

DRAFT

FOR APPROVAL

BUSINESS ORGANIZATIONS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

DRAFT FOR STYLE COMMITTEE
MEETING APRIL 30-MAY3, 2009
(WITH ABA COMMENTS)

With Prefatory Note and Comments

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BUSINESS ORGANIZATIONS ACT

PREFATORY NOTE

A. HISTORY OF THIS ACT IN THE CONFERENCE

This Business Organizations Act (“Business Organizations Act” or “Act”) has been prepared pursuant to the following resolution of the Executive Committee of the National Conference of Commissioners on Uniform State Laws:

RESOLVED, that a drafting committee be formed to prepare common provisions for business organizations in the following areas: definitions; the mechanics of filings; names of entities, registered agents and registered offices; qualification of foreign entities; administrative powers of the Secretary of State; and the META provisions on merger, interest exchanges, conversions, domestications and divisions

Formation of the Drafting Committee was based on the recommendations of the May 3, 2006 Report of a Joint Study Committee on an Omnibus Business Organizations Code co-sponsored by the Conference and the American Bar Association (“ABA”), and co-chaired by Harriet Lansing of the Conference and William H. Clark, Jr., of the ABA. The Report can be found online at:

<http://www.law.upenn.edu/bll/archives/ulc/oboc/committee-report3may2006.htm>

The Study Committee’s Report included a recommendation that a Business Organizations Code address:

(1) common definitions; (2) the mechanics of filings (e.g. what constitutes a filing and the legal effect of a filing); (3) names of entities, registered agents, and registered offices; (4) qualification of foreign entities; (5) administrative powers of the Secretary of State (annual reports, filing officer responsibilities and administrative dissolution); and (6) the META provisions on merger, interest exchanges, conversions, domestications and divisions.

The Executive Committee’s resolution implements that portion of the Study Committee’s recommendation.

A second recommendation of the Study Committee was that the drafting project be a collaborative effort with the ABA (as was the work of the Study Committee itself). The Study Committee Report noted that NCCUSL “has traditionally drafted acts governing unincorporated entities and the ABA . . . has traditionally drafted corporate entity statutes.” Since the Act deals with both unincorporated and incorporated entities, there was consensus, according to the Study Committee Report, on “the desirability of having this project conducted as a joint project between NCCUSL and the American Bar Association.” This Act is actually the work of two

Drafting Committees, one a NCCUSL Drafting Committee chaired by Timothy Berg, and the other an ABA Drafting Committee chaired by William H. Clark, Jr.

Thus this Act represents a continuation of the NCCUSL/ABA collaboration with respect to the law governing business (and other) entities. Two earlier products of this collaboration are the Model Entity Transaction Act (“META”) (approved by the Conference at its 2005 Annual Meeting, with amendments resulting from the action of various ABA entities approved by the Conference at its 2007 Annual Meeting) and the Model Registered Agents Act (“MRAA”) (approved by the Conference at its 2006 Annual Meeting). Pursuant to the Executive Committee resolution, those Acts are incorporated into this project. The substantive provisions of MRAA comprise Part Four of this Act (“Registered Agent”). The substantive provisions of META will be added to this Act as a separate Article Two. META and MRAA definitions of general applicability have been incorporated into Section 1-102 (“Definitions”) of this Act.

This Act was submitted to the NCCUSL Style Committee meeting of January 29-February 1, 2009 and most recently at its meeting April 30-May 3, 2009. The 2009 Annual Meeting will be the Conference’s third consideration of the Act.

B. COVERAGE OF THE ACT

1. Overview of Act’s Coverage.

The Act’s coverage follows the topics outlined in the Study Committee recommendation and the Executive Committee resolution, with the exception that coverage of META has been deferred, to be incorporated as a separate article.

The Act consists of seven Parts, as follows:

- Part One (“General Provisions”) (includes “Definitions” as Section 1-102)
- Part Two (“Filing”)
- Part Three (“Name of Entity”)
- Part Four (“Registered Agent”)
- Part Five (“Foreign Entities”)
- Part Six (“Administrative Dissolution”)
- Part Seven (“Miscellaneous Provisions”).

Under the Study Committee’s recommendations, this Act would ultimately constitute a “hub” linked to entity specific articles as “spokes,” with each spoke incorporating those provisions of the respective ABA model acts or NCCUSL uniform acts which are not common provisions dealt with in the hub. For example, Article 3 would consist of those provisions of the ABA Revised Model Business Corporation Act other than provisions such as filing mechanics, corporate name, registered agents, and qualification of foreign corporations addressed by the generic provisions of Article One—the hub. At the end of the Act, a listing of possible Articles Three through Ten foreshadows this potential development.

2. State of the Law to Which This Act is Directed.

As noted in the Study Committee Report, the last two decades have seen substantial activity in the area of entity law, with the number of different types of business and non-profit entities increasing substantially and traditional entity statutes attracting substantial revision. NCCUSL has recently adopted the Uniform Partnership Act (1997), Uniform Limited Partnership Act (2001), and Uniform Limited Liability Company Act (2007). In the nonprofit area, NCCUSL in 1996 promulgated a Uniform Unincorporated Nonprofit Association Act, providing a statutory framework for an area previously governed largely by common law, and recently revised that act in 2008.. Another new statute nearing completion is the Uniform Statutory Trust Entity Act, dealing with business trusts. adopted Uniform Limited Cooperative Associations Act. The limited liability partnership provided for in Article 10 of the Uniform Partnership Act (1997), though a form of general partnership, represents such an important development that the states that retain the 1914 Uniform Partnership Act have added limited liability partnership provisions to their general partnership statutes. In the corporate arena, the Model Business Corporation Act was entirely revised in 1984 and continues to be revised periodically by the Business Law Section of the ABA. In 2002, a new Chapter 9 was added, allowing for domestications and cross-entity conversions. Meanwhile the ABA has a major revision of the Model Nonprofit Corporation Act underway.

As the range of entity statutes has expanded, an interest has developed in rationalizing and harmonizing common provisions. Four states, Texas, Pennsylvania, Colorado, and Alabama have pursued projects reflecting that interest. The most extensive is the Texas Business Organizations Code, which is effective for all new entities formed after December 31, 2005 and for all entities as of January 1, 2010.

While the experience of statutory development in those states is important in drafting this Act, this Act draws most heavily on existing NCCUSL uniform acts and the ABA model corporation acts. Not only do the definitions provisions of META and MRAA provide the source for a substantial portion of the definitions in Section 1-102, the substantive provisions of MRAA have been largely carried over into Part 4 (“Registered Agent”) and provisions of the Uniform Limited Liability Company Act (as well as parallel provisions of other uniform acts) provide the pattern for most provisions of Part 5 (“Qualification of Foreign Entity”). The starting point for the “Mechanics of Filing” provisions of Part 2 of this Act were the provisions of Appendix A-1 of META, which in turn drew heavily on the filing mechanics of the Revised Model Business Corporation Act.

3. What the Act will accomplish.

As the Study Committee Report noted, this Act will meet a practical, perceived need for a single code setting forth common provisions for the existing major for-profit and non-profit entities, and, to the greatest extent feasible, modernizing and harmonizing the various entity statutes. Certainly such a code will promote better understanding of the various types of entities, reduce transaction and compliance costs caused by confusing and unnecessary inconsistencies between entity statutes, and enhance interstate commerce by for-profit and non-profit organizations.

1 **BUSINESS ORGANIZATIONS ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **[PART] 1**

5 **GENERAL PROVISIONS**

6 **SECTION 1-101. SHORT TITLES.**

7 (a) This [act] may be cited as the Business Organizations Act.

8 (b) This [article] may be cited as the Business Organizations Act -- General Provisions.

9 **SECTION 1-102. DEFINITIONS.** Except as otherwise provided in this [act]:

10 (1) “[Annual] [Biennial] report” means the report required by Section 1-211.

11 (2) “Business corporation” means a domestic business corporation incorporated under or
12 subject to [Article] 3 or a foreign business corporation.

13 (3) “Debtor in bankruptcy” means a person that is the subject of:

14 (A) an order for relief under Title 11 of the United States Code or a comparable
15 order under a successor statute of general application; or

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

17 (4) “Domestic,” with respect to an entity, means governed as to its internal affairs by the
18 law of this state.

19 (5) “Effective date,” when referring to a record filed by the [Secretary of State], means
20 the time and date determined in accordance with Section 1-203.

21 (6) “Entity” means:

22 (A) a business corporation;

23 (B) a nonprofit corporation;

1 (C) a general partnership;
2 (D) a limited partnership;
3 (E) a limited liability company;
4 [(F) a general cooperative association;]
5 (G) a limited cooperative association;
6 (H) an unincorporated nonprofit association;
7 (I) a statutory trust entity or other statutory or common-law business trust; or
8 (J) any other person that has a legal existence separate from any interest holder of
9 that person or that has the power to acquire an interest in real property in its own name, but the
10 term does not include:
11 (i) an individual;
12 (ii) a testamentary, inter vivos, or charitable trust, except a statutory trust
13 entity or other statutory or common-law business trust;
14 (iii) an association or relationship that is not a partnership solely by reason
15 of [Section 202(c) of the Revised Uniform Partnership Act] [Section 7 of the Uniform
16 Partnership Act] or a similar provision of the law of another jurisdiction;
17 (iv) a decedent's estate; [or]
18 (v) a government or a governmental subdivision, agency, or
19 instrumentality [; or] [.]
20 (vi) an entity excluded under Section 1-106.]
21 (7) "Entity filing" means a record delivered for filing to the [Secretary of State] pursuant
22 to this [act].

1 (8) “Filed record” means a record filed by the [Secretary of State] pursuant to this
2 [article].

3 (9) “Filing entity” means an entity that is formed by filing a public organic record.

4 (10) “Foreign,” with respect to an entity, means governed as to its internal affairs by the
5 law of a jurisdiction other than this state.

6 [(11) “General cooperative association” means a domestic general cooperative
7 association formed under or subject to [cite statute of this state under which an incorporated
8 cooperative association is formed] or a foreign general cooperative association.]

9 (12) “General partnership” means a domestic general partnership formed under or subject
10 to [Article] 5 or a foreign general partnership. The term includes a limited liability partnership.

11 (13) “Governance interest” means a right under the organic law or organic rules of an
12 unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

13 (A) receive or demand access to information concerning, or the books and records
14 of, the entity;

15 (B) vote for the election of the governors of the entity; or

16 (C) receive notice of or vote on issues involving the internal affairs of the entity.

17 (14) “Governor” means:

18 (A) a director of a business corporation;

19 (B) a director or trustee of a nonprofit corporation;

20 (C) a general partner of a general partnership;

21 (D) a general partner of a limited partnership;

22 (E) a manager of a manager-managed limited liability company;

23 (F) a member of a member-managed limited liability company;

1 [(G) a director of a general cooperative association;]
2 (H) a director of a limited cooperative association;
3 (I) a manager of an unincorporated nonprofit association;
4 (J) a trustee of a statutory trust entity or other statutory or common-law business
5 trust; or
6 (K) any person under whose authority the powers of an entity are exercised and
7 under whose direction the business and affairs of the entity are managed pursuant to the entity’s
8 organic law and organic rules.

9 (15) “Interest” means:

- 10 (A) a share in a business corporation;
- 11 (B) a membership in a nonprofit corporation;
- 12 (C) a partnership interest in a general partnership;
- 13 (D) a partnership interest in a limited partnership;
- 14 (E) a membership interest in a limited liability company;
- 15 [(F) a share in a general cooperative association;]
- 16 (G) a member’s interest in a limited cooperative association;
- 17 (H) a membership in an unincorporated nonprofit association;
- 18 (I) a beneficial interest in a statutory trust entity or other statutory or common-law
19 business trust; or
- 20 (J) a governance interest or transferable interest in any other type of
21 unincorporated entity.

22 (16) “Interest holder” means:

- 23 (A) a shareholder of a business corporation;

- 1 (B) a member of a nonprofit corporation;
- 2 (C) a general partner of a general partnership;
- 3 (D) a general partner of a limited partnership;
- 4 (E) a limited partner of a limited partnership;
- 5 (F) a member of a limited liability company;
- 6 [(G) a shareholder of a general cooperative association;]
- 7 (H) a member of a limited cooperative association;
- 8 (I) a member of an unincorporated nonprofit association;
- 9 (J) a beneficiary of a statutory trust entity or other statutory or common-law
- 10 business trust; or
- 11 (K) any other direct holder of an interest.

12 (17) “Jurisdiction”, as used to refer to a political entity, means the United States, a state, a

13 foreign country, or a political subdivision of a foreign country.

14 (18) “Jurisdiction of formation” of an entity means the jurisdiction whose law includes

15 the organic law of the entity.

16 (19) “Limited cooperative association” means a domestic limited cooperative association

17 formed under or subject to [Article] 8 or a foreign limited cooperative association.

18 (20) “Limited liability company” means a domestic limited liability company formed

19 under or subject to [Article] 7 or a foreign limited liability company.

20 (21) “Limited liability limited partnership” means a domestic limited liability limited

21 partnership formed under or subject to [Article] 6 or a foreign limited liability limited

22 partnership.

1 (22) “Limited liability partnership” means a domestic limited liability partnership
2 registered under or subject to [Article] 5 or a foreign limited liability partnership.

3 (23) “Limited partnership” means a domestic limited partnership formed under or subject
4 to [Article] 6 or a foreign limited partnership. The term includes a limited liability limited
5 partnership.

6 (24) “Nonfiling entity” means an entity that is not formed by filing a public organic
7 record.

8 (25) “Nonprofit corporation” means a domestic nonprofit corporation incorporated under
9 or subject to [Article] 4 or a foreign nonprofit corporation.

10 (26) “Organic law” means the law of an entity’s jurisdiction of formation that governs the
11 internal affairs of the entity.

12 (27) “Organic rules” means the public organic record and private organic rules of an
13 entity.

14 (28) “Person” means an individual, corporation, partnership, limited partnership, limited
15 liability company, [general cooperative association,] limited cooperative association,
16 unincorporated nonprofit trust association, statutory trust entity or other statutory or common-
17 law business trust, estate, trust, association, joint venture, public corporation, government or
18 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

19 (29) “Principal office” means the office, in or outside this state, designated by a filing
20 entity as its principal office in the most recent filed record that contains that designation.

21 (30) “Private organic rules” means the rules, whether or not in a record, that govern the
22 internal affairs of an entity, are binding on all of its interest holders, and are not part of its public
23 organic record, if any. The term includes:

- 1 (A) the bylaws of a business corporation;
- 2 (B) the bylaws of a nonprofit corporation;
- 3 (C) the partnership agreement of a general partnership;
- 4 (D) the partnership agreement of a limited partnership;
- 5 (E) the operating agreement of a limited liability company;
- 6 [(F) the bylaws of a general cooperative association;]
- 7 (G) the bylaws a limited cooperative association;
- 8 (H) the governing principles of an unincorporated nonprofit association; and
- 9 (I) the governing instrument of a statutory trust entity or other statutory or
- 10 common-law business trust.

11 (31) “Proceeding” includes a civil action, arbitration, mediation, administrative

12 proceeding, criminal prosecution, administrative prosecution, and investigatory action.

13 (32) “Property” means all property, real, personal, or mixed, or tangible or intangible, or

14 any interest therein.

15 (33) “Public organic record” means the record the public filing of which forms an entity

16 and any amendment or restatement of that record. The term includes:

- 17 (A) the articles of incorporation of a business corporation;
- 18 (B) the articles of incorporation of a nonprofit corporation;
- 19 (C) the certificate of limited partnership of a limited partnership;
- 20 (D) the certificate of organization of a limited liability company;
- 21 [(E) the articles of incorporation of a general cooperative association;]
- 22 (F) the articles of organization of a limited cooperative association; and

1 (G) the certificate of trust of a statutory trust entity or other statutory business
2 trust.

3 (34) “Qualified foreign entity” means a foreign entity that is registered to do business in
4 this state pursuant to a statement of registration filed by the [Secretary of State].

5 (35) “Receipt” means actual receipt. “Receive” has a corresponding meaning.

6 (36) “Record,” used as a noun, means information that is inscribed on a tangible medium
7 or that is stored in an electronic or other medium and is retrievable in perceivable form.

8 (37) “Registered agent” means a commercial registered agent as defined in Section 1-
9 401(2) or a noncommercial registered agent as defined in Section 1-401(3).

10 (38) “Sign” means, with present intent to authenticate or adopt a record:

11 (A) to execute or adopt a tangible symbol; or

12 (B) to attach to or logically associate with the record an electronic symbol, sound,
13 or process.

14 (39) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
15 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
16 the United States.

17 (40) “Statutory trust entity” means a domestic statutory trust entity formed under or
18 subject to [Article] 10 or a foreign statutory trust entity.

19 (41) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and
20 encumbrance.

21 (42) “Transferable interest” means the right under an unincorporated entity’s organic law
22 to receive distributions from the entity.

23 (43) “Type,” with regard to an entity, means a generic form of entity:

1 (A) recognized at common law; or
2 (B) formed under an organic law, whether or not some entities formed under that
3 organic law are subject to provisions of that law that create different categories of the form of
4 entity.

5 (44) “Unincorporated nonprofit association” means a domestic unincorporated nonprofit
6 association formed under or subject to [Article] 9 or a foreign unincorporated nonprofit
7 association.

8 *Legislative Note: If this state uses a term for the public organic record of a particular entity*
9 *different from that set forth in paragraph (33), it should substitute its own term. Some states, for*
10 *example, use the term “articles of organization” for the public organic document of a limited*
11 *liability company and should substitute that term for “certificate of organization” in paragraph*
12 *(33)(D), and, if the state adopts Section 1-212, Alternative A, in Section 1-212(b)(14).*

13

14

Comment

15

16 **In general.** The definitions in this section apply generally throughout the act unless a
17 particular term is defined differently in another article.

18

19 Many of the definitions in this section were developed for use in the Model Entity
20 Transactions Act (META). Definitions that are common to this Act and META are:

21

22 “domestic” (corresponding to the META term “domestic entity”)

23 “entity”

24 “filing entity”

25 “foreign” (corresponding to the META term “foreign entity”)

26 “governance interest”

27 “governor”

28 “interest”

29 “interest holder”

30 “jurisdiction of formation” (corresponding to the META term “jurisdiction of
31 organization”)

32 “organic law”

33 “organic rules”

34 “person”

35 “private organic rules”

36 “public organic record”

37 “qualified foreign entity”

38 “record”

39 “sign”

1 “transferable interest”
2 “type”
3

4 The comments below with respect to defined terms taken from META are substantively
5 the same as the corresponding comments in META.
6

7 Other definitions in this Act were developed for use in the Model Registered Agents Act
8 (MRA). Part 4 of this Act is derived from MRA and contains definitions of the following
9 MRA terms:

10
11 “appointment of agent”
12 “commercial registered agent”
13 “noncommercial registered agent”
14 “nonqualified foreign entity”
15 “nonresident limited liability partnership statement”
16 “registered agent filing”
17

18 “Registered agent” is a term defined in this Section by reference to Part 4.
19

20 **“Domestic.” [(4)]** – The term “domestic”, with respect to an entity, means in this Act an
21 entity whose internal affairs are governed by the organic laws of the adopting state. Except in
22 the case of general partnerships and unincorporated nonprofit associations, this will mean an
23 entity that is formed, organized, or incorporated under domestic law. In the case of a general
24 partnership organized under the Uniform Partnership Act (1997) (RUPA), it will mean a general
25 partnership whose governing law under RUPA § 106 is the law of the adopting state. Under
26 RUPA § 106 the governing law is determined by the location of the partnership’s chief executive
27 office, except for limited liability partnerships where the governing law is the state where the
28 statement of qualification is filed. It is a factual question whether the activities and organization
29 of an unincorporated nonprofit association make it a domestic or foreign entity.
30

31 This definition is patterned after Model Entity Transactions Act § 102(8) (“domestic
32 entity”), a term which is also defined in Model Registered Agents Act § 2(3).
33

34 **“Entity.” [(6)]** – This definition determines the overall scope of the Act.
35

36 This definition is intended to include all forms of private organizations, regardless of
37 whether organized for profit, and artificial legal persons other than those excluded by paragraphs
38 (J)(i)-(v). Thus, this definition is broader than the definition of “business entity” in, e.g., Code of
39 Ala. § 10-15-2(2) which does not include nonprofit entities. This definition does not exclude
40 regulated entities such as public utilities, banks and insurance companies.
41

42 Inter vivos and testamentary trusts are treated in many states as having a separate legal
43 existence, but they have been excluded from the definition of “entity.” Trusts that carry on a
44 business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust,
45 or other common law or statutory business trusts are “entities.”
46

1 Section 6 of the Uniform Unincorporated Nonprofit Association Act (2008) gives an
2 unincorporated nonprofit association the power to acquire an estate in real property and thus an
3 unincorporated nonprofit association organized in a state that has adopted that act will be an
4 “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did
5 not have the power to acquire real property. Most states that have not adopted the Uniform Act
6 have nonetheless modified the common law rule, but states that have not adopted the Uniform
7 Act should analyze whether they should modify the definition of “entity” to add an express
8 reference to unincorporated nonprofit associations.
9

10 There is some question as to whether a partnership subject to the Uniform Partnership
11 Act (1914) (UPA) is an entity or merely an aggregation of its partners. That question has been
12 resolved by Section 201 of the Uniform Partnership Act (1997) (RUPA), which makes clear that
13 a general partnership is an entity with its own separate legal existence. Section 8 of UPA gives
14 partnerships subject to it the power to acquire estates in real property and thus such a partnership
15 will be an “entity.” As a result, all general partnerships will be “entities” regardless of whether
16 the state in which they are organized has adopted RUPA.
17

18 Paragraph (J) (i) of this definition excludes a sole proprietorship from the concept of
19 “entity.”
20

21 Paragraph (J)(iii) of this definition excludes from the concept of an “entity” any form of
22 co-ownership of property or sharing of returns from property that is not a partnership under
23 RUPA § 202(c) or UPA § 7. In that connection, Section 202(c) of RUPA provides in part:
24

25 In determining whether a partnership is formed, the following rules apply:

26 (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property,
27 common property, or part ownership does not by itself establish a partnership, even
28 if the co-owners share profits made by the use of the property.

29 (2) The sharing of gross returns does not by itself establish a partnership, even if
30 the persons sharing them have a joint or common right or interest in property from
31 which the returns are derived.
32

33 A virtually identical provision appears in UPA § 7(3)-(4).
34

35 Limited liability partnerships and limited liability limited partnerships are “entities”
36 because they are general partnerships and limited partnerships, respectively, that have made the
37 additional required election claiming LLP or LLLP status. A limited liability partnership is not,
38 therefore, a separate type of entity from the underlying general or limited partnership that has
39 elected limited liability partnership status.
40

41 This definition is patterned after Model Entity Transactions Act § 102(12) (“entity”).
42 The same definition appears in the Model Registered Agents Act § 2(4).
43

44 **“Filing entity.” [(9)]** – Whether an entity is a filing entity is determined by reference to
45 whether its legal existence is attributable to the filing of a record with the state filing officer.
46 While the statute refers to an entity that is “formed,” it is intended to encompass corporations

1 which are “incorporated” and limited liability companies which are “organized” as well as
2 entities such as limited partnerships which are “formed” by a filing required by the organic law
3 governing the entity. Business trusts (sometimes referred to as “statutory trusts”) present a
4 special problem. In some states a business trust is a filing entity, while in other states business
5 trusts are recognized only by common law. Under section 201(a) of the 2007 NCCUSL Annual
6 Meeting Draft of the proposed Uniform Statutory Trust Entity Act, a statutory trust entity formed
7 under that act would be formed by delivery of a certificate of trust to the appropriate filing
8 officer, and would be a filing entity.
9

10 The term does not include a limited liability partnership because an election filed by a
11 general partnership claiming that status (*e.g.*, a statement of qualification under Uniform
12 Partnership Act (1997), § 1001) does not create the entity. A limited liability limited partnership,
13 on the other hand, is a filing entity because the underlying limited partnership is created by filing
14 a certificate of limited partnership.
15

16 This definition is patterned after Model Entity Transactions Act § 102(13) (“filing
17 entity”). A similar definition appears in Model Registered Agents Act § 2(5). See also Model
18 Business Corporation Act § 1.40(9B) (“filing entity”).
19

20 **“Foreign.” [(10)]** – The term “foreign,” with respect to an entity, includes any non-
21 domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by
22 the laws of the state of filing. A nonfiling foreign entity is governed by the laws of the state
23 governing its internal affairs. It is a factual question whether a general partnership whose
24 internal affairs are governed by the Uniform Partnership Act (1914) (UPA) is a domestic or
25 foreign partnership. A UPA partnership will likely be deemed to be a domestic entity where the
26 greatest nexus of contacts are found. Similar issues arise with respect to determining the
27 domestic or foreign status of unincorporated nonprofit associations. The domestic or foreign
28 characterization of partnerships under the Uniform Partnership Act (1997) (RUPA) that have not
29 registered as limited liability partnerships will be governed by RUPA § 106(a) (“state where the
30 partnership’s chief executive office is located”).
31

32 This definition is patterned after Model Entity Transactions Act § 102(14) (“foreign
33 entity”). The same definition is found in Model Registered Agents Act § 2(6).
34

35 **“Governance interest.” [(13)]** – A governance interest is typically only part of the
36 interest that a person will hold in an entity and is usually coupled with a transferable interest (or
37 economic rights). However, memberships in some nonprofit corporations and unincorporated
38 nonprofit associations consist solely of governance interests and memberships in other nonprofit
39 entities may not include either governance interests or transferable interests. In some
40 unincorporated business entities, there is a more limited right to transfer governance interests
41 than there is to transfer transferable interests. An interest holder in such an unincorporated
42 business entity who transfers only a transferable interest and retains the governance interest will
43 also retain the status of an interest holder. Whether a transferee who acquires only a transferable
44 interest will acquire the status of an interest holder is determined by the definition of “interest
45 holder.”
46

1 Shares in a business corporation that are nonvoting nonetheless have a governance
2 interest because they entitle the holder to certain rights of access to information and to certain
3 statutory voting rights on amendments of the articles of incorporation.
4

5 Governors of an entity have the kinds of rights listed in the definition of “governance
6 interest” by reason of their position with the entity. For a governor to have a “governance
7 interest,” however, requires that the governor also have those rights for a reason other than the
8 governor’s status as such. A manager who is not a member in a limited liability company, for
9 example, will not have a governance interest, but a manager who is a member will have a
10 governance interest arising from the ownership of a membership interest.
11

12 This definition is patterned after Model Entity Transactions Act § 102(15) and Model
13 Registered Agents Act § 2(8) (“governance interest”).
14

15 **“Governor.” [(14)]** – This term has been chosen to provide a way of referring to a
16 person who has the authority under an entity’s organic law to make management decisions
17 regarding the entity that is different from any of the existing terms used in connection with
18 particular types of entities. *Compare* Colo. § 7-90-102(35.7) which uses the term “manager” to
19 refer to this concept, even though “manager” is also a term of art in connection with limited
20 liability companies. Depending on the type of entity or its organic rules, the governors of an
21 entity may have the power to act on their own authority, or they may be organized as a board or
22 similar group and only have the power to act collectively, and then only through a designated
23 agent. In other words, a person having only the power to bind the organization pursuant to the
24 instruction of the governors is not a governor. Under the organic rules, particularly those of
25 unincorporated entities, most or all of the management decisions may be reserved to the
26 members or partners. Thus, if a manager of a limited liability company were limited to having
27 authority to execute management decisions made by the members and did not have any authority
28 to make independent management decisions, the manager would not be a governor under this
29 definition.
30

31 Except as described above, the term “governor” includes:

- 32 • Director of a business corporation.
- 33 • Director or trustee of a nonprofit corporation.
- 34 • General partner of a general partnership.
- 35 • General partner of a limited partnership.
- 36 • Manager of a limited liability company.
- 37 • Member of a member-managed limited liability company.
- 38 • [Director of a general cooperative association.]
- 39 • Director of a limited cooperative association
- 40 • Trustee of a statutory trust entity or other statutory or common-law business trust.
41

42 This definition is patterned after Model Entity Transactions Act § 102(16) and Model
43 Registered Agents Act § 2(9) (“governor”).
44

45 **“Interest.” [(15)]** – In the usual case, the interest held by an interest holder will include
46 both a governance interest and a transferable interest (or economic rights). Members in many

1 nonprofit corporations or unincorporated nonprofit associations do not have a transferable
2 interest because they do not receive distributions, but they nonetheless may hold a governance
3 interest in which case they would have the status of interest holders under the Act. An interest
4 holder in an unincorporated business entity may transfer all or part of the interest holder’s
5 transferable interest without the transferee acquiring the governance interest of the transferor. In
6 that case, whether the transferor will retain the status of an interest holder will be determined by
7 the applicable organic law and the transferee will have the status of an interest holder under
8 paragraph (B) of this definition. That paragraph will also apply to subsequent transferees from
9 the original transferee.

10
11 The term “interest” includes:

- 12 • Shares in a business corporation
- 13 • Membership in a nonprofit corporation.
- 14 • Partnership interest in a general partnership
- 15 • Partnership interest in a limited partnership
- 16 • Membership interest in a limited liability company
- 17 • Membership in an unincorporated nonprofit association.
- 18 • [Shares in a general cooperative association.]
- 19 • Membership in a limited cooperative association.
- 20 • Interest in a statutory trust entity or other statutory or common-law trust.
- 21 • Governance interest or transferable interest in any other type of unincorporated
22 entity.

23
24 This definition is patterned after Model Entity Transactions Act § 102(17) and Model
25 Registered Agents Act § 2(10) (“interest”).

26
27 **“Interest holder.” [(16)]** – This Act does not refer to “equity” interests or “equity”
28 owners or holders because the term “equity” could be confusing in the case of a nonprofit entity
29 whose members do not have an interest in the assets or results of operations of the entity but only
30 have a right to vote on its internal affairs. *Compare* Code of Ala. § 10-15-2(4) (“equity owner”).

31
32 The term “interest holder” includes:

- 33 • Shareholder of a business corporation.
- 34 • Member of a nonprofit corporation.
- 35 • General partner of a general partnership.
- 36 • General partner of a limited partnership.
- 37 • Limited partner of a limited partnership.
- 38 • Member of a limited liability company.
- 39 • Member of an unincorporated nonprofit association.
- 40 • [Shareholder of a general cooperative association.]
- 41 • Member of a limited cooperative association
- 42 • Beneficiary of a statutory trust entity or other statutory or common-law business
43 trust.

44
45 This definition is patterned after Model Entity Transactions Act § 102(19) (“interest

1 holder”). See also Model Business Corporation Act § 1.40(13B) (“interest holder”).

2
3 **“Jurisdiction of formation.” [(18)]** – The term “jurisdiction of formation” refers to the
4 jurisdiction whose laws include the organic law of the entity.

5
6 This definition is patterned after Model Entity Transactions Act § 102(21) and Model
7 Registered Agents Act § 2(12) (“jurisdiction of organization”).

8
9 **“Organic law.” [(26)]** – Organic law means statutes other than this Act that govern the
10 internal affairs of an entity. Organic law includes the entity specific articles of this Act, but does
11 not include Article 2 based on the Model Business Entity Transaction Act. Entity laws in a few
12 states purport to require that some of their internal governance rules applicable to a domestic
13 entity also apply to a foreign entity with significant ties to the state. *See, e.g.*, Cal. Gen. Corp.
14 Law § 2115, N.Y. N-PCL §§ 1318-1321, 15 Pa.C.S. § 6145. Such a “sticky fingers” law is
15 included within the definition of “organic law” for purposes of the Act.

16
17 This definition is patterned after Model Entity Transactions Act § 102(27) and Model
18 Registered Agents Act § 2(16) (“organic law”). See also Model Business Corporation Act §
19 1.40(15B) (“organic law”).

20
21 **“Organic rules.” [(27)]** – The term “organic rules” means an entity’s public organic
22 document and its private organic rules.

23
24 This definition is patterned after Model Entity Transactions Act § 102(28) and Model
25 Registered Agents Act § 2(17) (“organic rules”).

26
27 **“Person.” [(28)]** – The term “person” has the standard meaning of that term in uniform
28 acts.

29
30 **“Private organic rules.” [(30)]** – The term private “organic rules” is intended to include
31 all governing rules of an entity that are binding on all of its interest holders, whether or not in
32 written form, except for the provisions of the entity’s public organic document, if any. The term
33 is intended to include agreements in “record” form as well as oral partnership agreements and
34 oral operating agreements among LLC members. Where private organic rules have been
35 amended or restated, the term means the private organic rules as last amended or restated.

36
37 The term “private organic rules” includes:

- 38 • Bylaws of a business corporation.
 - 39 • Bylaws of a business trust.
 - 40 • Bylaws of a statutory trust entity.
 - 41 • Bylaws of a nonprofit corporation.
 - 42 • Constitution and bylaws of an unincorporated nonprofit association.
 - 43 • Operating agreement of a limited liability company.
 - 44 • Partnership agreement of a general partnership.
 - 45 • Partnership agreement of a limited partnership.
- 46

1 This definition is patterned after Model Entity Transactions Act § 102(31) and Model
2 Registered Agents Act § 2(19) (“private organic rules”). Compare Model Business Corporation
3 Act § 1.40(17A) (“private organic document”).
4

5 **“Public organic record”.** [(32)] – A “public organic record” is a record that is filed
6 publicly to form, organize, incorporate, or otherwise create an entity. The term does not include
7 a statement of partnership authority filed under Section 303 of the Uniform Partnership Act
8 (1997) or any of the other statements that may be filed under that act since those statements do
9 not create a new entity. A limited liability partnership is the same entity as the partnership that
10 files the statement. For the same reason, the term also does not include a statement of
11 qualification filed under Section 1001 of that act to become a limited liability partnership.
12 Similarly, the term does not include a statement of authority filed under Section 5 of the Uniform
13 Unincorporated Nonprofit Association Act or a statement appointing an agent filed under Section
14 10 of that act. Where a public organic record has been amended or restated, the term means the
15 public organic record as last amended or restated.
16

17 The term “public organic record” includes:

- 18 • Articles of incorporation of a business corporation.
- 19 • Articles of incorporation of a nonprofit corporation.
- 20 • Certificate of limited partnership.
- 21 • Certificate of organization of a limited liability company.
- 22 • [Articles of incorporation of a general cooperative association.]
- 23 • Articles of organization of a limited cooperative association.
- 24 • Certificate of trust of a statutory trust entity.
25

26 In those states where a deed of trust or other instrument is publicly filed to create a business
27 trust, that filing will constitute a public organic record. But in those states where a business trust
28 is not created by a public filing, the deed of trust or similar record will be part of the private
29 organic rules of the business trust.
30

31 This definition is patterned after Model Entity Transactions Act § 102(33) and Model
32 Registered Agents Act § 2(20) (“public organic document”).
33

34 **“Qualified foreign entity.”** [(33)] – A qualified foreign entity is a foreign entity for
35 which there is a foreign-qualification document in effect in the adopting state.
36

37 This definition is patterned after Model Entity Transactions Act § 102(34) and Model
38 Registered Agents Act § 2(21) (“qualified foreign entity”).
39

40 **“Receipt.”** [34] – Section 15 of the Uniform Electronic Transactions Act, which provides
41 rules as to when an electronic record is sent and received, applies to electronic records under this
42 Act.
43

44 **“Record.”** [(35)] – The term “record” has the standard meaning of that term in uniform
45 acts.
46

1 (4) The entity filing must state the name and capacity, if any, of the individual
2 who signed it but need not contain a seal, attestation, acknowledgment, or verification.

3 (b) If a law other than this [act] prohibits the disclosure by the [Secretary of State] of
4 information contained in an entity filing, the [Secretary of State] shall accept the filing if it
5 otherwise complies with this section but may redact that information.

6 (c) When an entity filing is delivered to the office of the [Secretary of State] for filing,
7 any fee required under this [article] and any tax, license fee, or penalty required to be paid under
8 this [article] or law other than this [act] must be paid in a manner permitted by the [Secretary of
9 State] or by that law.

10 (d) The [Secretary of State] may require that an entity filing delivered in written or
11 printed form be accompanied by an identical or conformed copy.

12 **Comment**

13 The records filed under this Act are referred to as “entity filings” in order to encompass
14 filings under corporation laws, which are typically referred to as “articles,” and filings under
15 limited partnership and other unincorporated entity laws, which are typically referred to as
16 “certificates.”

17 18 19 **1. Form of records.**

20
21 Section 1-104 provides that delivery of an entity filing to the Secretary of State is
22 effective only upon receipt by the Secretary of State.

23
24 An entity filing must be in typewritten or printed form unless the Secretary of State
25 permits delivery by electronic transmission. The types of electronic transmission that may be
26 used will be determined by the Secretary of State and may include facsimile transmissions,
27 electronic transmissions between computers via modems and filings through delivery of
28 magnetic tapes or computer diskettes. The text of an entity filing must be in the English
29 language (except to the limited extent permitted by subsection (a)(3)).

30
31 The Secretary of State is not authorized to prescribe forms (except to the extent permitted
32 by Section 1-202) and as a result may not reject entity filings on the basis of form (see Section 1-
33 206) if they contain the information called for by the specific statutory requirement and meet the
34 minimal formal requirements of this section.

1
2 **2. Signature.**
3

4 To be filed a record must be signed by the appropriate person. No specific officer is
5 designated as the appropriate person to sign in the case of a corporation. Similarly, an
6 unincorporated entity is given the authority to designate the person to sign on its behalf. See
7 Section 1-102 for a description of the manner in which a record may be “signed.”
8

9 The requirement in some state statutes that entity filings must be acknowledged or
10 verified as a condition for filing has been eliminated. These requirements serve little purpose in
11 connection with entity filings filed under organic laws. On the other hand, many organizations,
12 like lenders or title companies, may desire that specific records include acknowledgements,
13 verifications, or seals; subsection (a)(4) does not prohibit the addition of these forms of
14 execution and their use is not intended to affect the eligibility of the record for filing.
15

16 **3. Contents.**
17

18 A record must be filed by the Secretary of State if it contains the information required by
19 this Act.- In view of the very limited discretion granted to Secretaries of State under this section
20 and, Section 1-206(a) which defines the Secretary of State’s role as “ministerial,” Section 1-
21 206(d)(3) provides that no inference or presumption arises from the fact that the Secretary of
22 State accepted a document for filing. See the Comments to Sections 1-206 and 1-208.
23

24 **SECTION 1-202. FORMS.**

25 (a) The [Secretary of State] may provide forms for entity filings required or permitted to
26 be made by this [act], but, except as otherwise provided in subsection (b), their use is not
27 required.

28 (b) The [Secretary of State] may require that a cover sheet and [an annual] [a biennial]
29 report for an entity filing be on forms prescribed by the [Secretary of State].
30

30 **Comment**

31 As described in the Comments to Section 1-201, records are entitled to filing if they meet
32 the substantive and formal requirements of this Act. In these circumstances it is not appropriate
33 to vest the Secretary of State with general authority to establish mandatory forms for use under
34 the Act. This section authorizes (but does not require) the Secretary of State to prepare forms
35 suitable for filing under the Act. However, the use of these forms is permissive and cannot be
36 required by the Secretary of State. The Secretary of State is authorized to prescribe forms for
37 [annual] [biennial] reports, however, and for cover sheets for entity filings.
38

1 (b) To withdraw a filed record the parties to the record must deliver to the [Secretary of
2 State] for filing a statement of withdrawal.

3 (c) A statement of withdrawal must:

4 (1) except as otherwise agreed by the parties, be signed on behalf of each party
5 that signed the filed record being withdrawn;

6 (2) identify the filed record to be withdrawn, the date of the filing, and the parties
7 to the filed record; and

8 (3) state that the filed record has been withdrawn in accordance with the
9 agreement of the parties.

10 (d) On the delivery for filing to the [Secretary of State] of a statement of withdrawal, the
11 action or transaction evidenced by the original filed record does not take effect.

12 **Comment**

13
14 This provision is considerably broader in scope than section 11.08 of the Revised Model
15 Business Corporation Act (“Abandonment of Merger or Share Exchange”), on which it is
16 patterned.

17 18 19 **SECTION 1-205. CORRECTING FILED RECORD.**

20 (a) A person on whose behalf a filed record was delivered to the [Secretary of State] for
21 filing may correct the filed record if:

22 (1) the filed record at the time of filing contained an inaccuracy;

23 (2) the filed record was defectively signed; or

24 (3) the electronic transmission of the filed record to the [Secretary of State] was
25 defective.

26 (b) A filed record is corrected by filing with the [Secretary of State] a statement of
27 correction that:

1 (1) is signed on behalf of the person correcting the filed record;

2 (2) identifies the filed record to be corrected or has attached an identical copy and
3 states the date of its filing;

4 (3) specifies the inaccuracy or defect to be corrected; and

5 (4) corrects the inaccuracy or defect.

6 (c) A statement of correction is effective as of the effective date of the filed record that it
7 corrects except as to persons relying on the uncorrected filed record and adversely affected by
8 the correction. As to those persons, the statement of correction is effective when filed.

9 **Comment**

10
11 This section permits making corrections in entity filings without re-filing the entire
12 record. Under subsection (c), the correction relates back to the original effective date of the
13 entity filing being corrected, except as to persons relying on the original entity filing and
14 adversely affected by the correction. As to these persons, the effective date of the statement of
15 correction is the date the statement is filed.

16
17 An entity filing may be corrected either because it contains an inaccuracy or because it
18 was defectively executed (including defects in optional forms of execution that do not affect the
19 eligibility of the original record for filing). In addition, the entity filing may be corrected if its
20 electronic transmission was defective. This is intended to cover the situation where an electronic
21 filing is made but, due to a defect in transmission, the filed record is later discovered to be
22 inconsistent with the record intended to be filed. If no filing is made because of a defect in
23 transmission, a statement of correction may not be used to make a retroactive filing. Therefore,
24 an entity making an electronic filing should take steps to confirm that the filing was received by
25 the Secretary of State.

26
27 A provision in a entity filing setting an effective date may be corrected under this section,
28 but the corrected effective date must comply with the requirements of this Act limiting delayed
29 effective dates to within 90 days after filing. A corrected effective date is thus measured from the
30 date of the original filing of the record being corrected, i.e., it cannot be before the date of filing
31 of the record or more than 90 day thereafter.

32
33 **SECTION 1-206. DUTY OF [SECRETARY OF STATE] TO FILE; APPEAL OF**
34 **REFUSAL TO FILE.**

1 (a) The [Secretary of State] shall file an entity filing delivered to the [Secretary of State]
2 for filing which satisfies Section 1-201. The duty of the [Secretary of State] under this section is
3 ministerial.

4 (b) The [Secretary of State] files an entity filing by recording it as filed on the date and at
5 the time of its delivery. After filing an entity filing, the [Secretary of State] shall deliver to the
6 domestic or foreign entity or its representative a copy of the filing with an acknowledgement of
7 the date and time of filing.

8 (c) If the [Secretary of State] refuses to file an entity filing, the [Secretary of State] shall
9 return the entity filing or notify the person that submitted the filing not later than [15] business
10 days after the filing is delivered, together with a brief explanation in a record of the reason for
11 the refusal.

12 (d) If the [Secretary of State] refuses to file an entity filing delivered for filing, the person
13 that submitted the filing may appeal the refusal to the [appropriate court] under the following
14 procedures:

15 (1) The appeal is commenced by petitioning the court to compel filing of the
16 filing and by attaching to the petition the filing and the explanation of the [Secretary of State] for
17 the refusal to file.

18 (2) The court may summarily order the [Secretary of State] to file the filing or
19 take other action the court considers appropriate.

20 (3) The final decision of the court may be appealed as in other civil proceedings.

21 (e) The filing of or refusal to file an entity filing does not:

22 (1) affect the validity or invalidity of the filing in whole or in part;

23 (2) affect the correctness or incorrectness of information contained in the filing; or

1 (3) create a presumption that the filing is valid or invalid or that information
2 contained in the filing is correct or incorrect.

3 **Comment**

4 **1. Filing duty in general.**

5 Under this section the Secretary of State is required to file a entity filing if it “satisfies the
6 requirements of Section 1-201.” The purpose of this language is to limit the discretion of the
7 Secretary of State to a ministerial role in reviewing the contents of entity filings. If the entity
8 filing submitted is in the form prescribed and contains the information required by Section 1-201
9 and the applicable provision of this Act, the Secretary of State must file it. Consistently with this
10 approach, subsection (a) states explicitly that the filing duty of the Secretary of State is
11 ministerial and subsection (d) provides that the filing of an entity filing by the Secretary of State
12 does not affect the validity or invalidity of any provision contained in the filing and does not
13 create any presumption with respect to any provision. Persons adversely affected by provisions
14 in an entity filing may test their validity in a proceeding appropriate for that purpose. Similarly,
15 the attorney general of the state may also question the validity of provisions of entity filings filed
16 with the Secretary of State in an independent suit brought for that purpose; in neither case should
17 any presumption or interference be drawn about the validity of the provision from the fact that
18 the Secretary of State accepted the entity filing for filing.

19
20 **2. Mechanics of filing.**

21
22 Subsection (b) provides that when the Secretary of State files an entity filing, the
23 Secretary of State records it as filed on the date and time of delivery to the Secretary of State,
24 retains the original record for the state’s records, and delivers a copy of the record to the entity or
25 its representative with an acknowledgement of the date and time of filing. In the case of a record
26 transmitted electronically, delivery may be made by electronic transmission. The copy returned
27 will be the exact or conformed copy if one has been required by the Secretary of State, or will be
28 a copy made by the Secretary of State if an exact or conformed copy was not required. Of course,
29 a person desiring a certified copy of any filed record may obtain it from the office of the
30 Secretary of State by paying the fee prescribed in Section 1-209(b).

31
32 **3. Elimination of certificates and similar records.**

33
34 Subsection (b) provides that acceptance of a filing is evidenced merely by the Secretary
35 of State’s delivery of a copy of the entity filing with an acknowledgment of the date and time of
36 filing. The Act does not provide for the Secretary of State to issue a formal certificate of filing.
37 A copy of the filed record together with an acknowledgment of the date and time of filing should
38 sufficiently indicate that the entity filing has been accepted for filing.

39
40 **4. Rejection of document by Secretary of State.**

41
42 Because of the simplification of formal filing requirements and the limited discretion

1 granted to the Secretary of State by this Act, it is probable that rejection of entity filings will
2 occur only rarely. Subsection (c) provides that if the Secretary of State does reject an entity
3 filing, the Secretary of State must return it to the entity or its representative within five days
4 together with a brief written explanation of the reason for rejection. In the case of an entity filing
5 delivered by electronic transmission, rejection of the filing may be made electronically by the
6 Secretary of State or by a mailing to the entity.

7
8 **SECTION 1-207. EVIDENTIARY EFFECT OF COPY OF FILED RECORD.**

9 A certificate from the [Secretary of State] delivered with a copy of a filed record is
10 conclusive evidence that the original record is on file with the [Secretary of State].

11 **Comment**

12 This section is patterned on Revised Model Business Corporation Act section 1.27.
13

14 **SECTION 1-208. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

15 (a) Any person may apply to the [Secretary of State] to furnish a certificate of good
16 standing for a domestic filing entity or a certificate of registration for a qualified foreign entity.

17 (b) A certificate of good standing or registration must set forth:

18 (1) the domestic filing entity's name or the qualified foreign entity's name used in
19 this state;

20 (2) that the domestic filing entity is formed under the law of this state, the date of
21 its formation, and the period of its duration if less than perpetual, or that the qualified foreign
22 entity is registered to do business in this state;

23 (3) that all fees, taxes, and penalties owed to this state collected through the
24 [Secretary of State] have been paid, if:

25 (A) payment is reflected in the records of the [Secretary of State]; and

26 (B) nonpayment affects the good standing or registration of the domestic
27 or foreign entity;

1 (4) that the entity’s most recent [annual] [biennial] report required by Section 1-
2 211 has been delivered for filing to the [Secretary of State];

3 (5) that the entity has not been dissolved; and

4 (6) other facts of record in the office of the [Secretary of State] that may be
5 requested by the applicant.

6 (c) Subject to any qualification stated in the certificate, a certificate of good standing or
7 registration issued by the [Secretary of State] may be relied upon as conclusive evidence that the
8 domestic filing entity is in existence or the qualified foreign entity is registered to do business in
9 this state.

10 **Comment**

11 This section is patterned on RMBCA section 1.28. In addition to substituting generic
12 terms for the corporate specific terms used in section 1.28, this section uses the term
13 “registration” in connection with foreign entities, rather than “authorization.” This is because
14 this Act provides in Part 5 for “registration” of foreign entities, rather than for application for a
15 certificate of authorization, which is the procedure under RMBCA Chapter 15.

16
17 **SECTION 1-209. SIGNING CONSTITUTES AFFIRMATION.** Signing an entity
18 filing required or permitted to be made under this [act] constitutes an affirmation under the
19 penalties of perjury that the facts stated in the filing are true in all material respects.

20 **Comment**

21 This section makes it a criminal offense for any person to sign a document that he knows
22 is false in any material respect with intent that the document be submitted for filing to the
23 secretary of state. As provided in Section 1-102, “sign” includes any manual, facsimile,
24 conformed or electronic signature.
25

26 **SECTION 1-210. DELIVERY BY [SECRETARY OF STATE].** Except as otherwise
27 provided by Section 1-602 or by law other than this [act], the [Secretary of State] may deliver
28 any record to a person by delivering it to the person that submitted it, to the address of the

1 person's registered agent, to the principal office address of the person, or to another address that
2 the person provided the [Secretary of State] for delivery.

3 **Comment**

4 This section recognizes the various methods by which the Secretary of State may deliver
5 a record.
6

7 **SECTION 1-211. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF**
8 **STATE].**

9 (a) Each domestic filing entity and qualified foreign entity shall deliver to the [Secretary
10 of State] for filing [an annual] [a biennial] report that sets forth:

11 (1) the name of the entity and the jurisdiction under whose law it is incorporated
12 or formed;

13 (2) the name and address of its registered agent in this state; and

14 (3) the address of its principal office.

15 (b) Information in the [annual] [biennial] report must be current as of the date the report
16 is signed on behalf of the entity.

17 (c) The first [annual] [biennial] report must be delivered to the [Secretary of State]
18 between [January 1 and March 15] of the year following the calendar year in which the domestic
19 filing entity was formed or the foreign filing entity registered to do business in this state.

20 Subsequent [annual] [biennial] reports must be delivered to the [Secretary of State] between
21 [January 1 and March 15] of each [second] calendar year thereafter.

22 (d) If [an annual] [a biennial] report does not contain the information required by this
23 [part], the [Secretary of State] promptly shall notify the reporting domestic or qualified foreign
24 entity in a record and return the report to it for correction.

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Comment

This section is modeled on section 16.22 of the Revised Model Business Corporation Act.

[SECTION 1-212. FEES.

Alternative A

(a) The [Secretary of State] shall collect the following fees for copying and certifying the copy of any filed record:

- (1) \$ [] per page for copying; and
- (2) \$ [] for the certificate.

(b) The [Secretary of State] shall collect the following fees when an entity filing is delivered for filing:

- (1) Statement of merger, \$ [].
- (2) Statement of withdrawal of merger, \$ [].
- (3) Statement of interest exchange, \$ [].
- (4) Statement of withdrawal of interest exchange, \$ [].
- (5) Statement of conversion, \$ [].
- (6) Statement of withdrawal of conversion, \$ [].
- (7) Statement of domestication, \$ [].
- (8) Statement of withdrawal of domestication, \$ [].
- (9) [Annual] [Biennial] report, \$ [].
- (10) Articles of incorporation of a business corporation, \$ [].
- (11) Articles of incorporation of a nonprofit corporation, \$ [].
- (12) Statement of qualification of a limited liability partnership, \$ [].

- 1 (13) Certificate of limited partnership of a limited partnership, \$ [].
- 2 (14) Certificate of organization of a limited liability company, \$ [].
- 3 [(15) Articles of incorporation of a general cooperative association, \$ [].]
- 4 (16) Articles of organization of a limited cooperative association, \$ [].
- 5 (17) Certificate of trust of a statutory trust entity, \$ [].
- 6 (18) Other public organic document, \$ [].
- 7 (19) Commercial-registered-agent listing statement, \$ [].
- 8 (20) Commercial-registered-agent termination statement, \$ [].
- 9 (21) Registered agent statement of change, \$ [].
- 10 (22) Registered agent statement of resignation, no fee
- 11 (23) Statement appointing an agent for service of process, \$ [].
- 12 (24) Foreign entity registration statement, \$ [].
- 13 (25) Amendment of foreign entity registration statement, \$ [].
- 14 (26) Notice of cancellation of foreign entity registration statement, \$ [].
- 15 [(27) Other entity filings, \$ [].]

16 (c) The withdrawal of a filed record before effectiveness under Section 1-204 or the
17 correction of a filed record under Section 1-205 does not entitle the person on whose behalf the
18 record was filed to a refund of the filing fee.

19 **Alternative B**

20 (a) The [Secretary of State] shall adopt rules, in accordance with [this state's
21 administrative procedure act] setting fees for entity filings authorized to be delivered for filing in
22 the office of the [Secretary of State] under this [act] and for copying and certifying a copy of any
23 entity filing under this [act].

1 (b) There is no fee for filing a registered agent’s statement of resignation.

2 (c) The withdrawal of a filed record before effectiveness under Section 1-204 or the
3 correction of a filed record under Section 1-205 does not entitle the person on whose behalf the
4 record was filed to a refund of the filing fee.]

5 **End of Alternatives**

6 *Legislative Note: If this state includes fees of this kind in a general statute, add these fees to that*
7 *statute and omit this section. If this state sets fees of this kind by administrative rule, select*
8 *Alternative B.*

9
10 **Comment**

11
12 This section establishes the filing fees for all documents that may be filed under the Act.
13 The dollar amounts for each document should be inserted by each state as it adopts the Act.

14
15 Subsection (b) establishes standard fees for copying filed documents and certifying that
16 the copies are true copies. The dollar amounts for these services should be conformed to the fees
17 charged for similar services under other provisions of law.

18
19 **[PART] 3**

20 **NAME OF ENTITY**

21 **SECTION 1-301. PERMITTED NAMES.**

22 (a) Except as otherwise provided in subsections (b) and (d), the name of a domestic filing
23 entity or domestic limited liability partnership, and the name under which a foreign filing entity
24 or foreign limited liability partnership may register to do business in this state, must be
25 distinguishable on the records of the [Secretary of State] from any:

26 (1) name of another domestic filing entity or limited liability partnership;

27 (2) name of a foreign filing entity or foreign limited liability partnership that is
28 registered to do business in this state under [Part] 5;

29 (3) name that is reserved under Section 1-303;

30 (4) name that is registered under Section 1-304; and

1 (5) assumed name registered under [this state’s assumed name statute].

2 (b) Subsection (a) does not apply if the other entity or the person for which the name is
3 reserved or registered consents in a record to the use of the name and submits an undertaking in a
4 form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable
5 on the records of the [Secretary of State] from any name in any category of names in subsection
6 (a).

7 (c) Except as otherwise provided in subsection (d), in determining whether a name is the
8 same as or not distinguishable on the records of the [Secretary of State] from the name of another
9 entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”,
10 “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”,
11 “PA”, “Limited”, “Ltd.”, “limited partnership”, “limited liability partnership”, “LLP”,
12 “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”,
13 “LLLLP”, “registered limited liability limited partnership”, “RLLLLP”, “limited liability
14 company”, or “LLC”, may not be taken into account.

15 (d) The holder of a name under subsection (a) may consent in a record to the use of a
16 name that is not distinguishable on the records of the [Secretary of State] from its name except
17 for the addition of a word, phrase, or abbreviation indicating the type of entity described in
18 subsection (c). In such a case, the holder need not change its own name pursuant to subsection
19 (b).

20 (e) An entity name may not contain the words [insert prohibited words or words that may
21 be used only with approval by the appropriate state agency].

22 **Legislative Note:** Add specific words that this state does not permit an entity to use as part of its
23 name, such as “bank”, “banking”, “credit union”, “insurance”, or words of similar import,
24 without approval by the appropriate state agency.
25

1 **Comment**

2
3 This section adopts the “distinguishable on the records” test for availability of an entity
4 name and rejects the “deceptively similar” test widely used in the past.. The section is patterned
5 on Revised Model Business Corporation Act section 4.01.
6

7 **SECTION 1-302. NAME REQUIREMENTS FOR CERTAIN TYPES OF**
8 **ENTITIES.**

9 (a) The name of a business corporation must contain the word "corporation",
10 "incorporated", "company", or "limited", or the abbreviation "Corp.", "Inc.", "Co.", or "Ltd.", or
11 words or abbreviations of similar import in another language.

12 (b) The name of a limited partnership may contain the name of any partner. If the limited
13 partnership is not a limited liability limited partnership, the name must contain the phrase
14 “limited partnership” or the abbreviation “L.P.” or “LP” and may not contain the phrase “limited
15 liability limited partnership” or “registered limited liability partnership” or the abbreviation
16 “L.L.L.P.” or “LLLP”. If the limited partnership is a limited liability limited partnership, the
17 name must contain the phrase “limited liability limited partnership” or the abbreviation
18 “L.L.L.P.” or “LLLP” and may not contain the abbreviation “L.P.” or “LP”.

19 (c) The name of a limited liability partnership that is not a limited liability limited
20 partnership must contain the words “limited liability partnership” or “registered limited liability
21 partnership” or the abbreviation “L.L.P.”, “R.L.L.P.”, “LLP”, or “RLLP”.

22 (d) The name of a limited liability company must contain the words “limited liability
23 company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”.
24 “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

25 (f) The name of a limited cooperative association must contain the words “limited
26 cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA”.

1 “Limited” may be abbreviated as “Ltd.”. “Cooperative” may be abbreviated as “Co-op.”,
2 “Coop.”, “Co-op”, or “Coop”. “Association” may be abbreviated as “Assoc.”, “Assoc”, “Assn.”,
3 or “Assn”.

4 (e) The name of a statutory trust entity may contain the words “company”, “association”,
5 “club”, “foundation”, “fund”, “institute”, “society”, “union”, “syndicate”, “limited”, or “trust”,
6 or words of similar import, and may contain the name of a beneficial owner, a trustee, or any
7 other person.

8 [(f) Insert requirements for names of other types of entities that may be included in this
9 [act], such as general cooperative associations.]

10 **Comment**

11 **1. Corporations.**

12
13 Subsection (a) is drawn from Model Business Corporation Act, section 4.01(a). The
14 Model Nonprofit Corporation Act does not require the name of a nonprofit corporation to include
15 a corporate designator.

16 **2. Limited Partnerships.**

17
18
19 Subsection (b)(1)) is drawn from Uniform Limited Partnership Act (2001), section
20 108(a)-(c). Predecessor law, Revised Uniform Limited Partnership Act (RULPA) (1985)
21 Section 102, prohibited the use of a limited partner’s name in the name of a limited partnership
22 except in unusual circumstances. That approach derived from the 1916 Uniform Limited
23 Partnership Act and has become antiquated. In 1916, most business organizations were either
24 unshielded (*e.g.*, general partnerships) or partially shielded (*e.g.*, limited partnerships), and it was
25 reasonable for third parties to believe that an individual whose own name appeared in the name
26 of a business would “stand behind” the business. Today most businesses have a full shield (*e.g.*,
27 corporations, limited liability companies, most limited liability partnerships), and corporate, LLC
28 and LLP statutes generally pose no barrier to the use of an owner’s name in the name of the
29 entity. This Code eliminates the restriction of RULPA(1985) restriction and puts limited
30 partnerships on equal footing with these other “shielded” entities.

31 **3. Limited Liability Partnerships.**

32
33 This section is drawn from Uniform Partnership Act (1997) (RUPA), section 1002.

34 **4. Limited Liability Companies.**

1
2 Subsection (c) is drawn from Revised Uniform Limited Liability Company Act (2006),
3 section 108(a).

4
5 **5. Limited Cooperative Associations.**

6
7 This section is drawn from section 109(b) of the 2007 Final Draft of the Uniform Limited
8 Cooperative Association Act.

9
10 **6. Statutory Trust Entities.**

11
12 This section is drawn from the 2008 Draft of the Uniform Statutory Trust Act, section
13 207(b). The drafting committee comments indicate that it considered, but opted not to require, a
14 traditional limited liability appellation. Such a requirement would be inconsistent with current
15 practice under the Delaware Act. For example, the names of mutual funds typically do not
16 contain a limited liability appellation, though Section 35(d) of the Investment Company Act of
17 1940, which is applicable to a statutory trust that is a registered investment company, prohibits
18 “materially deceptive or misleading” names. 15 U.S.C. §80a-34(d). See also Rule 35d-1, 17
19 C.F.R. §270.35d-1 (listing types of names that have been deemed “materially deceptive or
20 misleading”).

21
22 **SECTION 1-303. RESERVATION OF NAME.**

23 (a) A person may reserve the exclusive use of an entity name by delivering an application
24 to the [Secretary of State] for filing. The application must set forth the name and address of the
25 applicant and the name proposed to be reserved. If the [Secretary of State] finds that the entity
26 name applied for is available, the [Secretary of State] shall reserve the name for the applicant’s
27 exclusive use for a [120]-day period.

28 (b) The owner of a reserved entity name may transfer the reservation to another person by
29 delivering to the [Secretary of State] a signed notice in a record of the transfer that states the
30 name and address of the transferee.

31 **Comment**

32 This section is patterned on Model Business Corporation Act section 4.02. It should be
33 noted that the Texas Business Organizations Code, section 5.105, unlike the Model Business
34 Corporation Act provision, allows renewal of reservation of names for successive 120 day
35 periods, by filing an application for renewal during the 30 day period preceding expiration of the
36 reservation.

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SECTION 1-304. REGISTRATION OF NAME.

(a) A foreign filing entity or foreign limited liability partnership not registered to do business in this state under [Part] 5 may register its name, or an alternate name required by Section 1-506, if the name is distinguishable upon the records of the [Secretary of State] from the names that are not available under Section 1-301.

(b) To register its name or an alternate name required by Section 1-506, a foreign filing entity or foreign limited liability partnership must deliver to the [Secretary of State] for filing an application setting forth its name, or its name with any addition required by Section 1-506, and the jurisdiction and date of its formation. If the [Secretary of State] finds that the name applied for is available, the [Secretary of State] shall register the name for the applicant’s exclusive use.

(c) The registration of a name under this section is effective for one year from the date of filing.

(d) A foreign filing entity or foreign limited liability partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than [three months] before the expiration of the registration year, to the [Secretary of State] for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(e) A foreign filing entity or foreign limited liability partnership whose name registration is effective may register as a foreign filing entity or foreign limited liability partnership under the registered name or consent in a signed record to the use of that name by a domestic filing entity formed under this [act] or limited liability partnership subject to this [act] or by another foreign filing entity or foreign limited liability partnership authorized to do business in this state.

1 **Comment**

2 This section is patterned on section 4.03 of the Revised Model Business Corporation Act.

3 **[PART] 4**

4 **REGISTERED AGENT**

5
6 **SECTION 1-401. DEFINITIONS.** In this [part]:

7 (1) “Appointment of agent” means a statement appointing an agent for service of process
8 filed by a nonqualified foreign entity or domestic nonfiling entity under Section 1-411.

9 (2) “Commercial registered agent” means a person listed under Section 1-405.

10 (3) “Noncommercial registered agent” means a person that is not listed as a commercial
11 registered agent under Section 1-405 and is:

12 (A) an individual or domestic or foreign entity that serves in this state as the agent
13 for service of process of an entity; or

14 (B) an individual who holds the office or other position in an entity that is
15 designated as the agent for service of process pursuant to Section 1-404(a)(2)(B).

16 (4) “Nonqualified foreign entity” means a foreign entity that is not a qualified foreign
17 entity.

18 (5) “Nonresident limited liability partnership statement” means:

19 (A) a statement of qualification of a domestic limited liability partnership that
20 does not have an office in this state; or

21 (B) a statement of foreign qualification of a foreign limited liability partnership
22 that does not have an office in this state.

23 (6) “Registered agent filing” means:

- 1 (A) the public organic record of a domestic filing entity;
- 2 (B) a nonresident limited liability partnership statement;
- 3 (C) a registration statement filed pursuant to Section 1-503; or
- 4 (D) an appointment of a registered agent.

5 (7) “Represented entity” means:

- 6 (A) a domestic filing entity;
- 7 (B) a domestic or qualified foreign limited liability partnership that does not have
- 8 an office in this state;
- 9 (C) a qualified foreign entity;
- 10 (D) a domestic or foreign unincorporated nonprofit association for which an
- 11 appointment of an agent has been filed;
- 12 (E) a domestic nonfiling entity for which an appointment of an agent has been
- 13 filed; or
- 14 (F) a nonqualified foreign entity for which an appointment of an agent has been
- 15 filed.

16 **Comment**

17
18 **“Appointment of agent.” [(1)]** – An appointment of agent is an optional filing that may
19 be made by an entity that does not otherwise make a public filing in the state naming an agent for
20 service of process. If a state has not enacted the Uniform Unincorporated Nonprofit Association
21 Act, paragraph (A) of this definition should be omitted.

22
23 **“Commercial registered agent.” [(2)]** – A commercial registered agent is an individual
24 or entity that is in the business of serving as a registered agent in the state and that files a listing
25 statement under Section 1-404. Being listed as a commercial registered agent is voluntary and
26 persons serving as registered agents are not required to be listed under Section 1-405. The
27 benefits to the registered agent of being listed under Section 1-405, however, are substantial and
28 most registered agents will elect to be so listed. Although this definition and Section 1-405 do
29 not expressly require that a foreign entity that is listed as a commercial registered agent be
30 qualified to do business in the state, the activity of serving as a registered agent is one that
31 requires such registration.

1
2 **“Noncommercial registered agent.” [(3)]** – A noncommercial registered agent is a
3 person that serves as an agent for service of process but that is not listed under Section 1-405.
4 All agents for service of process that are not commercial registered agents are noncommercial
5 registered agents.

6
7 This definition is patterned after Model Registered Agents Act § 2(13) (“noncommercial
8 registered agent”).

9
10 **“Nonqualified foreign entity.” [(4)]** – A nonqualified foreign entity is a foreign entity
11 which has not registered with the [Secretary of State] to do business in this state.

12
13 This definition is patterned after Model Entity Transactions Act § 102(26) “nonqualified
14 foreign entity”). See also Model Registered Agents Act § 2(14) (“nonqualified foreign entity”).

15
16 **“Nonresident limited liability partnership statement.” [(5)]** – A nonresident limited
17 liability partnership statement is the filing that is made by a limited liability partnership under
18 Section 1001 of the Uniform Partnership Act (1997).

19
20 This definition is patterned after Model Registered Agents Act § 2(15) (“nonresident
21 limited liability partnership statement”).

22
23 **“Registered agent filing.” [(6)]**– Some states require that filings in addition to those
24 listed in this definition, such as articles of amendment or articles of merger, state the registered
25 agent information of the entity making the filing. In states where that is the case, this definition
26 should be amended to add the following additional provision:

27
28 “(E) any other filing with the [Secretary of State] under an entity’s organic law that
29 must include the information required by Section 1-404(a).”

30
31 **“Represented entity.” [(7)]**– This definition lists the various classes of entities for which
32 registered agents act as agents for service of process.

33
34 **SECTION 1-402. ENTITIES REQUIRED TO DESIGNATE AND MAINTAIN**

35 **REGISTERED AGENT.** A domestic or foreign limited liability partnership that does not
36 maintain a place of business in this state, domestic filing entity, or qualified foreign entity shall
37 designate and continuously maintain a registered agent in this state.

38 **Comment**

39
40 This section is derived from Texas Business Organizations Code Section 5.201(a). A
41 similar provision appears in the Draft Alabama Business and Nonprofit Entity Code as Section
42 10A-1-5.31. The Model Registered Agents Act, from which this [Part] of this Act is largely

1 drawn, does not contain a provision mandating which entities must designate a registered agent,
2 leaving that to the specific entity statutes. The Texas statute and the Alabama Draft attempt to
3 do that in the “Hub”. This would ultimately entail deletions in the respective entity statutes.
4

5 Like the Texas statute, this section covers domestic and qualified foreign filing entities.
6 It also covers, as does the Alabama Draft, registered limited liability partnerships in the
7 circumstances in which RLLPs are required to maintain an agent for service of process under
8 Uniform Partnership Act (2001) Section 1001 (c)(3) (domestic RLLP) or Section 1102(a)(3)
9 (foreign RLLP), even though those sections do not use the term “registered agent.”
10

11 Notice that the Model Registered Agent does provide for elective designation of a
12 registered agent by domestic nonfiling entities and by nonqualified foreign entities. Model
13 Registered Agent Act Section. 12. Those provisions have been imported into this Act as Section
14 1-410, below.
15

16 **SECTION 1-403. ADDRESSES IN FILINGS.** If a provision of this [part] other than
17 Section 1-410(a)(4) requires that a record state an address, the record must state:

- 18 (1) a street address in this state; and
19 (2) a mailing address in this state, if different from the address described in paragraph (1).
20

20 **Comment**

21 When this Act requires that a filing state an address, the address used must always be a
22 geographic location. Where a person uses a post office box as its mailing address, paragraph (2)
23 requires that the post office box address also be stated.
24

25 This section, and the accompanying Comment, is derived from Model Registered Agent
26 Act Section 4.
27

28 **SECTION 1-404. APPOINTMENT OF REGISTERED AGENT.**

29 (a) A registered agent filing must state:

30 (1) the name of the represented entity’s commercial registered agent; or

31 (2) if the entity does not have a commercial registered agent:

32 (A) the name and address of the entity’s noncommercial registered agent;

33 or

1 (B) if the entity designates an officer or employee to accept service of
2 process, the title of the office or other position and the address of the business office of that
3 person.

4 (b) The appointment of a registered agent pursuant to subsection (a)(1) or (2)(A) is an
5 affirmation by the represented entity that the agent has consented to serve.

6 (c) The [Secretary of State] shall make available in a record as soon as practicable a daily
7 list of filings that contain the name of a registered agent. The list must:

8 (1) be available for at least 14 calendar days;

9 (2) list in alphabetical order the names of the registered agents; and

10 (3) state the type of filing and name of the represented entity making the filing.

11 **Legislative Note:** *Subsection (c) may be omitted if (1) the records of the Secretary of State or*
12 *equivalent officer are searchable electronically in a manner that permits filings to be identified*
13 *by the date of the filing and by the name of the registered agent named in the filing, and (2) the*
14 *searchable database is updated frequently.*

15 **Comment**

16
17
18 Subsection (a)(1) gives an entity the option of listing just the name of its commercial
19 registered agent in a registered agent filing and omitting the address of the registered agent. If
20 the commercial registered agent subsequently changes its address, that change will be reflected
21 in the filing made by the agent under Section 1-404, as amended under Section 1-408, but no
22 change will be necessary in the registered agent filing of any of the entities represented by the
23 commercial registered agent. The address of an entity's commercial registered agent may be
24 ascertained from the records of the Secretary of State by consulting its listing under Section 1-
25 404.

26
27 The address of an entity's noncommercial registered agent is usually not a business
28 address of the represented entity. On the other hand, subsection 1-403(a)(2)(B) permits an entity
29 to designate a person within the organization, such as its general counsel, to serve as its
30 registered agent; and in that circumstance the address of the registered agent may very well be a
31 business address of the represented entity.

32
33 The addresses required by subsection (a) to be stated in a registered agent filing must
34 satisfy the requirements in Section 1-402.

35
36 Subsection (b) avoids the need to include with a registered agent filing a consent of the

1 registered agent to serve as such.

2
3 Subsection (c) creates a procedure that will permit registered agents to determine if they
4 have been named in filings of which they were not aware by periodically consulting the list
5 prepared by the Secretary of State. Subsection (c) requires the registered agents to be listed in
6 alphabetical order to facilitate the use of the list by registered agents and also to indicate the type
7 of filing (e.g., articles of incorporation, certificates of limited partnership, appointments of agents
8 under Section 1-410 of this Act, etc.) in which each registered agent is named. Subsection (c)
9 will not be necessary under the circumstances described in the Legislative Note because
10 registered agents may consult the regular database maintained by the Secretary of State to verify
11 when they have been named as a registered agent.

12
13 Subsection (a) is a generalization of Section 5.01 of the Model Business Corporation Act,
14 Section 114 of the Uniform Limited Partnership Act, and Section 108 of the Uniform Limited
15 Liability Company Act.

16
17 This section and the accompanying Comment is derived from Section 5 of the Model
18 Registered Agents Act.

19
20 **SECTION 1-405. LISTING OF COMMERCIAL REGISTERED AGENT.**

21 (a) A person may become listed as a commercial registered agent by filing with the
22 [Secretary of State] a commercial-registered-agent listing statement signed by or on behalf of the
23 person which states:

24 (1) the name of the individual or the name, type, and jurisdiction of formation of
25 the entity;

26 (2) that the person is in the business of serving as a commercial registered agent
27 in this state; and

28 (3) the address of a place of business of the person in this state to which service of
29 process and other notice and documents being served on or sent to entities represented by the
30 person may be delivered.

31 (b) A commercial-registered-agent listing statement may include the information
32 regarding acceptance of service of process in a form other than a written record by the agent as
33 provided for in Section 1-412(d).

1 (c) If the name of a person filing a commercial-registered-agent listing statement is not
2 distinguishable on the records of the [Secretary of State] from the name of another commercial
3 registered agent listed under this section, the person shall adopt a fictitious name that is
4 distinguishable and use that name in its statement and when it does business in this state as a
5 commercial registered agent.

6 (d) A listing statement takes effect on filing by the [Secretary of State].

7 (e) The [Secretary of State] shall note the filing of the commercial-registered-agent listing
8 statement in the index of filings maintained by the [Secretary of State] for each entity
9 represented by the agent at the time of the filing. The statement has the effect of deleting the
10 address of the agent from the filing of each of those entities.

11 **Legislative Note:** *If the Secretary of State or equivalent officer is not able to identify from the*
12 *records maintained by the Secretary of State or equivalent officer all of the entities represented*
13 *by a registered agent, subsection (e) should be amended to read:*

14
15 *“(e) The commercial registered agent listing statement must be accompanied by a list in*
16 *alphabetical order of the entities represented by the person. The [Secretary of State] shall note*
17 *the filing of the commercial-registered-agent listing statement in the index of filings maintained*
18 *by the [Secretary of State] for each listed entity. The statement has the effect of deleting the*
19 *address of the registered agent from the registered agent filing of each of those entities.”*

20 21 **Comment**

22
23 This section is a substantial simplification of practice because it removes the need to
24 amend the filed record of every entity represented by a commercial registered agent when the
25 agent changes its address.

26
27 Subsection (a)(3) only permits a commercial registered agent to list one address where
28 service of process and other notices may be sent to entities represented by the agent. This may
29 require a change in practice for registered agents who have previously maintained more than one
30 address in a state and have permitted represented entities to choose which address they would
31 use in their registered agent filings. A corporation, for example, located in one part of a state
32 might include in its articles of incorporation an address for its registered agent which is the
33 address of an office of the agent located close to the corporation and which is different than the
34 address used by a corporation in another part of the state which has the same registered agent but
35 uses a different office of the agent. In the example given, the registered agent will need to pick
36 just one address in the state where all service of process will be sent to it. If a commercial

1 registered agent wishes to maintain more than one office in a state where service of process will
2 be received by it, it can accomplish that result by organizing separate entities to conduct its
3 business in the state and filing separate statements for each entity under this section.
4

5 The address required by subsection (a)(3) to be stated in a commercial registered agent
6 listing statement must satisfy the requirements in Section 1-402 above. .
7

8 Subsection (e) is a transitional provision that deals with the effect on the entities
9 represented by a registered agent at the time the agent is first listed under this section. The effect
10 is to amend the registered agent filing of each such entity to delete the address of the registered
11 agent consistent with Section 1-403(a)(1).
12

13 This section is drawn from Section 6 of the Model Registered Agents Act, which in turn
14 is patterned generally after 15 Pa. Consol. Stat. § 109.
15

16 This section provides a procedure for a commercial registered agent to withdraw from the
17 business of providing registered agent services. Use of the procedure in this section will
18 terminate the status of the registered agent as the agent for service of process of all the entities
19 represented by the agent. Thus, the procedure in this section differs from the procedure in
20 Section 1-409, which permits a registered agent to resign with respect to just a single represented
21 entity instead of resigning generally with respect to all of its represented entities.
22

23 This section and its accompanying comment is derived from Section 7 of the Model
24 Registered Agents Act.
25

26 **SECTION 1-406. TERMINATION OF LISTING OF COMMERCIAL**
27 **REGISTERED AGENT.**

28 (a) A commercial registered agent may terminate its listing as a commercial registered
29 agent by delivering to the [Secretary of State] for filing a commercial-registered-agent
30 termination statement signed by or on behalf of the agent which states:

31 (1) the name of the agent as listed under Section 1-405; and

32 (2) that the agent is no longer in the business of serving as a commercial
33 registered agent in this state.

34 (b) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the
35 31st day after the day on which it is filed.

1 (c) The commercial registered agent promptly shall furnish each entity represented by the
2 agent with notice in a record of the filing of the commercial-registered-agent termination
3 statement.

4 (d) When a commercial-registered-agent termination statement takes effect, the
5 commercial registered agent ceases to be an agent for service of process on each entity formerly
6 represented by it. Until an entity formerly represented by a terminated commercial registered
7 agent appoints a new registered agent, service of process may be made on the entity pursuant to
8 Section 1-412. Termination of the listing of a commercial registered agent under this section
9 does not affect any contractual rights a represented entity has against the agent or that the agent
10 has against the entity.

11 **Comment**

12
13 This section provides a procedure for a commercial registered agent to withdraw from the
14 business of providing registered agent services. Use of the procedure in this section will
15 terminate the status of the registered agent as the agent for service of process of all the entities
16 represented by the agent. Thus, the procedure in this section differs from the procedure in
17 Section 1-409, which permits a registered agent to resign with respect to just a single represented
18 entity instead of resigning generally with respect to all of its represented entities.

19
20 This section and its accompanying comment is derived from Section 7 of the Model
21 Registered Agents Act.

22 **SECTION 1-407. CHANGE OF REGISTERED AGENT BY ENTITY.**

23
24 (a) A represented entity may change the information on file under Section 1-404(a) by
25 delivering to the [Secretary of State] for filing a statement of change signed on behalf of the
26 entity which states:

27 (1) the name of the entity; and

28 (2) the information that is to be in effect as a result of the filing of the statement of
29 change.

1 (b) The interest holders or governors of a domestic entity need not approve the filing of:

2 (1) a statement of change under this section; or

3 (2) a similar filing changing the registered agent or registered office of the entity
4 in any other jurisdiction.

5 (c) The appointment of a registered agent pursuant to subsection (a) is an affirmation by
6 the represented entity that the agent has consented to serve.

7 (d) A statement of change under this section takes effect on delivery to the [Secretary of
8 State] for filing.

9 (e) As an alternative to using the procedure in this section, a represented entity may
10 change the information on file under Section 1-404(a) by amending its most recent registered
11 agent filing in the manner provided by law of this state other than this [act] for amending that
12 filing.

13 **Comment**

14
15 Changes of the registered agent or the office address of a registered agent are usually
16 routine matters that do not affect the rights of the interest holders of the represented entity. This
17 section permits those changes to be made without a formal amendment of an entity's public
18 organic document, without approval of its interest holders, and, indeed, even without formal
19 approval by its governors (i.e., the persons managing the entity's affairs, such as the board of
20 directors of a corporation).

21
22 Subsection (c) avoids the need to file with a statement of change a consent of the new
23 registered agent being designated.

24
25 Subsection (e) makes clear that the procedures in this section are not exclusive. A
26 common way in which an entity changes its registered agent or registered office is to include the
27 change in an amendment of its public organic document.

28
29 Subsection (a) is a generalization of Section 5.02(a) of the Model Business Corporation
30 Act, Section 115 of the Uniform Limited Partnership Act, and Section 109 of the Uniform
31 Limited Liability Company Act. As to subsection (c), compare Section 5.02(a)(5) of the Model
32 Business Corporation Act. Subsection (d) is patterned after Section 115(b) of the Uniform
33 Limited Partnership Act.

1 This section, and the accompanying comment, is derived from Section 8 of the Model
2 Registered Agents Act.

3
4 **SECTION 1-408. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL**
5 **REGISTERED AGENT.**

6 (a) If a noncommercial registered agent changes its name or its address as in effect with
7 respect to a represented entity pursuant to Section 1-404(a), the agent shall deliver to the
8 [Secretary of State] for filing, with respect to each entity represented by the agent, a statement of
9 change signed by or on behalf of the agent which states:

10 (1) the name of the entity;

11 (2) the name and address of the agent;

12 (3) if the name of the agent has changed, its new name; and

13 (4) if the address of the agent has changed, the new address.

14 (b) A statement of change under this section takes effect on delivery to the [Secretary of
15 State] for filing.

16 (c) A noncommercial registered agent promptly shall furnish the represented entity with
17 notice in a record of the filing of a statement of change and the changes made by the filing.

18 **Comment**

19
20 This section permits a noncommercial registered agent to change the name and address of
21 the agent that appears in the registered agent filing of an entity represented by the agent.
22 Because the noncommercial registered agent is not listed under Section 1-404, the agent will not
23 be able to use the procedures in Section 338 which permit commercial registered agents to make
24 only one filing to change their name and address for all entities represented by them. Thus the
25 noncommercial registered agent will need to make a filing under this section for each entity
26 represented by the agent.

27
28 An address included in a statement of change must satisfy the requirements in Section 1-
29 402.

30
31 This section is derived from Model Registered Agent Act section 9, which in turn is
32 patterned after 15 Pa. Consol. Stat. § 108.

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SECTION 1-409. CHANGE OF NAME, ADDRESS, OR TYPE OF ORGANIZATION BY COMMERCIAL REGISTERED AGENT.

(a) If a commercial registered agent changes its name, its address as listed under Section 1-405(a), or its type or jurisdiction of formation, the agent shall deliver to the [Secretary of State] for filing a statement of change signed by or on behalf of the agent which states:

- (1) the name of the agent as listed under Section 1-405(a);
- (2) if the name of the agent has changed, its new name;
- (3) if the address of the agent has changed, the new address; and
- (4) if the type or jurisdiction of formation of the agent has changed, the new type or jurisdiction of formation.

(b) A commercial registered agent’s filing of a statement of change under subsection (a) is effective to change the information regarding the agent with respect to each entity represented by the agent.

(c) A statement of change under this section takes effect on delivery to the [Secretary of State] for filing.

(d) A commercial registered agent promptly shall furnish each entity represented by it notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(e) If a commercial registered agent changes its address without filing a statement of change as required by this section, the [Secretary of State] may cancel the listing of the agent under Section 1-405. A cancellation under this subsection has the same effect as a termination

1 under Section 1-406. Promptly after canceling the listing of an agent, the [Secretary of State]
2 shall serve notice in a record in the manner provided in Section 1-412(b) or (c) on:

3 (1) each entity represented by the agent, stating that the agent has ceased to be an
4 agent for service of process on the entity and that, until the entity appoints a new registered
5 agent, service of process may be made on the entity as provided in Section 1-412; and

6 (2) the agent, stating that the listing of the agent has been canceled under this
7 section.

8 **Comment**

9 This section permits a commercial registered agent to make a single filing that has the
10 effect of changing the name or address of the agent for all of the entities represented by it.

11
12 An address included in a statement of change must satisfy the requirements in Section 1-
13 402.

14
15 Subsection (e) provides a procedure by which the Secretary of State may cancel the
16 listing of a commercial registered agent when the Secretary of State learns that the agent has
17 changed its address without amending its listing as a commercial registered agent. When the
18 Secretary of State acts to cancel the listing of a commercial registered agent, the Secretary of
19 State is required to notify both (i) the entities represented by the agent that they no longer have a
20 valid registered agent and (ii) the agent that it no longer is listed as a commercial registered
21 agent. Unlike in the case of a resignation under Section 11 which is initiated by the registered
22 agent and thus does not require a notice from the Secretary of State to the agent, notice by the
23 Secretary of State to the agent is needed under this section so that the agent has notice that its
24 representation of the entities it previously represented has terminated under Section 335.

25
26 This section is derived from section 10 of the Model Registered Agents Act, which in
27 turn is patterned after 15 Pa.Consol. Stat. § 109(b).

28
29 **SECTION 1-410. RESIGNATION OF REGISTERED AGENT.**

30 (a) A registered agent may resign as agent for a represented entity by delivering to the
31 [Secretary of State] for filing a statement of resignation signed by or on behalf of the agent
32 which states:

33 (1) the name of the entity;

1 (2) the name of the agent;
2 (3) that the agent resigns from serving as agent for service of process for the
3 entity; and
4 (4) the name and address of the represented entity to which the agent will send the
5 notice required by subsection (c).

6 (b) A statement of resignation takes effect on the earlier of the 31st day after the day on
7 which it is filed or the appointment of a new registered agent for the represented entity.

8 (c) A registered agent promptly shall furnish the represented entity notice in a record of
9 the date on which a statement of resignation was filed.

10 (d) When a statement of resignation takes effect, the registered agent ceases to have
11 responsibility for any matter tendered to it as agent for the represented entity. The resignation
12 does not affect any contractual rights the entity has against the agent or that the agent has against
13 the entity.

14 (e) A registered agent may resign with respect to a represented entity whether or not the
15 entity is in good standing.

16 **Comment**

17
18 Resignation under this section may be accomplished solely by action of the registered
19 agent and does not require the cooperation or consent of the represented entity. Whether a
20 resignation violates a contract between the registered agent and the represented entity is beyond
21 the scope of this Act and subsection (d) preserves whatever claims a represented entity may have
22 against its registered agent for a wrongful termination. Even if a resignation were to violate such
23 a contract, the resignation would still be effective if the provisions of this section are followed.
24

25 Resignation under this section relates only to the entity named in the statement of
26 resignation. Thus, the procedure in this section differs from the procedure in Section 1-405
27 which terminates the status of the agent as agent for all of the entities represented by it.
28

29 The requirements of Section 1-402 with respect to addresses do not apply to subsection
30 (a)(4) because the registered agent may not have all the required information available.
31

1 Subsection (b) delays the effectiveness of a statement of resignation for 31 days to allow
2 the notice of the resignation that must be sent under subsection (c) to reach the represented entity
3 and to allow the represented entity to arrange for a substitute registered agent.
4

5 Subsection (e) makes clear that a registered agent may resign with respect to an entity
6 that is not in good standing and supersedes the contrary administrative practice in some states of
7 refusing to accept any filings with respect to an entity that is not in good standing until the
8 problem with the entity's standing is cured.
9

10 Subsection (a) is a generalization of Section 5.03(a) of the Model Business Corporation
11 Act, Section 116(a) of the Uniform Limited Partnership Act, and Section 110(a) of the Uniform
12 Limited Liability Company Act. Subsection (b) is a generalization of Section 5.03(c) of the
13 Model Business Corporation Act, Section 116(c) of the Uniform Limited Partnership Act, and
14 Section 110(c) of the Uniform Limited Liability Company Act. Subsection (c) is derived from
15 Section 5.03(b) of the Model Business Corporation Act, Section 116(b) of the Uniform Limited
16 Partnership Act, and Section 110(b) of the Uniform Limited Liability Company Act, except that
17 notice under this Act is to be given by the resigning registered agent rather than the Secretary of
18 State.
19

20 This section and the accompanying comment are derived from section 11 of the Model
21 Registered Agents Act.
22

23 **SECTION 1-411. APPOINTMENT OF REGISTERED AGENT BY**
24 **NONQUALIFIED FOREIGN ENTITY OR NONFILING DOMESTIC ENTITY.**

25 (a) A nonqualified foreign entity or a domestic nonfiling entity may deliver to the
26 [Secretary of State] for filing a statement appointing an agent for service of process signed on
27 behalf of the entity which states:

28 (1) the name, type, and jurisdiction of formation of the entity; and

29 (2) the information required by Section 1-404(a).

30 (b) A statement appointing an agent for service of process takes effect on filing by the
31 [Secretary of State] and is effective for five years after the date of filing unless canceled earlier.

32 (c) Appointment of a registered agent under this section does not qualify a nonqualified
33 foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction
34 over the nonqualified foreign entity in this state.

1 (d) A statement appointing an agent for service of process may not be rejected for filing
2 because the name of the entity filing the statement is not distinguishable on the records of the
3 [Secretary of State] from the name of another entity appearing in those records. The filing of
4 such a statement does not make the name of the entity filing the statement unavailable for use by
5 another entity.

6 (e) An entity that files a statement appointing an agent for service of process may cancel
7 the statement by delivering to the [Secretary of State] for filing a statement of cancellation that
8 states the name of the entity and that the entity is canceling its appointment of an agent for
9 service of process in this state. The statement takes effect on filing by the [Secretary of State].

10 (f) A statement appointing an agent for service of process for a nonqualified foreign
11 entity terminates on the date the entity becomes a qualified foreign entity.

12 **Comment**

13 Filing under this section is elective, and no inference should be drawn from the failure of
14 an entity to make such a filing.

15
16 This section and the accompanying comment are drawn from Section 12 of the Model
17 Registered Agents Act. Subsection (a), in turn, is patterned after Section 10 of the Uniform
18 Unincorporated Nonprofit Association Act.

19 20 **SECTION 1-412. SERVICE OF PROCESS ON ENTITY.**

21 (a) A registered agent is an agent of the represented entity authorized to receive service of
22 any process, notice, or demand required or permitted by law to be served on the entity.

23 (b) If an entity that filed a registered agent filing with the [Secretary of State] no longer
24 has a registered agent, or if its registered agent cannot with reasonable diligence be served, the
25 entity may be served by registered or certified mail, return receipt requested, addressed to the
26 governors of the entity by name at its principal office in accordance with any applicable judicial
27 rules and procedures. The names of the governors and the address of the principal office may be

1 as shown in the most recent [annual] [biennial] report filed with the [Secretary of State]. Service
2 is perfected under this subsection on the earliest of:

- 3 (1) the date the entity receives the mail;
- 4 (2) the date shown on the return receipt, if signed on behalf of the entity; or
- 5 (3) five days after its deposit with the United States Postal Service, if correctly
6 addressed and with sufficient postage.

7 (c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a)
8 or (b), service may be made by handing a copy to the manager, clerk, or other individual in
9 charge of any regular place of business or activity of the entity if the individual served is not a
10 plaintiff in the action.

11 (d) Service of process, notice, or demand on a registered agent must be in a written
12 record, except that service may be made on a commercial registered agent in other forms, and
13 subject to such requirements, as the agent has stated in its listing under Section 1-405 that it will
14 accept.

15 (e) Service of process, notice, or demand may be perfected by other means under law
16 other than this [act].

17 **Comment**

18
19 Subsection (c) provides a means for serving process on an entity that cannot be served
20 under subsection (a) or (b). Some entity organic laws require that service of process in that
21 circumstance be made on the Secretary of State, but that leaves unanswered the question of what
22 the Secretary of State should do with the process. Subsection (c) is patterned after Pa.
23 R.Civ.Proc. 423(3) and 424(2). A similar approach is taken by Fed. R.Civ.Proc. 4(h)(1).
24

25 Subsections (a) and (d) are a generalization of Section 5.04(a) and (c) of the Model
26 Business Corporation Act, Section 117(a) and (f) of the Uniform Limited Partnership Act, and
27 Section 111(a) and (e) of the Uniform Limited Liability Company Act. Subsection (b) is a
28 generalization of Section 5.04(b) of the Model Business Corporation Act.
29

30 This section is derived from Section 13 of the Model Registered Agents Act.

1 the represented entity in this state. The address of the agent does not determine venue in an
2 action or proceeding involving the entity.

3 **Comment**
4

5 As discussed in the Introduction to the Act, one of the purposes of the Act is to eliminate
6 the registered office address as a means of determining where venue is to be laid in an action
7 involving a represented entity. Consistent with that purpose, this section makes clear that the
8 address of a registered agent does not determine venue. This section may be inconsistent with
9 other law or procedural rules in a state, and thus existing law on venue should be reviewed when
10 this Act is considered for adoption in a state. *Compare Cooper v. Chevron U.S.A., Inc.*, 132
11 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New Mexico statute permitting venue “in the
12 county where the statutory agent designated by the foreign corporation resides”).

13
14 This section is drawn from Section 15 of the Model Registered Agents Act.
15

16 **[PART] 5**

17 **FOREIGN ENTITIES**

18 **SECTION 1-501. GOVERNING LAW.**

19 (a) The law of the jurisdiction of formation of an entity governs:

20 (1) the internal affairs of the entity;

21 (2) the liability that a person has as an interest holder or governor for the debts,
22 obligations, and other liabilities of the entity;

23 (3) the liability of a series of a series limited liability company; and

24 (4) the liability of a series of a statutory trust entity.

25 (b) A foreign entity is not precluded from registering to do business in this state because
26 of any difference between the laws of the entity’s jurisdiction of formation and the laws of this
27 state.

28 (c) Registration of a foreign entity to do business in this state does not authorize it to
29 engage in any activity or exercise any power that a domestic entity of the same type may not
30 engage in or exercise in this state.

1 **Comment**

2 This section is a generalized version of Uniform Limited Partnership Act (2001) Section
3 901, Revised Uniform Limited Liability Company Act Section 801, Uniform Limited
4 Cooperative Association Act (2007 Draft), Section 1301, and Uniform Statutory Trust Act
5 (2006 Draft), Section 701. The Model Business Corporation Act and the Model NonProfit
6 Corporation Act do not contain an explicit parallel provision.

7
8 **SECTION 1-502. REGISTRATION TO DO BUSINESS IN THIS STATE.**

9 (a) A foreign filing entity or foreign limited liability partnership may not do business in
10 this state until it registers with the [Secretary of State] under this [article].

11 (b) A foreign filing entity or foreign limited liability partnership doing business in this
12 state may not maintain an action or proceeding in this state unless it has registered to do business
13 in this state.

14 (c) The failure of a foreign filing entity or foreign limited liability partnership to register
15 to do business in this state does not impair the validity of a contract or act of the foreign filing
16 entity or foreign limited liability partnership or preclude it from defending an action or
17 proceeding in this state.

18 (d) The liability of an interest holder or governor of a foreign filing entity or of a partner
19 of a foreign limited liability partnership is governed by the laws of its jurisdiction of formation,
20 and any limitations on that liability are not waived solely because the foreign filing entity or
21 foreign limited liability partnership does business in this state without registering.

22 (e) Section 1-501(a) and (b) apply even if a foreign entity fails to register under this
23 [article].

24 **Comment**

25 This section is a generalized version of Uniform Limited Liability Company Act Section
26 808 and parallel provisions of other entity statutes.
27

- 1 (1) the name of the entity;
- 2 (2) the type of entity, including, if it is a limited partnership, the entity's
- 3 becoming or ceasing to be a limited liability limited partnership;
- 4 (3) the jurisdiction of formation;
- 5 (4) the address or addresses required by Section 1-503(4); or
- 6 (5) information required by Section 1-404(a).

7 (b) The requirements of Section 1-503 for an original foreign registration statement apply
8 to an amendment of a foreign registration statement under this section.

9 **Comment**

10 This section is a generalized version of Model Business Corporation Act section 15.04,
11 but with provision for registration rather than obtaining a certificate of authority.

12
13 **SECTION 1-505. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.**

14 (a) Activities of a foreign filing entity or foreign limited liability partnership which do not
15 constitute doing business in this state under this [article] include:

- 16 (1) maintaining, defending, mediating, arbitrating, or settling an action or
- 17 proceeding;
- 18 (2) carrying on any activity concerning its internal affairs, including holding
- 19 meetings of its interest holders or governors;
- 20 (3) maintaining accounts in financial institutions;
- 21 (4) maintaining offices or agencies for the transfer, exchange, and registration of
- 22 interests in the entity or maintaining trustees or depositories with respect to those interests;
- 23 (5) selling through independent contractors;
- 24 (6) soliciting or obtaining orders by any means if the orders require acceptance
- 25 outside this state before they become contracts;

- 1 (7) creating or acquiring indebtedness, mortgages, or security interests in
- 2 property;
- 3 (8) securing or collecting debts or enforcing mortgages or other security interests
- 4 in property securing the debts and holding, protecting, or maintaining property;
- 5 (9) conducting an isolated transaction that is not in the course of similar
- 6 transactions; and
- 7 (10) doing business in interstate commerce.

8 (b) This section does not apply in determining the contacts or activities that may subject a
9 foreign filing entity or foreign limited liability partnership to service of process, taxation, or
10 regulation under law of this state other than this [act].

11 **Comment**

12 This section is a generalized version of Uniform Limited Liability Company Act, Section
13 803. Similar provisions appear in Uniform Limited Partnership Act (2001), Section 903; and in
14 Section 704 of the Statutory Trust Act Draft and in Section 1303 of the Limited Cooperative
15 Association Act Draft, as well as in Section 15.01(b) of the Revised Model Business Corporation
16 Act; and Sections 15.01(b) of the Model Non-Profit Corporation Act.

17
18 **SECTION 1-506. NONCOMPLYING NAME OF FOREIGN ENTITY.**

19 (a) A foreign filing entity or foreign limited liability partnership whose name does not
20 comply with Section 1-301 for an entity of its type may not register to do business in this state
21 until it adopts, for the purpose of doing business in this state, an alternate name that complies
22 with Section 1-301. A foreign filing entity or foreign limited liability partnership that registers
23 under an alternate name under this subsection need not comply with [this state’s fictitious or
24 assumed name statute]. After registering to do business in this state with an alternate name, a
25 foreign filing entity or foreign limited liability partnership may do business in this state under:

- 26 (1) the alternate name;

1 (2) its entity name, with the addition of its jurisdiction of formation clearly
2 identified; or
3 (3) an assumed or fictitious name the entity is authorized to use under [this state’s
4 fictitious or assumed name statute].

5 (b) If a foreign filing entity registered to do business in this state changes its name to one
6 that does not comply with Section 1-301, it may not do business in this state until it complies
7 with subsection (a) by amending its registration to adopt an alternate name that complies with
8 Section 1-301.

9 **Comment**

10
11 This section is a generalized version of Uniform Limited Liability Company Act Section
12 805, and of the parallel provisions of other entity statutes.

13
14 **SECTION 1-507. WITHDRAWAL OF REGISTRATION OF REGISTERED**
15 **FOREIGN ENTITY.**

16 (a) A foreign entity registered to do business in this state may withdraw its registration by
17 delivering a statement of withdrawal to the [Secretary of State] for filing. The application
18 statement of withdrawal must set forth:

19 (1) the name of the foreign entity and the name of the jurisdiction under whose
20 law it is formed;

21 (2) the type of entity including, if it is a limited partnership, whether it is a limited
22 liability limited partnership;

23 (3) that the entity is not doing business in this state and that it withdraws its
24 registration to do business in this state;

25 (4) that the entity revokes the authority of its registered agent to accept service on
26 its behalf; and

1 (5) a mailing address to which service of process may be made under subsection
2 (b).

3 (b) After the withdrawal of the registration of an entity, service of process in any
4 proceeding based on a cause of action arising during the time it was registered to do business in
5 this state may be made pursuant to Section 1-412.

6 **Comment**

7
8 This section is based on Revised Model Business Corporation Act section 15.20.

9
10 **SECTION 1-508. WITHDRAWAL DEEMED UPON CONVERSION TO**
11 **DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.**

12 A qualified foreign entity registered to do business in this state that converts to any type of
13 domestic filing entity or to a domestic registered limited liability partnership is deemed to have
14 withdrawn its registration on the effective date of the conversion.

15 **Comment**

16
17 This section is based on Revised Model Business Corporation Act section 15.21.

18
19 **SECTION 1-509. WITHDRAWAL UPON DISSOLUTION OR CONVERSION TO**
20 **NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

21 (a) A foreign entity registered to do business in this state that dissolves or converts to a
22 domestic or foreign nonfiling entity other than a limited liability partnership shall deliver a
23 statement of withdrawal to the [Secretary of State] for filing. The statement must set forth:

24 (1) the name of the foreign entity and the name of the jurisdiction under
25 whose law it was formed before the dissolution or conversion;

26 (2) the foreign entity's type before the dissolution or conversion;

1 (3) that the foreign entity surrenders its registration to do business in this state as a
2 qualified entity; and

3 (4) if the foreign entity has converted to a foreign nonfiling entity other than a
4 foreign limited liability partnership:

5 (A) the type of nonfiling entity to which it has converted and the
6 jurisdiction whose laws govern its internal affairs;

7 (B) that it revokes the authority of its registered agent to accept service on
8 its behalf; and

9 (C) a mailing address to which service of process may be made under
10 subsection (b).

11 (b) After the withdrawal under this section of a foreign filing entity that has converted to
12 a foreign nonfiling entity is effective, service of process in any proceeding based on a cause of
13 action arising during the time it was registered to do business in this state may be made pursuant
14 to Section 1-412.

15 (c) After the withdrawal under this section of a foreign filing entity that has converted to
16 a domestic nonfiling entity is effective, service of process must be made on the nonfiling entity
17 in accordance with the procedures for service of process on the form of nonfiling entity to which
18 the entity was converted.

19 **Comment**

20 This section is based on Revised Model Business Corporation Act section 15.22.

21 **SECTION 1-510. TRANSFER OF REGISTRATION.**

22 (a) A foreign filing entity or foreign limited liability partnership registered to do business
23 in this state that merges with or converts to a foreign entity required to register with the

1 [Secretary of State] to do business in this state shall file with the [Secretary of State] an
2 application for transfer of registration. The application must set forth:

3 (1) the name of the applicant entity;

4 (2) the type of entity it was before the merger or conversion;

5 (3) the name of the entity into which it has merged or to which it has been
6 converted, and, if the name does not comply with Section 1-301, an alternate name adopted
7 pursuant to Section 1-506(a);

8 (4) the type of entity into which it has merged or to which it has been converted
9 and the jurisdiction whose laws govern its internal affairs; and

10 (5) the following information regarding the entity into which it has merged or to
11 which it has been converted, if different than the information for the applicant entity:

12 (A) the street and mailing address of the principal office of the entity and,
13 if the law of that entity's jurisdiction or formation requires it to maintain an office in that
14 jurisdiction, the street and mailing address of that office; and

15 (B) the name and street and mailing address of its registered agent in this
16 state.

17 (b) The application for transfer of registration must be delivered to the [Secretary of
18 State] for filing and takes effect at the effective time provided in Section 1-203.

19 (c) When the application for transfer of registration takes effect, the registration of the
20 applicant entity to do business in this state is transferred without interruption to the entity into
21 which it has merged or to which it has been converted.

22 **Comment**

23 This section is patterned after RMBCA section 15.23.

1 **SECTION 1-511. TERMINATION OF REGISTRATION.**

2 (a) The registration of a foreign filing entity or foreign limited liability partnerships to do
3 business in this state may be terminated by the [Secretary of State] in the manner provided in
4 subsections (b) and (c) if the entity does not:

5 (1) pay, not later than [60 days] after the due date, any fee, tax, or penalty
6 required to be paid to the [Secretary of State] under this [article] or law other than this [act];

7 (2) deliver, not later than [60 days] after the due date, the [annual] [biennial]
8 report, if any, required of foreign entities of its type; or

9 (3) have an agent for service of process as required by Section 1-402.

10 (b) To terminate the registration of a foreign filing entity or foreign limited liability
11 partnership, the [Secretary of State] must file a notice of termination or note the termination in its
12 records and deliver a copy of the notice or the information in the notation to the entity's agent for
13 service of process in this state, or if the entity does not have an agent in this state, to the entity's
14 principal office as designated in Section 1-503(4). The notice must state or the information in the
15 notation must include:

16 (1) the effective date of the termination, which must be at least [60 days] after the
17 date the [Secretary of State] delivers the copy; and

18 (2) the grounds for termination under subsection (a).

19 (c) The authority of a foreign filing entity or foreign limited liability partnership to do
20 business in this state ceases on the effective date of the notice of termination unless before that
21 date the entity cures each ground for termination stated in the notice filed under subsection (b). If
22 the entity cures each ground, the [Secretary of State] shall file a record so stating.

23 **Comment**

24 This section is a generalized version of Uniform Limited Liability Company Act Section

1 806 and parallel provisions of other entity statutes.

2

3 **[SECTION 1-512. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]

4 may maintain an action to enjoin a foreign filing entity or foreign limited liability partnership

5 from doing business in this state in violation of this [act].]

6

Comment

7

8 This section is a generalized version of Uniform Limited Liability Company Act Section

9 809, and parallel provisions of other entity statutes.

10

11

[PART] 6

12

ADMINISTRATIVE DISSOLUTION

13

SECTION 1-601. GROUNDS. The [Secretary of State] may commence a proceeding

14 under Section 1-602 to dissolve a domestic filing entity administratively if the entity:

15 (1) does not pay any fee, tax, or penalty required to be paid to the [Secretary of State] not

16 later than [six months] after it is due;

17 (2) does not deliver [an annual] [a biennial] report to the [Secretary of State] not later

18 than [six months] after it is due; or

19 (3) is without a registered agent in this state for [60] days.

20

Comment

21

22 This section is modeled on Model Business Corporation Act section 14.20. Note that

23 limited liability partnerships are not filing entities and thus this Part does not apply to them.

24

25

SECTION 1-602. PROCEDURE AND EFFECT.

26 (a) If the [Secretary of State] determines that one or more grounds exist under Section 1-

27 601 for dissolving a domestic filing entity, the [Secretary of State] shall serve the entity under

28 Section 1-412 with notice in a record of the [Secretary of State's] determination.

1 (b) If a domestic filing entity, not later than [60] days after service of the notice is
2 perfected under Section 1-412, does not correct each ground for dissolution or demonstrate to the
3 reasonable satisfaction of the [Secretary of State] that each ground determined by the [Secretary
4 of State] does not exist, the [Secretary of State] shall dissolve the entity administratively by
5 signing a statement of dissolution that recites the ground or grounds for dissolution and its
6 effective date. The [Secretary of State] shall file the original of the statement and serve a copy on
7 the entity under Section 1-412.

8 (c) A domestic filing entity that is administratively dissolved continues its existence as an
9 entity but may not carry on any business except as necessary to wind up and liquidate its
10 business and affairs in the manner provided in its organic law or to apply for reinstatement under
11 Section 1-603.

12 (d) The administrative dissolution of a domestic filing entity does not terminate the
13 authority of its registered agent.

14 **Comment**

15 This section is modeled on Model Business Corporation Act section 14.21.

16 **SECTION 1-603. REINSTATEMENT.**

17 (a) A domestic filing entity that is administratively dissolved under Section 1-602 may
18 apply to the [Secretary of State] for reinstatement. The application must state:

19 (1) the name of the entity at the time of its administrative dissolution and, if
20 needed, a different name that satisfies Section 1-301;

21 (2) the address of the principal office of the entity and the name and address of the
22 registered agent;

23 (3) the effective date of the entity's administrative dissolution; and

1 (4) that the grounds for dissolution either did not exist or have been eliminated.

2 (b) To be reinstated, an entity must pay all fees, taxes, and penalties that were due to the
3 [Secretary of State] at the time of its administrative dissolution and all fees, taxes, and penalties
4 that would have been due to the [Secretary of State] while the entity was administratively
5 dissolved.

6 (c) If the [Secretary of State] determines that the application contains the information
7 required by subsection (a), that the information is correct, and that all payments required to be
8 made to the [Secretary of State] by subsection (b) have been made, the [Secretary of State] shall
9 cancel the statement of dissolution and prepare a statement of reinstatement that states the
10 [Secretary of State's] determination and the effective date of reinstatement, file the original of
11 the statement, and serve a copy on the entity under Section 1-412.

12 (d) When reinstatement under this section is effective, it relates back to and takes effect
13 as of the effective date of the administrative dissolution, and the domestic filing entity resumes
14 carrying on its business as if the administrative dissolution had never occurred.

15 **Comment**

16 This section is modeled on Model Business Corporation Act section 14.22.

17 **SECTION 1-604. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.**

18 (a) If the [Secretary of State] denies a domestic filing entity's application for
19
20 reinstatement following administrative dissolution, the [Secretary of State] shall serve the entity
21 under Section 1-412 with a notice in a record that explains the reason or reasons for denial.

22 (b) An entity may seek judicial review of denial of reinstatement in the [appropriate
23 court] not later than [30] days after service of the notice of denial.
24

25 **Comment**

1 This section is modeled on Model Business Corporation Act section 14.23.

2 [PART] 7

3 MISCELLANEOUS PROVISIONS

4 **SECTION 1-701. RESERVATION OF POWER TO AMEND OR REPEAL.** The
5 [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all
6 domestic and foreign entities subject to this [act] are governed by the amendment or repeal.

7 **SECTION 1-702. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by
8 particular provisions of this [act] the principles of law and equity supplement this [act].

9 **SECTION 1-703. UNIFORMITY OR CONSISTENCY OF APPLICATION AND**
10 **CONSTRUCTION.** In applying and construing the [articles] of this [act] based on uniform or
11 model acts, consideration must be given to the need to promote uniformity or consistency of the
12 law with respect to its subject matter among states that enact it.

13 **SECTION 1-704. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
14 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal
15 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
16 this [act] does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section
17 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that
18 Act, 15 U.S.C. Section 7003(d).

19 **SECTION 1-705. SAVINGS CLAUSE.** The repeal of a statute by this [act] does not
20 affect:

21 (1) the operation of the statute or any action taken under it before its repeal;

22 (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or
23 incurred under the statute before its repeal;

1 (3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because
2 of the violation, before its repeal; or

3 (4) any proceeding, reorganization, or dissolution commenced under the statute before its
4 repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with
5 the statute as if it had not been repealed.

6 **[ARTICLE] 2**

7 **ENTITY TRANSACTIONS**

8 **[ARTICLE] 3**

9 **BUSINESS CORPORATIONS**

10 **[ARTICLE] 4**

11 **NONPROFIT CORPORATIONS**

12 **[ARTICLE] 5**

13 **GENERAL PARTNERSHIPS**

14 **[ARTICLE] 6**

15 **LIMITED PARTNERSHIPS**

16 **[ARTICLE] 7**

17 **LIMITED LIABILITY COMPANIES**

18 **[ARTICLE] 8**

19 **LIMITED COOPERATIVE ASSOCIATIONS**

20 **[ARTICLE] 9**

21 **UNINCORPORATED NONPROFIT ASSOCIATIONS**

22 **[ARTICLE] 10**

23 **STATUTORY TRUST ENTITIES**