limited liability partnership in compliance with Article 4 of

1 Chapter 1. The status as a limited liability partnership
2 remains effective, regardless of changes in the partnership,
3 and partnership continues as a limited liability partnership
4 until a statement of cancellation is voluntarily filed in
5 accordance with subsection (m).

6 (j) The fact that a statement of limited liability
7 partnership is on file with the Secretary of State is notice
8 that the partnership is a limited liability partnership and as
9 notice of the facts required to be set forth in the statement
10 of limited liability partnership.

11 (k) A partnership that has filed a statement of
12 limited liability partnership as a limited liability
13 partnership is for all purposes, except as provided in Section
14 10A-8A-3.06, the same entity that existed before the statement
15 of limited liability partnership was filed and continues to be
16 a partnership under the laws of this state subject to the
17 limited liability partnership provisions of this chapter. If a
18 limited liability partnership dissolves and its business or
19 not for profit activity, or a portion of its business or not
20 for profit activity is continued without the complete winding
21 up of partnership's business or not for profit activity, a
22 partnership which is a successor to the limited liability
23 partnership shall not be required to file a new statement of
24 limited liability partnership.

25 (l) The status of the partnership as a limited
26 liability partnership and the liability of a partner of the
27 limited liability partnership shall not be adversely affected

1 by error or subsequent changes in the information stated in
2 the statement of limited liability partnership under
3 subsection (d).

4 (m) The decision to file a statement of cancellation
5 shall require the approval of all of the partners of the
6 partnership. The statement of cancellation must be delivered
7 for filing to the Secretary of State and must contain the
8 following:

9 (1) the name of the limited liability partnership;

10 (2) the date and office or offices in which it filed
11 its statement of limited liability partnership, and all
12 amendments and restatements thereof;

13 (3) the street and mailing address of its principal
14 office;

15 (4) the street and mailing address of its registered
16 office and the name of the registered agent at that office for
17 service of process in this state which the partnership was
18 required to maintain;

19 (5) a statement that the statement of cancellation
20 was approved in accordance with this subsection; and

21 (6) any other information that the partners
22 determine to include.

23 (n) A statement of cancellation must be executed by
24 one or more partners authorized to execute the statement of
25 cancellation.

26 (o) The statement of cancellation is effective, and
27 a partnership ceases to be a limited liability partnership,

1 immediately on the date the statement of cancellation is
2 delivered to the Secretary of State for filing or at any later
3 date or time specified in the statement of cancellation in
4 compliance with Article 4 of Chapter 1. The statement of
5 cancellation shall not cause the dissolution of the
6 partnership.

7 (p) The filing of a statement of cancellation of a
8 limited liability partnership does not affect the limited
9 liability of partners for debts, obligations or liabilities of
10 the partnership which occur or were incurred prior to the
11 filing of the statement of cancellation.

12 (q) A dissolved limited liability partnership shall
13 continue its status as a limited liability partnership unless
14 a statement of cancellation is voluntarily filed in accordance
15 with subsection (m).

16 (r) The statement of limited liability partnership
17 and the statement of cancellation are filing instruments for
18 the purposes of Chapter 1.

19 §10A-8A-10.02. Special rules for limited liability
20 partnerships performing professional services.

21 (a) A limited liability partnership shall have the
22 power to render professional services if it complies with the
23 rules of the licensing authority for such profession.

24 (b) Every individual who renders professional
25 services as a partner or as an employee of a limited liability
26 partnership shall be liable for any negligent or wrongful act
27 or omission in which the individual personally participates to

1 the same extent the individual would be liable if the
2 individual rendered the services as a sole practitioner.

3 (c) Except as otherwise provided in subsection (b),
4 the personal liability of a partner of any limited liability
5 partnership engaged in providing professional services shall
6 be governed by Section 10A-8A-3.06.

7 (d) The personal liability of a partner or employee
8 of a foreign limited liability partnership engaged in
9 providing professional services shall be determined under the
10 law of the jurisdiction which governs the foreign limited
11 liability partnership.

12 (e) Nothing in this article shall restrict or limit
13 in any manner the authority or duty of a licensing authority
14 with respect to individuals rendering a professional service
15 within the jurisdiction of the licensing authority. Nothing in
16 this article shall restrict or limit any law, rule, or
17 regulation pertaining to standards of professional conduct.

18 (f) Nothing in this article shall limit the
19 authority of a licensing authority to impose requirements in
20 addition to those stated in this chapter on any limited
21 liability partnership or foreign limited liability partnership
22 rendering professional services within the jurisdiction of the
23 licensing authority.

24 (g) A partner's transferable interest in a limited
25 liability partnership organized to render professional
26 services may be voluntarily transferred only to a qualified
27 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
26 profit and loss statement of the limited liability partnership

1 for the 12-month period ended on the date of the balance
2 sheet.

3 (c) If within 30 days after the date of the written
4 offer from the limited liability partnership the fair value of
5 the transferable interest is agreed upon between the personal
6 representative of the estate of the deceased partner, the
7 disqualified person, or the transferee, as the case may be,
8 and the limited liability partnership, payment therefor shall
9 be made within 90 days, or such other period as the parties
10 may agree, after the date of the offer. Upon payment of the
11 agreed value, the personal representative of the estate of the
12 deceased partner, the disqualified person, or the transferee,
13 as the case may, be shall cease to have any interest in, or
14 claim to, the transferable interest.

15 (d) If within 30 days from the date of the written
16 offer from the limited liability partnership, the personal
17 representative of the estate of the deceased partner, the
18 disqualified person, or the transferee, as the case may be,
19 and the limited liability partnership do not so agree as to
20 the fair value of the transferable interest, then either party
21 may commence a civil action in the circuit court in the county
22 in which the limited liability partnership's principal place
23 of business or not for profit activity within this state is
24 located, and if the limited liability partnership does not
25 have a principal place of business or not for profit activity
26 within this state, then the circuit court for the county in
27 which the limited liability partnership's most recent

1 registered office is located requesting that the fair value of
2 the transferable interest be found and determined. The
3 personal representative of the estate of the deceased partner,
4 the disqualified person, or the transferee, as the case may
5 be, wherever residing, shall be made a party to the proceeding
6 as an action against that person's transferable interest quasi
7 in rem. Service shall be made in accordance with the rules of
8 civil procedure. The personal representative of the estate of
9 the deceased partner, the disqualified person, or the
10 transferee, as the case may be, shall be entitled to a
11 judgment against the limited liability partnership for the
12 amount of the fair value of that person's transferable
13 interest as of the date of death, disqualification, or
14 transfer. The court may order that the judgment be paid in
15 installments and with interest and on terms as the court may
16 determine. The court may appoint one or more persons as
17 appraisers to receive evidence and recommend a decision on the
18 question of fair value. The appraisers shall have the power
19 and authority as shall be specified in the order of their
20 appointment or an amendment thereof.

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

25 (f) The costs and expenses of any proceeding shall
26 be determined by the court and shall be assessed against the
27 parties in a manner the court deems equitable.

1 (g) The expenses shall include reasonable
2 compensation for and reasonable expenses of the appraisers and
3 a reasonable attorney's fee but shall exclude the fees and
4 expenses of counsel for and of experts employed by any party;
5 but:

6 (1) if the fair value of the transferable interest
7 as determined materially exceeds the amount which the limited
8 liability partnership offered to pay therefor, or if no offer
9 was made by the limited liability partnership, the court in
10 its discretion may award to the personal representative of the
11 estate of the deceased partner, the disqualified person, or
12 the transferee, as the case may be, the sum the court
13 determines to be reasonable compensation to any expert or
14 experts employed by the personal representative of the estate
15 of the deceased partner, the disqualified person, or the
16 transferee, as the case may be, in the proceeding; and

17 (2) if the offer of the limited liability
18 partnership for the transferable interest materially exceeds
19 the amount of the fair value of the transferable interest as
20 determined, the court in its discretion may award to the
21 limited liability partnership the sum the court determines to
22 be reasonable compensation to any expert or experts employed
23 by the limited liability partnership, in the proceeding.

24 (h) If the purchase or transfer of the transferable
25 interest of a deceased partner, a disqualified person or a
26 transferee is not completed within 12 months after the death
27 of the deceased partner or 12 months after the

1 disqualification or transfer, as the case may be, the limited
2 liability partnership shall forthwith cancel the transferable
3 interest on its books and the personal representative of the
4 estate of the deceased partner, the disqualified person, or
5 the transferee, as the case may be, shall have no further
6 interest in the transferable interest other than that person's
7 right to payment for the transferable interest under this
8 section.

9 (i) This section shall not require a limited
10 liability partnership to purchase a transferable interest of a
11 disqualified person if the disqualification is for less than
12 12 months from the date of disqualification. A limited
13 liability partnership may require the disqualified person to
14 sell the disqualified person's transferable interest to the
15 limited liability partnership upon any disqualification.

16 (j) Any provision of a partnership agreement
17 regarding the purchase or transfer of a transferable interest
18 of a limited liability partnership performing professional
19 services shall be specifically enforceable in the courts of
20 Alabama.

21 (k) Nothing in this section shall prevent or relieve
22 a limited liability partnership from paying pension benefits
23 or other deferred compensation.

24 Article 11. Transition Rules and Miscellaneous
25 Provisions.

26 §10A-8A-11.01. Application to existing
27 relationships.

1 (a) Beginning January 1, 2019, this chapter governs
2 all partnerships and all foreign partnerships.

3 (b) With respect to a partnership formed before
4 January 1, 2019, and governed by the laws of this state, the
5 following rules apply:

6 (1) a registration of a limited liability
7 partnership which is current and effective as of December 31,
8 2018, shall remain effective without further action on the
9 part of the limited liability partnership, and a partnership
10 having the status of a limited liability partnership, under
11 predecessor law, shall have the status of a limited liability
12 partnership under this chapter and to the extent such
13 partnership has not filed a statement of limited liability
14 partnership pursuant to this chapter, the registration or
15 latest annual notice filed by such partnership under
16 predecessor law shall constitute a statement of limited
17 liability partnership filed under this chapter;

18 (2) a partnership's partnership agreement existing
19 as of December 31, 2018, shall be deemed to be that
20 partnership's partnership agreement under this chapter;

21 (3) a statement of partnership authority is deemed
22 to be a statement of authority and each statement of
23 partnership authority existing as of December 31, 2018, shall
24 remain effective without further action on the part of the
25 partnership for the remainder of the period of time authorized
26 under predecessor law, unless earlier amended, in which case,

1 such statement of partnership authority shall comply with
2 Section 10A-8A-3.03;

3 (4) a statement of denial, statement of
4 dissociation, and statement of dissolution existing as of
5 December 31, 2018, shall be deemed to be a statement of
6 denial, statement of dissociation, and statement of
7 dissolution under this chapter respectively;

8 (5) a registration of a foreign limited liability
9 partnership which is current and effective as of December 31,
10 2018, shall remain effective without further action on the
11 part of the foreign limited liability partnership, and a
12 foreign limited liability partnership having the status of a
13 qualified foreign limited liability partnership, under
14 predecessor law, shall have the status of a qualified foreign
15 limited liability partnership under this chapter and to the
16 extent such partnership has not filed a statement of foreign
17 limited liability partnership pursuant to this chapter, the
18 registration or latest annual notice filed by such partnership
19 under predecessor law shall constitute a statement of foreign
20 limited liability partnership filed under this chapter; and

21 (6) if a limited liability partnership or foreign
22 limited liability partnership is using the phrase "registered
23 limited liability partnership" or the abbreviation "RLLP" or
24 "R.L.L.P.," in its name as of December 31, 2018, such phrase
25 or abbreviation shall continue to comply with Article 5 of
26 Chapter 1 unless and until it changes or amends, by whatever
27 means, its name on or after January 1, 2019, at which point it

1 may only use the term "limited liability partnership" or the
2 abbreviation "LLP" or "L.L.P.," in its name in compliance with
3 Article 5 of Chapter 1. No limited liability partnership which
4 is formed or elects to become a limited liability partnership
5 on or after January 1, 2018, and no foreign limited liability
6 partnership which delivers to the Secretary of State for
7 filing, a statement of foreign limited liability partnership,
8 may use the phrase "registered limited liability partnership"
9 or the abbreviation "RLLP" or "R.L.L.P.," in its name.

10 §10A-8A-11.02. Severability clause. If any provision
11 of this chapter or its application to any person or
12 circumstance is held invalid, the invalidity does not affect
13 other provisions or applications of this chapter which can be
14 given effect without the invalid provision or application, and
15 to this end the provisions of this chapter are severable.

16 §10A-8A-11.03. Relation to Electronic Signatures in
17 Global and National Commerce Act. This chapter modifies,
18 limits, or supersedes the federal Electronic Signatures in
19 Global and National Commerce Act, 15 U.S.C. Section 7001 et
20 seq., but this chapter does not modify, limit, or supersede
21 Section 101(c) of that act or authorize electronic delivery of
22 any of the notices described in Section 103(b) of that act.

23 §10A-8A-11.04. Effective date. This chapter takes
24 effect January 1, 2019.

25 §10A-8A-11.05. Repeals. Effective January 1, 2019,
26 the following parts of the Code of Alabama 1975, are repealed:
27 Section 10A-1-7.33 and Chapter 8 of Title 10A, comprised of

1 Sections 10A-8-1.01 to 10A-8-11.04, inclusive, as amended and
2 in effect immediately before the effective date of this act.

3 §10A-8A-11.06. Savings clause.

4 (a) Except as provided in subsection (b), the repeal
5 of a statute by this chapter does not affect:

6 (1) the operation of the statute or any action taken
7 under it before its repeal;

8 (2) any ratification, right, remedy, privilege,
9 obligation, or liability acquired, accrued, or incurred under
10 the statute before its repeal;

11 (3) any violation of the statute, or any penalty,
12 forfeiture, or punishment incurred because of the violation,
13 before its repeal; or

14 (4) any proceeding, reorganization, or dissolution
15 commenced under the statute before its repeal, and the
16 proceeding, reorganization, or dissolution may be completed in
17 accordance with the statute as if it had not been repealed.

18 (b) If a penalty or punishment imposed for violation
19 of a statute repealed by this chapter is reduced by this
20 chapter, the penalty or punishment if not already imposed
21 shall be imposed in accordance with this chapter.

22 §10A-8A-11.07. Composite returns. The Alabama
23 Department of Revenue shall promulgate rules and regulations
24 similar to those provided under Section 40-18-176, relating to
25 Alabama S corporations, to permit the filing of annual
26 composite income tax returns for one or more nonresident
27 partners, who are individuals, of a partnership, limited

1 liability partnership or foreign limited liability partnership
2 with an effective statement of foreign limited liability
3 partnership on file with the Secretary of State, as well as
4 one or more nonresident members, who are individuals, of a
5 limited liability company or foreign limited liability company
6 and one or more nonresident beneficiaries, who are
7 individuals, of a business trust, organized under or
8 recognized by the laws of this state.

9 §10A-8A-11.08. Taxation of limited liability
10 partnership. A limited liability partnership and a foreign
11 limited liability partnership shall be taxed as a partnership
12 in accordance with Section 40-18-24, as amended from time to
13 time, will file partnership returns as required by Section
14 40-18-28, as amended from time to time, and shall for all
15 other tax purposes be taxed as a partnership, all being
16 subject to the limited liability partnership and a foreign
17 limited liability partnership maintaining its status as a
18 partnership under federal income tax law.

19 §10A-8A-11.09. Reserved power of the state to alter
20 or repeal chapter. All provisions of this chapter may be
21 altered from time to time or repealed and all rights of
22 partners, partnerships, and agents are subject to this
23 reservation. Unless expressly stated to the contrary in this
24 chapter, all amendments of this chapter shall apply to
25 partners, partnerships, and agents whether or not existing as
26 such at the time of the enactment of any such amendment.

1 §10A-8A-11.10. Interstate application. A limited
2 liability partnership governed by this chapter may conduct its
3 business or not for profit activity, carry on its operations,
4 and have and exercise the powers granted by this chapter in
5 any state, foreign country, or other jurisdiction.

6 Section 8. This act shall become effective on
7 January 1, 2019.