



BUSINESS LAW SECTION
PARTNERSHIPS AND LIMITED LIABILITY COMPANIES
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REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

LEGISLATIVE PROPOSAL (BLS-2011-06)

TO: Office of Governmental Affairs

FROM: Ron Wargo, Chair
Business Law Section (the “Section”) Partnerships and Limited Liability Companies
Committee (the “Committee”)

DATE: June 1, 2010

RE: Proposal to adopt Revised Uniform Limited Liability Company Act and repeal the
Beverly-Killea Limited Liability Company Act

SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee (the “Executive Committee”): July 16, 2010

Approval Vote: For: 15 Against: 0

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HISTORY, DIGEST AND PURPOSE

This Proposal seeks to adopt the National Conference of Commissioners on Uniform State Laws' ("NCCUSL") Revised Uniform Limited Liability Company Act ("RULLCA") with certain modifications under California law. Idaho, Iowa, Nebraska and Wyoming have already adopted RULLCA. The District of Columbia has introduced RULLCA. Next year it is anticipated that Alabama, Arkansas, Minnesota, Montana, New Jersey, South Carolina and the Virgin Islands will introduce RULLCA.

History

The Beverly-Killea Limited Liability Company Act became effective in 1994. Some of the code sections affected by this Proposal have been amended since their original codification. Our Committee was involved with certain technical corrections included in SB 141 which was chaptered in 1996 (Chap. 57).

Proposal and Reasons for the Proposal

The Uniform Limited Liability Company Act ("ULLCA") was conceived in 1992 and first adopted by NCCUSL in 1994. By that time California and nearly every state had adopted an LLC statute, and those statutes varied considerably in both form and substance.

ULLCA's drafting relied substantially on the then recently adopted Revised Uniform Partnership Act ("RUPA"), and this reliance was especially heavy with regard to member-managed LLCs. ULLCA's provisions for manager-managed LLCs comprised an amalgam fashioned from the 1985 Revised Uniform Limited Partnership Act ("RULPA") and the Model Business Corporation Act ("MBCA"). ULLCA's provisions were also significantly influenced by the then-applicable federal tax classification regulations, which classified an unincorporated organization as a corporation if the organization more nearly resembled a corporation than a partnership. Those same regulations also made the tax classification of single-member LLCs problematic.

Much has changed. All states including California have adopted LLC statutes, and many LLC statutes have been substantially amended several times. LLC filings are significant in every U.S. jurisdiction, and in many states new LLC filings approach or even outnumber new corporate filings on an annual basis. Manager-managed LLCs have become a significant factor in non-publicly-traded capital markets, and increasing numbers of states provide for mergers and conversions involving LLCs and other unincorporated entities.

In 1997, the tax classification context changed radically, when the IRS' "check-the-box" regulations became effective. Under these regulations, an "unincorporated" business entity is taxed either as a partnership or disregarded entity (depending upon the number of owners) unless it elects to be taxed as a corporation. Exceptions exist (e.g., entities whose interests are publicly-traded), but, in general, tax classification concerns no longer constrain the structure of LLCs and the content of LLC statutes. Single-member LLCs, once suspect because novel and of uncertain tax status, are now popular both for sole proprietorships and as corporate subsidiaries.

In 1995, NCCUSL amended RUPA to add “full-shield” LLP provisions, and today every state has some form of LLP legislation (either through a RUPA adoption or shield-related revisions to a RUPA-based statute). While some states like California still provide only a “partial shield” for LLPs, many states have adopted “full shield” LLP provisions.

ULLCA was revised in 1996 in anticipation of the “check the box” regulations and has been adopted in a number of states. In many non-ULLCA states, the LLC statute includes RUPA-like provisions. However, state LLC laws are far from uniform.

Twenty-two years have passed since the IRS issued its gate-opening Revenue Ruling 88-76, declaring that a Wyoming LLC would be taxed as a partnership despite the entity’s corporate-like liability shield. More than eight years have passed since the IRS opened the gate still further with the “check the box” regulations. Sixteen years have passed since the adoption of the Beverly-Killea Limited Liability Company Act. It is an opportune moment to identify the best elements of the myriad “first generation” LLC statutes and to infuse those elements into a new, “second generation” uniform act.

Noteworthy Provisions of the New Act

The Revised Uniform Limited Company Act is drafted to replace a state’s current LLC statute, whether or not that statute is based on ULLCA. The new Act’s noteworthy provisions concern:

- the operating agreement
- the ability to “pre-file” a certificate of organization without having a member at the time of the filing
- the power of a member or manager to bind the limited liability company
- default rules on management structure
- charging orders
- a remedy for oppressive conduct
- special litigation committees

The Operating Agreement: Like the partnership agreement in a general or limited partnership, an LLC’s operating agreement serves as the foundational contract among the entity’s owners. RUPA pioneered the notion of centralizing all statutory provisions pertaining to the foundational contract, and – like ULLCA and ULPA (2001) – the new Act continues that approach. However, because an operating agreement raises issues too numerous and complex to include easily in a single section, the new Act uses three related sections to address the operating agreement:

- Section 17701.10 – scope, function, and limitations;
- Section 17701.11 – effect on limited liability company and persons becoming members; pre-formation agreement; and
- Section 17701.12 – effect on third parties and relationship to records effective on behalf of limited liability company.

The new Act also contains a number of substantive innovations concerning the operating agreement, including:

- better delineating the extent to which the operating agreement can define, alter, or even eliminate aspects of fiduciary duty;
- expressly authorizing the operating agreement to relieve members and managers from liability for money damages arising from breach of duty, subject to specific limitations; and
- stating specific rules for applying the statutory phrase “manifestly unreasonable” and thereby providing clear guidance for courts considering whether to invalidate operating agreement provisions that address fiduciary duty and other sensitive matters.

The Ability to “Pre-File” a Certificate of Organization: The new Act authorizes the creation of a “shelf LLC” – i.e., an LLC formed without having at least one member upon formation. In short, the Act: (i) permits an organizer to file a certificate of organization without a person “waiting in the wings” to become a member upon formation; but (ii) provides that the LLC is not formed until and unless at least one person becomes a member and the organizer makes a second filing stating that the LLC has at least one member.

The Power of a Member or Manager to Bind the Limited Liability Company: In 1914, the original Uniform Partnership Act codified a particular type of apparent authority by position, providing that “[t]he act of every partner ... for apparently carrying on in the usual way the business of the partnership binds the partnership” This concept of “statutory apparent authority” applies by linkage in the 1916 Uniform Limited Partnership Act and the 1976/85 Revised Uniform Limited Partnership Act and appears in RUPA, ULLCA, ULPA (2001), and almost every LLC statute in the United States.

The concept makes good sense for general and limited partnerships. A third party dealing with either type of partnership can know by the formal name of the entity and by a person’s status as general or limited partner whether the person has the power to bind the entity.

The concept does not make sense for modern LLC law, because: (i) an LLC’s status as member-managed or manager-managed is not apparent from the LLC’s name (creating traps for unwary third parties); and (ii) although most LLC statutes provide templates for member-management and manager-management, variability of management structure is a key strength of the LLC as a form of business organization.

The new Act recognizes that “statutory apparent authority” is an attribute of partnership formality that does not belong in an LLC statute. Section 17703.01(a) provides that “a member is not an agent of the limited liability company solely by reason of being a member.” Other law – most especially the law of agency – will handle power-to-bind questions.

Although conceptually innovative, this approach will not significantly alter the commercial reality that exists between limited liability companies and third parties, because:

1. The vast majority of interactions between limited liability companies and “third parties” are quotidian and transpire without agency law issues being recognized by the parties, let alone disputed.
2. When a limited liability company enters into a major transaction with a sophisticated third party, the third party never relies on statutory apparent authority to determine that the person purporting to act for the limited liability company has the authority to do so.
3. Most LLCs use employees to carry out most of the LLC’s dealings with third parties. In that context, the agency power of members and managers is usually irrelevant. (If an employee’s authority is contested and the employee “reports to” a member or manager, the member or manager’s authority will be relevant to determining the employee’s authority. However, in that situation, agency law principles will suffice to delineate the manager or member’s supervisory authority.)
4. Very few current LLC statutes contain rules for attributing to an LLC the wrongful acts of the LLC’s members or managers. Compare RUPA § 305. In this realm, this Act merely acknowledges pre-existing reality.
5. Existing agency law principles are well-suited to the tasks resulting from the “de-codification” of apparent authority by position.

The moment is opportune for this reform. The newly-issued Restatement (Third) of Agency gives substantial attention to the power of an enterprise’s participants to bind the enterprise. In addition, the new Act has “souped up” RUPA’s statement of authority to permit an LLC to publicly file a statement of authority for a position (not merely a particular person). Statements of authority will enable LLCs to provide reliable documentation of authority to enter into transactions without having to disclose to third parties the entirety of the operating agreement. (The new Act also has eliminated prolix provisions that sought to restate agency law rules on notice and knowledge.)

Default Rules on Management Structure: The new Act retains the manager-managed and member-managed constructs as options for members to use in configuring their inter se relationship, and the operating agreement is the vehicle by which the members make and state their choice of management structure. Given the elimination of statutory apparent authority, it is unnecessary and could be confusing to require the certificate of organization to state the members’ determination on this point.

Special Litigation Committees: The new Act contains modern provisions addressing special litigation committees and subjecting their composition and conduct to judicial review. The Drafting Committee choose to continue existing California corporate law with respect to direct and derivative actions.

Fiduciary Duties. NCCUSL elected to change the default rule for fiduciary duties to an ordinary negligence standard, measured by the business judgment rule. The Drafting Committee elected to continue existing California law which defaults to a gross negligence standard. Consistent with existing law, the operating agreement may raise or lower fiduciary duties as agreed by the members.

Series Provisions. NCCUSL did not include series provisions in RULLCA. In 2006, NCCUSL believed that the uncertain status of series for tax purposes and bankruptcy made series LLCs too speculative. However, the IRS is intending to issue guidance on series LLCs this year and the Franchise Tax Board has already issued guidance on series LLCs. Last year NCCUSL changed its mind and adopted the Uniform Statutory Trust Act which included series provisions. Currently seven states, Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas and Utah, recognize series LLCs. The Drafting Committee elected to include series provisions based on the ABA Revised Prototype LLC Act.

APPLICATION

The proposed legislation would become effective in 2013.

PENDING LITIGATION

We are not aware of any specific pending litigation that would be affected by this Proposal.

LIKELY SUPPORT AND OPPOSITION

We anticipate support from the California Chamber of Commerce and the California Manufacturers Association. We are unaware of any specific segments that might oppose this Proposal but it (or portions of it) possibly could be opposed by the Consumer Attorneys of California (“CAOC”), at least as initially proposed. In the past, CAOC has opposed LLC legislation, but our Committee has worked with CAOC and other interested parties, and resolved the differences in connection with that LLC legislation. With this Proposal, the Committee plans to work with CAOC and other interested parties in an effort to resolve any differences that may exist.

FISCAL IMPACT

None anticipated.

GERMANENESS

The matters addressed in this Proposal require the special knowledge, training, experience or technical expertise of the Section and of members of the Committee. The position advanced would promote clarity, consistency, and comprehensiveness in the law.

EXPLANATION OF PROPOSAL

The proposed changes would repeal the existing Beverley-Killea Limited Liability Company Act, Corporations Code Section 17000 – 17656 and adopt the Revised Uniform Limited Liability Company Act. Specific changes and comparison to existing law is set forth below.

Section 17701.02(a): Section 17701.02(a) would change certain key definitions. “Articles of organization” would be replaced with “certificate of organization.”

Section 17701.02(j): Section 17701.02(j) includes the definition of a “low profit limited liability company”, or “L3C,” which is an LLC designed to accomplish certain charitable purposes.

Section 17701.02(p) and (q): These sections would draw distinctions between “manager-managed” limited liability companies and “member-managed” limited liability companies, imposing fiduciary duties only on those in control of the limited liability company.

Section 17701.02(r): This section recognizes an operating agreement can be in writing, oral, in a record, implied or a combination thereof. This is broader than current law that provides that an operating agreement can be in writing or oral.

Section 17701.02(x): Existing law would change by recognizing the existence of series LLCs, which are LLCs who identify certain assets and liabilities which are separate from the assets and liabilities of the other series of the LLC.

Section 17701.03: Section 17701.03 defines knowledge and notice which are not part of the current LLC Act. Generally, a person has both actual knowledge and constructive knowledge of certain facts which are a part of the public record.

Section 17701.04: Section 17701.04 generally provides that a limited liability company has perpetual duration and is an entity distinct from its members with perpetual existence. This section contains provisions of existing Section 17002 by providing that the LLC may be engaged in any lawful business, whether for profit or not.

Section 17701.05: Section 17701.05 provides the powers granted to an LLC or a series of an LLC, including the ability to sue or be sued, contract, hold assets, and grant liens and security interests.

Section 17701.06: Section 17701.06 provides that California law would govern the internal affairs of the LLC, liability for debts of the LLC, authority of members and agents and the availability of LLC assets to satisfy creditors’ claims.

Section 17701.07: Section 17701.07 includes rules of construction, including the directive that courts give maximum effect to the principals of contract and to the enforceability of operating agreements.

Section 17701.08: Section 17701.08 replaces existing Section 17052 concerning the LLC's name. Similar to the requirement of the California Revised Uniform Limited Partnership Act, the name of an LLC must be distinguishable in the records of the Secretary of State from the name of any other LLC.

Section 17701.09: Section 17701.09 allows an LLC to reserve a name for up to two consecutive 90-day periods, which is longer than the current two consecutive 60-day periods set forth in Corporations Code Section 17053.

Section 17701.10: Section 17701.10 replaces the existing Section 17005 by providing which portions of the Act may be overridden by an operating agreement. It generally continues the existing restrictions on changing fiduciary duties under California law. Further, the Act would include the current law sanctions on members who fail to make capital contributions.

Section 17701.11: Section 17701.11 would allow an LLC to enforce both its operating agreement and a pre-formation agreement that may have been executed prior to the LLC filing its certificate of organization.

Section 17701.12: Section 17701.12 allows the operating agreement to require approval of the parties that are not members, such as lenders, who would otherwise not be parties to the operating agreement.

Section 17701.13: Section 17701.13 maintains the existing requirements of Section 17057 requiring the designation of an office within the state and the appointment of an agent for service of process.

Sections 17701.14, 17701.15 and 17701.16: Sections 17701.14, 17701.15 and 17701.16 deal with changing the designated officer, agent, resignation of the agent and how service of process is accomplished by an LLC.

Section 17701.17: Section 17701.17 is new by allowing the LLC to be subject to the non-exclusive jurisdiction of courts in another state or the exclusive jurisdiction of California courts. In addition, it encourages arbitration by providing that arbitration clauses are enforceable in California.

Section 17702.01: Section 17702.01 amends the existing Section 17050 by allowing a certificate of organization to be filed up to 90 days before the identification of the members and managers of the LLC. A certificate of organization lapses and is void unless within 90 days after the date of filing, the organizer signs and delivers to the Secretary of State a notice that the LLC has at least one member. Thus, the Act allows for the creation of shelf LLCs similar to corporations.

Section 17702.02: Section 17702.02 replaces existing Section 17054 concerning the amendment or restatement of a certificate of organization.

Section 17702.03: Section 17702.03 generally provides that any person may be authorized by the LLC to deliver documents.

Section 17702.04: Section 17702.04 provides that certain documents may be signed and filed pursuant to a court order.

Section 17702.05: Section 17702.05 provides that generally documents delivered to the Secretary of State are effective upon filing, unless the LLC requests a delayed filing date.

Section 17702.06: Section 17702.06 provides rules on correcting a filed record.

Section 17702.07: Section 17702.07 creates liability for the managers and members inaccurate information in a filed record.

Section 17702.08: Section 17702.08 is new by providing that the Secretary of State may provide a certificate of existence or good standing. Further, the Secretary of State may also provide a certificate of authorization for a foreign limited liability company.

Section 17702.09: Section 17702.09 replaces Section 17060 by providing an annual report as opposed to statement of information. As under existing law, the annual report is filed bi-annually.

Section 17703.01: Section 17703.01 provides that a member is not an agent of an LLC merely by being a member.

Section 17703.02: Section 17703.02 provides that an LLC or a series may deliver a statement of authority identifying the individual who have the ability to execute documents and bind the LLC. This changes existing law, which created authority in the manager for a manager-managed LLC or the members in a member-managed LLC. The statement of authority lets the LLC identify the titles of the persons that have authority to bind the LLC.

Section 17703.03: Under Section 17703.03, an individual named in a statement of authority may negate their authority by filing a statement of denial.

Section 17703.04: Section 17703.04 continues the provisions of existing Section 17101(c) by providing that members or managers are generally not liable for the debts of the LLC. The proposal does not change the current application of piercing the LLC veil under existing law.

Section 17704.01: Section 17704.01 replaces existing Section 17100 concerning the ability to become a member. Consistent with existing law, a person can become a member as provided in the operating agreement, as a result of a merger or conversion, with the consent of all the members or if designated by an appropriate person.

Section 17704.02: Section 17704.02 is consistent with existing law and provides that the form of contribution can be money, services, promissory notes or agreements to contribute any of these items.

Section 17704.03: Section 17704.03 continues the provisions of existing Section 17101 creating liability for a member who is obligated to contribute property or capital consistent with existing Section 17201.

Section 17704.04: Section 17704.04 provides that in the absence of an agreement, profits and losses are divided equally and consistent with existing Section 17252, and provides that a withdrawing member generally does not have the ability to withdraw property or capital from the LLC.

Section 17704.05: Section 17704.05 imposes limitations on distributions similar to existing Section 17254. Generally, an LLC may not make a distribution if it is unable to pay its debts as they come due in the ordinary course of its trade or business, or its total assets are less than the amount of its total liabilities.

Section 17704.06: Section 17704.06 continues the liability to a member or manager who votes for a distribution in violation of either one of Section 17704.05's requirements.

Section 17704.07: Section 17704.07 continues existing law under Code Section 17150 by providing that in a manager-managed LLC, management is vested in the managers and in a member-managed LLC, management is vested in the members. Unless otherwise provided in the operating agreement, certain fundamental decisions, such a sale of all of the assets, or amending the operating agreement, requires the consent of a majority of the members.

Section 17704.08: Section 17704.08 continues the existing rules of Code Section 17155 by providing that an LLC or a series may indemnify any manager or member but does not permit indemnification certain activities, such as breach of fiduciary duties.

Section 17704.09: Section 17704.09 continues the existing fiduciary duties set forth in Section 17153, but rather than merely referring to them by cross reference to Corporations Code Section 16404 restates the same obligations in the statute. Generally, California law sets forth a duty of care, duty of loyalty and obligation of good faith and fair dealing.

Section 17704.10: Section 17704.10 continues the rights of members to obtain information and inspect records set forth in existing Section 17106.

Section 17705.01: Section 17705.01 continues existing Section 17300 by providing that the interest in the LLC is personal property.

Section 17705.02: Section 17705.02 continues the provisions of existing Section 17301 concerning the transferability of membership interests.

Section 17705.03: Section 17705.03 continues the existing charging order provisions of existing Section 17302.

Section 17705.04: Section 17705.04 empowers the personal representative of a deceased member to exercise the rights of the former member.

Section 17706.01: Section 17706.01 is new and provides when a member has been disassociated from the LLC and the effects of dissociation on the member. This is similar to the requirements set forth in the California Revised Uniform Limited Partnership Act.

Section 17706.02: Section 17706.02 lists the events that cause dissolution.

Section 17707.01: Section 17707.01 continues the existing rules of Section 17350 concerning dissolution of an LLC.

Section 17707.02: Section 17707.02 continues the rules of existing Section 17350.5 concerning cancelling the certificate of organization.

Section 17707.03: Section 17707.03 provides for judicial dissolution and avoidance of dissolution consistent with Corporations Code Section 17351.

Section 17707.04: Section 17707.04 continues the existing rules of Section 17352 and does not change the dissolution provisions under existing law. However, Section 17707.10 provides for revival of an LLC if it makes all prior filings and pays back taxes, similar to the revival of California limited partnerships.

Section 17708: Section 17708 continues the existing rules found in existing Section 17450 concerning the registration of foreign limited liability companies.

Section 17709.01: Section 17709.01 clarifies the distinction between direct actions and derivative actions.

Section 17709.03: Section 17709.03 provides for the creation of special litigation committee to investigate derivative actions filed by members.

Section 17710.01 et al: Article 10, beginning with Section 17710.01 continues existing law on mergers and conversion, including dissenters' rights.

Article 12, which deals with series LLCs is new. Generally, an operating agreement may provide for the establishment of one or more series and the liabilities of that series are limited to the assets of the series. If LLC has series, Section 17712.06 requires it include a statement to that effect in its certificate of organization, operating agreement and imposes certain recordkeeping requirements on the LLC.

Article 13 generally provides that the new Act takes effect on January 1, 2013. New LLCs would be governed by the new act and on January 1, 2015, the existing Beverley-Killea Limited Liability Company Act would be repealed requiring that all LLCs be covered by the new act.

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

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REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

ARTICLE 1

GENERAL PROVISIONS

SECTION 17701.01 SHORT TITLE. This title may be cited as the California Revised Uniform Limited Liability Company Act.

SECTION 17701.02 DEFINITIONS. In this title:

(a) “Certificate of organization” means the certificate required by Section 17702.01. The term includes the certificate as amended or restated.

(b) “Contribution” means any benefit provided by a person to a limited liability company:

(1) in order to become a member upon formation of the limited liability company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the limited liability company;

(2) in order to become a member after formation of the limited liability company and in accordance with an agreement between the person and the limited liability company; or

(3) in the person’s capacity as a member and in accordance with the operating agreement or an agreement between the member and the limited liability company.

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

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

(2) a comparable order under federal, state, or foreign law governing bankruptcy or insolvency, an assignment for the benefit of creditors; or an order appointing a trustee, receiver, or liquidator of the person or of all or substantially all of the person’s property.

(d) “Designated office” means:

(1) the office that a limited liability company is required to designate and maintain under Section 17701.13; or

(2) the principal office of a foreign limited liability company.

(e) “Distribution”, except as otherwise provided in Section 17704.05(g), means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(f) “Domestic” means organized under the laws of this state when used in relation to any limited liability company, other business entity or person (other than a natural person).

(g) “Effective”, with respect to a record required or permitted to be delivered to the Secretary of State for filing under this title, means effective under Section 17702.05(c).

(h) “Foreign limited liability company” means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(i) “Limited liability company”, except in the phrase “foreign limited liability company”, means an entity formed under this title.

(j) “Low-profit limited liability company” means a limited liability company that has set forth in its certificate of organization a business purpose that satisfies, and which limited liability company is at all times operated to satisfy each of the following requirements:

(1) The entity (i) significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Internal Revenue Code, and (ii) would not have been formed but for the entity’s relationship to the accomplishment of charitable or educational purposes.

(2) No significant purpose of the entity is the production of income or the appreciation of property; provided however, that the fact that an entity produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property; and

(3) No purpose of the entity is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Internal Revenue Code.

(k) “Majority of the managers” unless otherwise provided in the operating agreement, means more than 50 percent of the interests of managers in current profits of the limited liability company.

(l) “Majority of the members” unless otherwise provided in the operating agreement, means more than 50 percent of the membership interests of members in current profits of the limited liability company.

(m) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Section 17704.07(c).

(n) “Manager-managed limited liability company” means a limited liability company that qualifies under Section 17704.07(a).

(o) “Member” means a person that has become a member of a limited liability company under Section 17704.01 and has not dissociated under Section 17706.02.

(p) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(q) “Membership Interest” means a member’s rights in the limited liability company, including the member’s transferrable interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(r) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Section 17701.10(a). An operating agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the operating agreement. The term includes the agreement as amended or restated.

(s) “Organization” means (whether domestic or foreign): a partnership (whether general or limited), limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, statutory business trust having a governing statute.

(t) “Organizer” means a person that acts under Section 17702.01 to form a limited liability company.

(u) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(v) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(w) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(x) “Series” means one or more designated series of assets of a limited liability company established in accordance with Section 17712.01.

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

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

(aa) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(bb) “Transferable interest” means the right, as originally associated with a person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(cc) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

SECTION 17701.03 KNOWLEDGE; NOTICE.

- (a) A person knows a fact when the person:
- (1) has actual knowledge of it; or
 - (2) is deemed to know it under subsection (d)(1) or law other than this title.
- (b) A person has notice of a fact when the person:
- (1) has reason to know the fact from all of the facts known to the person at the time in question; or
 - (2) is deemed to have notice of the fact under subsection (d)(2);
- (c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.
- (d) A person that is not a member is deemed:
- (1) to know of a limitation on authority to transfer real property as provided in Section 17703.02(g); and
 - (2) to have notice of a limited liability company’s:
 - (A) dissolution, 90 days after a certificate of dissolution under Section 17707.08(a) has been filed;

(B) termination, 90 days after a certificate of cancellation under either Section 17707.02 or Section 17707.08(b) has been filed;

(C) merger or conversion, 90 days after certificate of merger or conversion under Article 10 becomes effective; and

(D) revival, 90 days after a certificate of revival under Section 17707.10 has been filed.

(e) A member's knowledge, notice or receipt of a notification of a fact relating to the limited liability company is not knowledge, notice or receipt of a notification of a fact by the limited liability company solely by reason of the member's capacity as a member.

SECTION 17701.04 NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business. A domestic or foreign limited liability company may render services that may be lawfully rendered only pursuant to a license, certificate, or registration authorized by the Business and Professions Code, the Chiropractic Act, the Osteopathic Act or the Yacht and Shipbrokers Act, if the applicable provisions of the Business and Professions Code, the Chiropractic Act, the Osteopathic Act or the Yacht and Shipbrokers Act authorize a limited liability company to hold that license, certificate or registration.

(c) A limited liability company has perpetual duration.

(d) If the limited liability company is a low-profit limited liability company described in Section 17701.02(j), that the limited liability company is a low-profit limited liability company.

(e) Notwithstanding subdivision (a) and as specifically provided in this subdivision, a limited liability company may operate as a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the limited liability company is a subsidiary of a health care service plan licensed pursuant to those provisions and the limited liability company is established to serve an existing line of business of the parent health care service plan. Notwithstanding any other provision of law, the tort or

contract liability of a limited liability company created to operate as a health care service plan under this subdivision and its members is not limited or restricted in any manner because of the limited liability company status of the health care service plan.

SECTION 17701.05 POWERS.

(a) A limited liability company established under this title has the power and capacity in the limited liability company's own name to:

- (1) sue and be sued;
- (2) contract;
- (3) hold and convey title to assets of the limited liability company, including real property, personal property and intangible property; and
- (4) grant lien and security interests in the assets of the limited liability company.

(b) A series established under this title has the power and capacity in the series' own name to:

- (1) sue and be sued;
- (2) contract;
- (3) hold and convey title to assets of the series, including real property, personal property, and intangible property; and
- (4) grant liens and security interests in assets of the series.

SECTION 17701.06 GOVERNING LAW. The law of this state governs:

- (a) the internal affairs of a limited liability company;
- (b) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company;
- (c) the authority of the members and agents of a limited liability company; and
- (d) the availability of the assets of a series or the obligations of another series or the limited liability company.

SECTION 17701.07 RULES OF CONSTRUCTION.

(a) It is the policy of this title and this state to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.

(b) Unless displaced by particular provisions of this title, the principles of law and equity supplement this title.

(c) Rules that statutes in derogation of the common law are to be strictly construed shall have no application to this title.

(d) Unless the context otherwise requires, as used in this title, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained in this title are for purposes of convenience only and shall not control or affect the construction of this title.

SECTION 17701.08 NAME.

(a) The name of a limited liability company shall contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”, provided, however, that if the limited liability company is a low-profit limited liability company described in Section 17701.02(j), the last words of its name shall contain either the words “low-profit limited liability company” or the abbreviation “L3C” or “L.3.C.”.

(b) Unless authorized by subsection (c), the name of a limited liability company shall be distinguishable in the records of the Secretary of State from:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state;

(2) the limited liability company name stated in each certificate of organization that contains the statement as provided in Section 17702.01(b)(3) and that has not lapsed; and

(3) each name reserved under Section 17701.09.

(c) A limited liability company may apply to the Secretary of State for authorization to use a name that does not comply with subsection (b). The Secretary of State shall authorize use of the name applied for if, as to each noncomplying name:

(1) the present user, registrant, or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the noncomplying name to a name that complies with subsection (b) and is distinguishable in the records of the Secretary of State from the name applied for; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court establishing the applicant’s right to use in this state the name applied for.

(d) Subject to Section 17708.04, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

SECTION 17701.09 RESERVATION OF NAME.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the Secretary of State for filing. The application shall state the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for up to 2 consecutive 90-day periods.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Secretary of State for filing a signed notice of the transfer which states the name and address of the transferee.

SECTION 17701.10 OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

(a) Except as otherwise provided in subsections (b) and (c), the operating agreement governs:

- (1) relations among the members as members and between the members and the limited liability company;
- (2) the rights and duties under this title of a person in the capacity of manager;
- (3) the activities of the limited liability company and the conduct of those activities; and
- (4) the means and conditions for amending the operating agreement.

(b) To the extent the operating agreement does not otherwise provide for a matter described in subsection (a), this title governs the matter.

(c) An operating agreement may not:

- (1) vary a limited liability company's capacity, or a series thereof, under Section 17701.05 to sue and be sued in its own name;
- (2) vary the law applicable under Section 17701.06;
- (3) vary the power of the court under Section 17702.04;

- (4) subject to subsections (d) through (g), eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;
 - (5) subject to subsections (d) through (g), eliminate the contractual obligation of good faith and fair dealing under Section 17704.09(d);
 - (6) unreasonably restrict the duties and rights stated in Section 17704.10;
 - (7) vary the power of a court to decree dissolution in the circumstances specified in Section 17707.03(a) or the provisions for avoidance of dissolution in Section 17707.03(b);
 - (8) except as otherwise expressly provided therein, vary the requirements of Section 17707.04 through 17707.08;
 - (9) unreasonably restrict the right of a member to maintain an action under Article 9;
 - (10) restrict the right to approve a merger, conversion, or domestication under Section 17710.14 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization;
 - (11) except as otherwise provided in Section 17701.12(b), restrict the rights under this title of a person other than a member or manager;
 - (12) vary any provision under Article 10; or
 - (13) vary any provision under Article 12.
- (d) Eliminate the duty of loyalty under Section 17704.09(b), but the operating agreement may:
- (1) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
 - (2) specify the number or percentage of members which may authorize or ratify, after full disclosure to all members of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (e) Unreasonably reduce the duty of care under subdivision (c) of Section 17704.09.
 - (f) Eliminate the obligation of good faith and fair dealing under subdivision (d) of Section 17704.09, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

(g) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this title and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(h) The operating agreement may alter or eliminate the indemnification for a member or manager provided by Section 17704.08(a) and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

- (1) breach of the duty of loyalty;
- (2) a financial benefit received by the member or manager to which the member or manager is not entitled;
- (3) a breach of a duty under Section 17704.06;
- (4) intentional infliction of harm on the limited liability company or a member; or
- (5) an intentional violation of criminal law.

(i) The court shall decide any claim under subsection (d) that a term of an operating agreement is manifestly unreasonable. The court:

- (1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and
- (2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

- (A) the objective of the term is unreasonable; or
- (B) the term is an unreasonable means to achieve the provision's objective.

(j) An operating agreement may provide that:

- (1) A member or transferee who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and
- (2) At the time or upon the happening of events specified in the operating agreement, a member or transferee may be subject to specified penalties or specified

consequences. The penalty or consequence may include and take the form of reducing or eliminating the defaulting member's or transferee's proportionate interest in a limited liability company, subordinating the member's or transferee's membership interest to that of nondefaulting members or transferees, forcing a sale of that membership interest, forfeiting the defaulting member's or transferee's membership interest, the lending by other members or transferees of the amount necessary to meet the defaulting member's or transferee's commitment, a fixing of the value of the defaulting member's or transferee's membership interest by appraisal or by formula and redemption or sale of the membership interest at that value, or other penalty or consequence.

SECTION 17701.11 OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING MEMBERS; PREFORMATION AGREEMENT.

(a) A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.

(b) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the operating agreement.

SECTION 17701.12 OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

(a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under Section 17705.03(b)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under this title contains a provision that would be ineffective under Section 17701.10(c) if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c), if a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under this title conflicts with a provision of the operating agreement:

- (1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and
- (2) the record prevails as to other persons to the extent they reasonably rely on the record.

SECTION 17701.13 OFFICE AND AGENT FOR SERVICE OF PROCESS.

(a) A limited liability company shall designate and continuously maintain in this state:

- (1) an office, which need not be a place of its activity in this state; and
- (2) an agent for service of process.

(b) A foreign limited liability company that has a certificate of authority under Section 17708.02 shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited liability company or foreign limited liability company shall be an individual who is a resident of this state or other person with authority to transact business in this state.

SECTION 17701.14 CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS.

(a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary of State for filing a statement of change containing:

- (1) the name of the limited liability company;
- (2) the street and mailing addresses of its current designated office;
- (3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
- (4) the name and street and mailing addresses of its current agent for service of process; and
- (5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to Section 17702.05(c), a statement of change is effective when filed by the Secretary of State.

SECTION 17701.15 RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

(a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent shall deliver to the Secretary of State for filing a statement of resignation containing the limited liability company name and stating that the agent is resigning.

(b) The Secretary of State shall file a statement of resignation delivered under subsection (a) and mail or otherwise provide or deliver a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the limited liability company if the mailing addresses of the principal office appears in the records of the Secretary of State and is different from the mailing address of the designated office.

(c) An agency for service of process terminates on the earlier of:

- (1) the 31st day after the Secretary of State files the statement of resignation;
- (2) when a record designating a new agent for service of process is delivered to the Secretary of State for filing on behalf of the limited liability company and becomes effective.

SECTION 17701.16 SERVICE OF PROCESS.

(a) An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the limited liability company for service of any process, notice, or demand required or permitted by law to be served on the limited liability company.

(b) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's street address, the Secretary of State is an agent of the limited liability company upon whom process, notice, or demand may be served.

(c) Service of any process, notice, or demand on the Secretary of State as agent for a limited liability company or foreign limited liability company may be made by delivering to the Secretary of State duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the Secretary of State, the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the limited liability company at its designated office.

(d) Service is effected under subsection (c) at the earliest of:

(1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the limited liability company; or

(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.

(e) The Secretary of State shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(f) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

SECTION 17701.17 JURISDICTION; ARBITRATION; SERVICE OF PROCESS; CONSENT.

(a) A member may, in a written operating agreement or other writing, consent to be subject to the nonexclusive jurisdiction of the courts of a specified jurisdiction, or the exclusive jurisdiction of the courts of this state.

(b) If a member desires to use the arbitration process, that member may, in a written operating agreement or other writing, consent to be nonexclusively subject to arbitration in a specified state, or to be exclusively subject to arbitration in this state.

(c) Along with this consent to the jurisdiction of courts or arbitration, a member may consent to be served with legal process in the manner prescribed in the operating agreement or other writing.

ARTICLE 2
FORMATION; CERTIFICATE OF ORGANIZATION
AND OTHER FILINGS

**SECTION 17702.01 FORMATION OF LIMITED LIABILITY COMPANY;
CERTIFICATE OF ORGANIZATION.**

(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Secretary of State for filing a certificate of organization.

(b) A certificate of organization shall state:

(1) the name of the limited liability company, which shall comply with Section 17701.08;

(2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses of the initial agent for service of process of the limited liability company;

(3) if the limited liability company will have no members when the Secretary of State files the certificate, a statement to that effect; and

(4) if the limited liability company will have one or more designated series of assets subject to limitations on liabilities, a statement to that effect.

(c) Subject to Section 17701.12(c), a certificate of organization may also contain statements as to matters other than those required by subsection (b). However, a statement in a certificate of organization is not effective as a statement of authority.

(d) Unless the filed certificate of organization contains the statement as provided in subsection (b)(3), the following rules apply:

(1) A limited liability company is formed when the Secretary of State has filed the certificate of organization and the limited liability company has at least one member, unless the certificate states a delayed effective date pursuant to Section 17702.05(c).

(2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Secretary of State for filing and the Secretary of State files the certificate.

(3) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the Secretary of State is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(e) If a filed certificate of organization contains a statement as provided in subsection (b)(3), the following rules apply:

(1) The certificate lapses and is void unless, within 90 days from the date the Secretary of State files the certificate, an organizer signs and delivers to the Secretary of State for filing a notice stating:

- (A) that the limited liability company has at least one member; and
- (B) the date on which a person or persons became the limited liability company's initial member or members.

(2) If an organizer complies with paragraph (1), a limited liability company is deemed formed as of the date of initial membership stated in the notice delivered pursuant to paragraph (1).

(3) Except in a proceeding by this state to dissolve a limited liability company, the filing of the notice described in paragraph (1) by the Secretary of State is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

SECTION 17702.02 AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.

(a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company shall deliver to the Secretary of State for filing an amendment stating:

- (1) the name of the limited liability company;
- (2) the date of filing of its certificate of organization; and
- (3) the changes the amendment makes to the certificate as most recently amended or restated.

(c) To restate its certificate of organization, a limited liability company shall deliver to the Secretary of State for filing a restatement, designated as such in its heading, stating:

(1) in the heading or an introductory paragraph, the limited liability company's present name and the date of the filing of the limited liability company's initial certificate of organization;

(2) if the limited liability company's name has been changed at any time since the limited liability company's formation, each of the limited liability company's former names; and

(3) the changes the restatement makes to the certificate as most recently amended or restated.

(d) Subject to Sections 17701.12(c) and 17702.05(c), an amendment to or restatement of a certificate of organization is effective when filed by the Secretary of State.

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the Secretary of State for filing a statement of change under Section 17701.14 or a statement of correction under Section 17702.06.

(f) If the limited liability company is a low-profit limited liability company described in Section 17701.02(j) that has ceased to meet any of the requirements of Section 17701.02(j), the limited liability company shall file a certificate of amendment with the Secretary of State within thirty (30) days after ceasing to meet those requirements and amend its name to conform with the requirements in Section 17701.08 governing limited liability company names.

SECTION 17702.03 SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO SECRETARY OF STATE.

(a) A record delivered to the Secretary of State for filing pursuant to this title shall be signed as follows:

(1) Except as otherwise provided in paragraphs (2) through (4), a record signed on behalf of a limited liability company shall be signed by a person authorized by the limited liability company.

(2) A limited liability company's initial certificate of organization shall be signed by at least one person acting as an organizer.

(3) A notice under Section 17702.01(e)(1) shall be signed by an organizer.

(4) A record filed on behalf of a dissolved limited liability company that has no members shall be signed by the person winding up the limited liability company's activities or a person appointed under Section 17707.04 to wind up those activities.

(5) A statement of cancellation under Section 17702.01(d)(2) shall be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(6) A statement of denial by a person under Section 17703.03 shall be signed by that person.

(7) Any other record shall be signed by the person on whose behalf the record is delivered to the Secretary of State.

(b) Any record filed under this title may be signed by an agent.

(c) A limited liability company may record in the office of the county recorder of any county in this state, and county recorders, on request, shall record a certified copy of the limited liability company certificate of organization and any exhibits or attachments, or any amendment or correction thereto, that has been filed in the office of the Secretary of State. A foreign limited liability company may record in the office of the county recorder of any county in the state a certified copy of the limited liability company certificate of authority, or any amendment thereto, that has been filed in the office of the Secretary of State. The recording shall create a conclusive presumption in favor of any bona fide purchaser or encumbrancer for value of the limited liability company real property located in the county in which the certified copy has been recorded, of the statements contained therein.

(d) If the Secretary of State determines that an instrument submitted for filing or otherwise submitted does not conform to the law and returns it to the person submitting it, the instrument may be resubmitted accompanied by a written opinion of a member of the State Bar of California submitting the instrument or representing the person submitting it, to the effect that the specific provisions of the instrument objected to by the Secretary of State does conform to law and stating the points and authorities upon which the opinion is based. The Secretary of State shall rely, with respect to any disputed point of law, other than the application of Sections

17701.08, 17701.09, 17708.02, and 17708.03, upon that written opinion in determining whether the instrument conforms to law. The date of filing in that case shall be the date the instrument is received on resubmission.

SECTION 17702.04 SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

(a) If a person required by this title to sign a record or deliver a record to the Secretary of State for filing under this title does not do so, any other person that is aggrieved may petition the Superior Court to order:

- (1) the person to sign the record;
- (2) the person to deliver the record to the Secretary of State for filing; or
- (3) the Secretary of State to file the record unsigned.

(b) If a petitioner under subsection (a) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company a party to the action.

SECTION 17702.05 DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE; EFFECTIVE DATE.

(a) A record authorized or required to be delivered to the Secretary of State for filing under this title shall be captioned to describe the record's purpose, be in a medium permitted by the Secretary of State, and be delivered to the Secretary of State. If the filing fees have been paid, unless the Secretary of State determines that a record does not comply with the filing requirements of this title, the Secretary of State shall file the record and:

- (1) for a statement of denial under Section 17703.03, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and
- (2) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(b) Upon request and payment of the requisite fee, the Secretary of State shall send to the requester a certified copy of a requested record.

(c) Except as otherwise provided in Sections 17701.15 and 17702.06 and except for a certificate of organization that contains a statement as provided in Section 17702.01(b)(3), a record delivered to the Secretary of State for filing under this title may specify a delayed

effective date. Subject to Sections 17701.15, 17702.01(d)(1), and 17702.06, a record filed by the Secretary of State is effective:

- (1) if the record does not specify a delayed effective date, on the date the record is filed as evidenced by the Secretary of State's endorsement of the date on the record;
- (2) if the record specifies a delayed effective date, on the earlier of:
 - (A) the specified date; or
 - (B) the 90th day after the record is filed.

SECTION 17702.06 CORRECTING FILED RECORD.

(a) A limited liability company or foreign limited liability company may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the limited liability company to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained inaccurate information or was defectively signed.

(b) A statement of correction under subsection (a) may not state a delayed effective date and shall:

- (1) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;
- (2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and
- (3) correct the defective signature or inaccurate information.

(c) When filed by the Secretary of State, a statement of correction under subsection (a) is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

- (1) for the purposes of Section 17701.03(d); and
- (2) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

SECTION 17702.07 LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.

(a) If a record delivered to the Secretary of State for filing under this title and filed by the Secretary of State contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subsection (b), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(A) the record was delivered for filing on behalf of the limited liability company; and

(B) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under Section 17702.02;

(ii) filed a petition under Section 17702.04; or

(iii) delivered to the Secretary of State for filing a statement of change under Section 17701.14 or a statement of correction under Section 17702.06.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the limited liability company to the Secretary of State for filing under this title and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under this title affirms under penalty of perjury that the information stated in the record is accurate.

SECTION 17702.08 CERTIFICATE OF EXISTENCE OR AUTHORIZATION.

(a) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the Secretary of State show that the limited liability company has been formed under Section 17702.01 and the Secretary of State has not filed a certificate of dissolution under Section 17707.08 pertaining to the limited liability company. A certificate of existence shall state:

(1) the limited liability company's name;

(2) that the limited liability company was duly formed under the laws of this state and the date of formation;

(3) whether all fees, taxes, and penalties due under this title or other law to the Secretary of State have been paid;

(4) whether the limited liability company's most recent annual report required by Section 17702.09 has been filed by the Secretary of State; and

(5) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(b) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority under Section 17708.04 and has not revoked the certificate of authority. A certificate of authorization shall state:

(1) the limited liability company's name and any alternate name adopted under Section 17708.05(a) for use in this state;

(2) that the limited liability company is authorized to transact business in this state;

(3) whether all fees, taxes, and penalties due under this title or other law to the Secretary of State have been paid;

(4) whether the limited liability company's most recent annual report required by Section 17702.09 has been filed by the Secretary of State;

(5) that the Secretary of State has not revoked the limited liability company's certificate of authority; and

(6) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Secretary of State is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

SECTION 17702.09 BI-ANNUAL REPORT FOR SECRETARY OF STATE.

(a) Once every two years, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Secretary of State for filing a report that states:

- (1) the name of the limited liability company;
- (2) the street and mailing addresses of the limited liability company's designated office and the name and street and mailing addresses of its agent for service of process in this state;
- (3) the street and mailing addresses of its principal office; and
- (4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the limited liability company is formed and any alternate name adopted under Section 17708.05(a).

(b) Information in an annual report under this section shall be current as of the date the report is delivered to the Secretary of State for filing.

(c) The first annual report under this section shall be delivered to the Secretary of State within 90 days following the date on which a limited liability company was formed or a foreign limited liability company was authorized to transact business and bi-annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State.

(d) If a bi-annual report under this section does not contain the information required in subsection (a), the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the Secretary of State within 30 days after the effective date of the notice, it is timely delivered.

(e) If a bi-annual report under this section contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary of State immediately before the bi-annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 17701.14.

SECTION 17702.10 FILING OF INSTRUMENTS; DATE OF FILING. An instrument shall be deemed filed, and the date of filing endorsed thereon, upon receipt by the Secretary of State of any instrument accompanied by the fee prescribed in Chapter 15

(commencing with Section 17700). The date of filing shall be the date the instrument is received by the Secretary of State unless the instrument is withheld from filing for a period of time not to exceed 90 days pursuant to a request by the party submitting it for filing or unless, in the judgment of the Secretary of State, the filing is intended to be coordinated with the filing of some other document that cannot be filed. The Secretary of State shall file a document as of any requested future date not more than 90 days after its receipt, including a Saturday, Sunday, or legal holiday, if that document is received in the Secretary of State's office at least one business day prior to the requested date of filing. Upon receipt and after filing of any document under this title, the Secretary of State may microfilm or reproduce by other techniques any filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law.

ARTICLE 3

RELATIONS OF MEMBERS AND MANAGERS

TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

SECTION 17703.01 NO AGENCY POWER OF MEMBER AS MEMBER.

(a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this title from imposing liability on a limited liability company because of the person's conduct.

SECTION 17703.02 STATEMENT OF AUTHORITY.

(a) A limited liability company on behalf of itself, or a series thereof, may deliver to the Secretary of State for filing a statement of authority. The statement:

(1) shall include the name of the limited liability company and the street and mailing addresses of its designated office;

(2) with respect to any position that exists in or with respect to the limited liability company, or a series thereof, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) execute an instrument transferring real property held in the name of the limited liability company or a series thereof; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company or a series thereof; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) execute an instrument transferring real property held in the name of the limited liability company or a series thereof; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company or a series thereof.

(b) To amend or cancel a statement of authority filed by the Secretary of State under Section 17702.05(a), a limited liability company, or a series thereof, shall deliver to the Secretary of State for filing an amendment or cancellation stating:

(1) the name of the limited liability company;

(2) the street and mailing addresses of the limited liability company's designated office;

(3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company, or a series thereof, to persons that are not members.

(d) Subject to subsection (c) and Section 17701.03(d) and except as otherwise provided in subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b); or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, or a series thereof, and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subsection (b) and a certified copy of the certificate of cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company, or a series thereof, is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(h) Subject to subsection (i), an effective certificate of dissolution is a cancellation of any filed statement of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection (g).

(i) A limited liability company, or a series thereof, may deliver to the Secretary of State for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g).

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subsection (f)(1).

SECTION 17703.03 STATEMENT OF DENIAL. A person named in a filed statement of authority granting that person authority may deliver to the Secretary of State for filing a statement of denial that:

- (a) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and
- (b) denies the grant of authority.

SECTION 17703.04 LIABILITY OF MEMBERS AND MANAGERS.

(a) The debts, obligations, or other liabilities of a limited liability company, or a series thereof, whether arising in contract, tort, or otherwise:

- (1) are solely the debts, obligations, or other liabilities of the limited liability company, or a series thereof; and
- (2) do not become the debts, obligations, or other liabilities of a member or manager or any other series solely by reason of the member acting as a member or manager acting as a manager for the limited liability company or a series thereof.

(b) A member of a limited liability company shall be subject to liability under the common law governing alter ego liability, and shall also be personally liable under a judgment of a court or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation; except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that a member or the members have alter ego or personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers.

(c) Nothing in this section shall be construed to affect the liability of a member of a limited liability company (1) to third parties for the member's participation in tortious conduct, or (2) pursuant to the terms of a written guarantee or other contractual obligation entered into by the member, other than an operating agreement.

(d) A limited liability company or foreign limited liability company shall carry insurance or provide an undertaking to the same extent and in the same amount as is required by

any law, rule, or regulation of this state that would be applicable to the limited liability company or foreign limited liability company were it a corporation organized and existing or duly qualified for the transaction of intrastate business under the General Corporation Law.

(e) Notwithstanding subdivision (a), a member of a limited liability company may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company as long as the agreement to be so obligated is set forth in the certificate of organization or in a written operating agreement that specifically references this subdivision.

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

SECTION 17704.01 BECOMING MEMBER.

(a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the limited liability company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company, or a series thereof, is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited liability company. The organizer acts on behalf of the persons in forming the limited liability company and may be, but need not be, one of the persons.

(c) If a filed certificate of organization contains the statement required by Section 17702.01(b)(3), a person becomes an initial member of the limited liability company, or a series thereof, with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the limited liability company's, or a series' thereof, initial members.

(d) After formation of a limited liability company, a person becomes a member:

- (1) as provided in the operating agreement;
- (2) as the result of a transaction effective under Article 10;
- (3) with the consent of all the members; or
- (4) if, within 90 consecutive days after the limited liability company ceases to

have any members:

(A) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(B) the designated person consents to become a member.

(e) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

(f) A person may be admitted as the sole member without acquiring a membership interest and without making or being obligated to make a contribution to the limited liability company.

SECTION 17704.02 FORM OF CONTRIBUTION.

(a) A contribution may consist of tangible or intangible property or other benefit to a limited liability company, or a series thereof, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

SECTION 17704.03 LIABILITY FOR CONTRIBUTIONS.

(a) A person's obligation to make a contribution to a limited liability company, or a series thereof, is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the limited liability company or a series thereof.

(b) The foregoing election shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company, or a series thereof, may have under the operating agreement or applicable law.

(1) The obligation of a member to make a contribution to a limited liability company may be compromised only by consent of all the members. A conditional obligation of a member to make a contribution to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

(2) The obligation of a member of a series to make a contribution to the series may be compromised only by consent of all the members of that series. A conditional obligation of a member to make a contribution to a series may not be enforced unless the conditions of the

obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of that series before the time the call occurs.

(3) Subsection (b)(1) shall not apply to a member's obligation to make a contribution to a series of a limited liability company.

(c) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a) may enforce the obligation.

SECTION 17704.04 SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

(a) Any distributions made by a limited liability company before its dissolution and winding up shall be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 17705.02 and any charging order in effect under Section 17705.03.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the limited liability company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. A limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

(e) (1) All members of a series shall share equally in any distributions made by the series before its dissolution and winding up.

(2) A member of a series has a right to a distribution before the dissolution and winding up of the series as provided in the operating agreement. A decision of the series to make a distribution before the dissolution and winding up of the series is a decision in the ordinary course of activities of the series. A member's dissociation from a series with which the member is associated does not entitle the dissociated member to a distribution from the series.

(3) A member of a series does not have a right to demand and receive a distribution from the series in any form other than money. A series may distribute an asset in kind if each member of the series receives a percentage of the asset in proportion to the member's share of distributions from the series.

(4) If a member of a series becomes entitled to receive a distribution from the series, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution.

(f) Subsection (a) shall not apply to a distribution made by a series.

SECTION 17704.05 LIMITATIONS ON DISTRIBUTION.

(a) A limited liability company may not make a distribution if after the distribution:

(1) the limited liability company would not be able to pay its debts as they become due in the ordinary course of the limited liability company's activities; or

(2) the limited liability company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (f), the effect of a distribution under subsection (a) is measured:

(1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the limited liability company, as of the date money or other property is transferred or debt incurred by the limited liability company; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within 120 days after that date; or

(B) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subsection (a), "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

(h) (1) A series shall not make a distribution to a member of the series to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the series, other than liabilities to members of the series on account of their membership interests and liabilities for which the recourse of creditors is limited to specific property of the series, exceed the fair value of the assets of the series, except that the fair value of the property that is subject to a liability for which recourse of creditors is limited shall be included in the assets of the series only to the extent that the fair value of the property exceeds that liability.

(2) A member of a series who receives a distribution in violation of subsection (h)(1) or the operating agreement, and who knew at the time of the distribution that the distribution violated subsection (h)(1) or the operating agreement, shall be personally liable to that series for the amount of the distribution. A member of a series who receives a distribution in violation of subsection (h)(1) or the limited liability company agreement, and who did not know at the time of the distribution that the distribution violated subsection (h)(1) or the operating agreement, shall not be liable for the amount of the distribution.

(3) Subsection (a) shall not apply to a distribution made by a series.

SECTION 17704.06 LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as otherwise provided in subsection (b) and Section 17704.05(h)(2), if a member of a member-managed limited liability company or manager of a manager-managed

limited liability company consents to a distribution made in violation of Section 17704.05 and in consenting to the distribution fails to comply with Section 17704.09, the member or manager is personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of Section 17704.05.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 17704.05 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 17704.05.

(d) A person against which an action is commenced because the person is liable under subsection (a) may:

(1) implead any other person that is subject to liability under subsection (a) and seek to compel contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) and seek to compel contribution from the person in the amount the person received in violation of subsection (c).

(e) An action under this section is barred if not commenced within four years after the distribution.

SECTION 17704.07 MANAGEMENT OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the limited liability company is or will be “manager-managed”;

(B) the limited liability company is or will be “managed by managers”;

or

(C) management of the limited liability company is or will be “vested in managers”; or

- (2) includes words of similar import.
- (b) In a member-managed limited liability company, the following rules apply:
 - (1) The management and conduct of the limited liability company are vested in the members.
 - (2) The management and conduct of a series are vested in the members of that series.
 - (3) Subsection (b)(1) shall not apply to the management and conduct of a series.
 - (4) Each member has equal rights in the management and conduct of the limited liability company's activities.
 - (5) Each member of a series has equal rights in the management and conduct of the series' activities.
 - (6) Subsection (b)(4) shall not apply to the management and conduct of the series.
 - (7) A difference arising among members as to a matter in the ordinary course of the activities of the limited liability company shall be decided by a majority of the members of the limited liability company.
 - (8) An act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members.
 - (9) The operating agreement may be amended only with the consent of all members.
- (c) In a manager-managed limited liability company, the following rules apply:
 - (1) Except as otherwise expressly provided in this title, any matter relating to the activities of the limited liability company is decided exclusively by the managers.
 - (2) Except as otherwise expressly provided in this title, any matter related to the activity of the series is decided exclusively by the managers of the series.
 - (3) Subsection (c)(1) shall not apply to the activities of a series.
 - (4) Each manager has equal rights in the management and conduct of the activities of the limited liability company.
 - (5) Each manager of a series has equal rights in the management and conduct of the activity of the series.

(6) Subsection (c)(4) shall not apply to the management and conduct of the activity of the series.

(7) A difference arising among managers as to a matter in the ordinary course of the activities of the limited liability company may be decided by a majority of the managers of the limited liability company.

(8) The consent of all members of the limited liability company is required to:

(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited liability company's property, with or without the goodwill, outside the ordinary course of the limited liability company's activities;

(B) approve a merger or conversion under Article 10;

(C) undertake any other act outside the ordinary course of the limited liability company's activities; and

(D) amend the operating agreement.

(9) The consent of all members of a series is required to:

(A) sell, lease, exchange, or afterward dispose of all or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series activities;

(B) approve a merger or conversion of the series under Article 10;

(C) undertake any other act outside the ordinary course of the series' activities; or

(D) amend the operating agreement with respect to the series.

(10) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(11) A manager of a series may be chosen at any time by the consent of a majority of members of that series and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or in the case of a manager that is not an individual, terminates. A manager of a series may be removed at any time by the consent of a majority of the members of that series without notice or cause.

(12) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(13) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under this title may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company, or a series thereof, does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as a member and a manager.

(f) This title does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

SECTION 17704.08 INDEMNIFICATION AND INSURANCE.

(a) A limited liability company, or a series thereof, shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed limited liability company or the manager of a manager-managed limited liability company in the course of the member's or manager's activities on behalf of the limited liability company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Sections 17704.05 and 17704.09.

(b) A limited liability company, or a series thereof, may purchase and maintain insurance on behalf of a member or manager of the limited liability company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 17701.10(g), the operating agreement could not eliminate or limit the person's liability to the limited liability company for the conduct giving rise to the liability.

SECTION 17704.09 STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.

(a) The fiduciary duties that a member owes to a member-managed limited liability company, or a series thereof, and the other members of the limited liability company, or a series thereof, are the duties of loyalty and care under subdivisions (b) and (c).

(b) A member's duty of loyalty to the limited liability company, or a series thereof, and the other members is limited to the following:

(1) to account to the limited liability company, or a series thereof, and hold as trustee for it any property, profit or benefit derived by the member in the conduct and winding up of the limited liability company's, or a series' thereof, activities or derived from a use by the member of limited liability company, or a series thereof, property, including the appropriation of a limited liability company, or a series thereof, opportunity;

(2) to refrain from dealing with the limited liability company, or a series thereof, in the conduct or winding up of the limited liability company's, or a series' thereof, activities as or on behalf of a party having an interest adverse to the limited liability company, or a series thereof; and

(3) to refrain from competing with the limited liability company, or a series thereof, in the conduct or winding up of the limited liability company's, or a series' thereof, activities.

(c) A member's duty of care to the limited liability company, or a series thereof, and the other members in the conduct and winding up of the limited liability company's, or a series' thereof, activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A member shall discharge the duties to the limited liability company, or a series thereof, and the other members under this title or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A member does not violate a duty or obligation under this chapter or under the operating agreement merely because the members' conduct furthers the members' own interest.

(f) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (e) apply to the manager or managers and not the members.

(2) Subsection (d) applies to the members and managers.

(3) A member does not have any fiduciary duty to the limited liability company, or a series thereof, or to any other member solely by reason of being a member.

SECTION 17704.10 RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.

(a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company regarding the limited liability company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this title.

(2) The limited liability company shall furnish to each member:

(A) without demand, any information concerning the limited liability company's activities, financial condition, and other circumstances which the limited liability company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this title, except to the extent the limited liability company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the limited liability company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

(b) In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the limited liability company, a member may obtain from the limited liability company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the limited liability company as is just and reasonable if:

(A) the member seeks the information for a purpose material to the member's interest as a member;

(B) the member makes a demand in a record received by the limited liability company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose.

(3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the limited liability company shall in a record inform the member that made the demand:

(A) of the information that the limited liability company will provide in response to the demand and when and where the limited liability company will provide the information; and

(B) if the limited liability company declines to provide any demanded information, the limited liability company's reasons for declining.

(4) Whenever this title or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the limited liability company shall, without demand, provide the member with all information that is known to the limited liability company and is material to the member's decision.

(c) On 10 days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2). The limited liability company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (b)(3).

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the limited liability company has the burden of proving reasonableness.

ARTICLE 5
TRANSFERABLE INTERESTS AND RIGHTS
OF TRANSFEREES AND CREDITORS

SECTION 17705.01 NATURE OF TRANSFERABLE INTEREST. A transferable interest is personal property.

SECTION 17705.02 TRANSFER OF TRANSFERABLE INTEREST.

- (a) A transfer, in whole or in part, of a transferable interest:
- (1) is permissible;
 - (2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's or a series thereof's activities; and
 - (3) subject to Section 17705.04, does not entitle the transferee to:
 - (A) participate in the management or conduct of the limited liability company's activities or series thereof; or
 - (B) except as otherwise provided in subsection (c), have access to records or other information concerning the limited liability company's or series' activities.
- (b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.
- (c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the limited liability company's transactions only from the date of dissolution.
- (d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company, or a series thereof, in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company, or a series thereof, need not give effect to a transferee's rights under this section until the limited liability company, or a series thereof, has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in Section 17706.02(4)(B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Sections 17704.03 and 17704.06(c) known to the transferee when the transferee becomes a member.

SECTION 17705.03 CHARGING ORDER.

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 17705.02.

(d) At any time before foreclosure under subsection (c), the member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the

charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure under subsection (c), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) This title does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

SECTION 17705.04 POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER.

(a) If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in Section 17705.02(c) and, for the purposes of settling the estate, the rights of a current member under Section 17704.10.

ARTICLE 6

MEMBER'S DISSOCIATION

SECTION 17706.01 MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Section 17706.02(a)(1).

(b) A person's dissociation from a limited liability company is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the termination of the limited liability company and:

(A) the person withdraws as a member by express will;

(B) the person is expelled as a member by judicial order under

Section 17706.02(a)(5);

(C) the person is dissociated under Section 17706.02(a)(7)(A) by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it dissolved or terminated.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 17709.01, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the limited liability company or the other members.

SECTION 17706.02 EVENTS CAUSING DISSOCIATION. A person is dissociated as a member from a limited liability company when:

(1) the limited liability company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the limited liability company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members because:

(A) it is unlawful to carry on the limited liability company's activities with the person as a member;

(B) there has been a transfer of all of the person's transferable interest in the limited liability company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 17705.03 which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the limited liability company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation and the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited liability company, the person is expelled as a member by judicial order because the person:

(A) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the limited liability company's activities;

(B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under Section 17704.09; or

(C) has engaged in, or is engaging, in conduct relating to the limited liability company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

(6) in the case of a person who is an individual:

(A) the person dies; or

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the person is appointed; or

(ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this title or the operating agreement;

(7) in a member-managed limited liability company, the person becomes a debtor in bankruptcy;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the limited liability company is distributed but not solely by reason of a substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed but not solely by reason of a substitution of a successor personal representative;

- (10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;
- (11) the limited liability company participates in a merger under Article 10, if:
 - (A) the limited liability company is not the surviving entity; or,
 - (B) otherwise as a result of the merger, the person ceases to be a member; or
- (12) the limited liability company terminates.

SECTION 17706.03 EFFECT OF PERSON'S DISSOCIATION AS MEMBER.

- (a) When a person is dissociated as a member of a limited liability company:
 - (1) the person's right to participate as a member in the management and conduct of the limited liability company's activities terminates;
 - (2) if the limited liability company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and
 - (3) subject to Section 17705.04 and Article 10, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.
- (b) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

ARTICLE 7

DISSOLUTION AND WINDING UP

SECTION 17707.01 EVENTS CAUSING DISSOLUTION. A limited liability company, or a series thereof, is dissolved, and its activities shall be wound up, upon the happening of the first to occur of the following:

- (a) On the happening of an event set forth in a written operating agreement or the certificate of organization;
- (b) By the vote of a majority in interest of the members of the limited liability company, or a series thereof, or a greater percentage of the voting interests of members as may be specified in the certificate of organization or a written operating agreement;

(c) The passage of 90 consecutive days during which the limited liability company, or a series thereof, has no members except on the death of a natural person who is the sole member of a limited liability company, or a series thereof, the status of the member, including a membership interest, may pass to the heirs, successors and assigns of the member by will or applicable law. The heir, successor or assign of the member's interest becomes a substituted member pursuant to Section 17705.02, subject to administration as provided by applicable law, without the permission or consent of the heirs, successors or assigns or those administering the estate of the deceased member;

(d) Entry of a decree of judicial dissolution pursuant to Section 17707.03.

SECTION 17707.02 CANCELLATION OF CERTIFICATE OF ORGANIZATION WHERE DOMESTIC LIMITED LIABILITY COMPANY HAS NOT CONDUCTED ANY BUSINESS; TIME FOR FILING CERTIFICATE OF CANCELLATION.

(a) Notwithstanding any other provision of this division, if a domestic limited liability company has not conducted any business, only a majority of the members, or, if there are no members, the majority of the managers, if any, or if no members or managers, the person or a majority of the persons signing the certificate of organization, may execute and acknowledge a certificate of cancellation of certificate of organization, on a form prescribed by the Secretary of State, stating all of the following:

(1) The name of the domestic limited liability company and the Secretary of State's file number.

(2) That the certificate of cancellation is being filed within 12 months from the date the certificate of organization were filed.

(3) That the limited liability company does not have any debts or other liabilities, except as provided in paragraph (4).

(4) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(5) That the known assets of the limited liability company remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the

persons entitled thereto or that the limited liability company acquired no known assets, as the case may be.

(6) That the limited liability company has not conducted any business from the time of the filing of the certificate of organization.

(7) That a majority of the managers or members voted, or, if no managers or members, the person or a majority of the persons signing the certificate of organization, voted to dissolve the limited liability company.

(8) If the limited liability company has received payments for interests from investors, that those payments have been returned to those investors.

(b) A certificate of cancellation executed and acknowledged pursuant to subdivision (a) shall be filed with the Secretary of State within 12 months from the date that the certificate of organization were filed. The Secretary of State shall notify the Franchise Tax Board of the cancellation.

(c) Upon filing a certificate of cancellation pursuant to subdivision (a), a limited liability company shall be cancelled and its powers, rights, and privileges shall cease.

(d) A domestic limited liability company that filed certificate of organization on or after January 1, 2004, and that meets all of the conditions described in subdivision (a) may file a certificate of cancellation under this section.

SECTION 17707.03 DECREE OF DISSOLUTION UPON SPECIFIED EVENT; AVOIDANCE OF DISSOLUTION.

(a) Pursuant to an action filed by any manager or by any member or members of a limited liability company, a court of competent jurisdiction may decree the dissolution of a limited liability company whenever any of the events specified in subdivision (b) occurs.

Pursuant to an action filed by a manager or by any member or members of a series, a court of competent jurisdiction may decree the dissolution of that series whenever any of the events specified in subdivision (b) with respect to that series occurs.

(b) (1) It is not reasonably practicable to carry on the business in conformity with the certificate of organization or operating agreement.

(2) Dissolution is reasonably necessary for the protection of the rights or interests of the complaining members.

(3) The business of the limited liability company, or a series thereof, has been abandoned.

(4) The management of the limited liability company, or a series thereof, is deadlocked or subject to internal dissention.

(5) Those in control of the limited liability company, or a series thereof, have been guilty of, or have knowingly countenanced persistent and pervasive fraud, mismanagement, or abuse of authority.

(c) (1) In any suit for judicial dissolution, the other members may avoid the dissolution of the limited liability company, or a series thereof, by purchasing for cash the membership interests owned by the members so initiating the proceeding (the "moving parties") at their fair market value. In fixing the value, the amount of any damages resulting if the initiation of the dissolution is a breach by any moving party or parties of an agreement with the purchasing party or parties, including, without limitation, the operating agreement, may be deducted from the amount payable to the moving party or parties; provided, that no member who sues for dissolution on the grounds set forth in paragraph (3), (4), or (5) of subdivision (a) shall be liable for damages for breach of contract in bringing that action.

(2) If the purchasing parties (A) elect to purchase the membership interests owned by the moving parties, (B) are unable to agree with the moving parties upon the fair market value of the membership interests, and (C) give bond with sufficient security to pay the estimated reasonable expenses, including attorneys' fees, of the moving parties if the expenses are recoverable under paragraph (3), the court, upon application of the purchasing parties, either in the pending action or in a proceeding initiated in the superior court of the proper county by the purchasing parties, shall stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair market value of the membership interests owned by the moving parties.

(3) The court shall appoint three disinterested appraisers to appraise the fair market value of the membership interests owned by the moving parties, and shall make an order referring the matter to the appraisers so appointed for the purpose of ascertaining that value. The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or a majority of them, when confirmed by the court, shall be final and conclusive upon all parties. The court shall enter a decree that shall provide in the alternative for winding up and dissolution of the limited liability company, or a series thereof, unless payment

is made for the membership interests within the time specified by the decree. If the purchasing parties do not make payment for the membership interests within the time specified, judgment shall be entered against them and the surety or sureties on the bond for the amount of the expenses, including attorneys' fees, of the moving parties. Any member aggrieved by the action of the court may appeal therefrom.

(4) If the purchasing parties desire to prevent the winding up and dissolution of the limited liability company, or a series thereof, they shall pay to the moving parties the value of their membership interests ascertained and decreed within the time specified pursuant to this section, or, in the case of an appeal, as fixed on appeal. On receiving that payment or the tender thereof, the moving parties shall transfer their membership interests to the purchasing parties.

(5) For the purposes of this section, the valuation date shall be the date upon which the action for judicial dissolution was commenced. However, the court may, upon the hearing of a motion by any party, and for good cause shown, designate some other date as the valuation date.

(6) A dismissal of any suit for judicial dissolution by a manager, member or members shall not affect the other members' rights to avoid dissolution pursuant to this Section 17707.03.

SECTION 17707.04 WINDING UP OF COMPANY'S AFFAIRS; NOTICE TO CREDITORS AND CLAIMANTS; DECREE ORDERING WINDING UP OF COMPANY; COMPENSATION OF MANAGERS OR MEMBERS. In the event of a dissolution of a limited liability company:

(a) The managers who have not wrongfully dissolved the limited liability company, or a series thereof, or, if none, the members, or, if none, the person or a majority of the persons signing the certificate of organization, may wind up the limited liability company's, or a series' thereof, affairs, unless the dissolution occurs pursuant to Section 17707.03, in which event the winding up shall be conducted in accordance with the decree of dissolution. The persons winding up the affairs of the limited liability company, or a series thereof, shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the limited liability company.

(b) Upon the petition of any manager or of any member or members, or three or more creditors of a limited liability company, a court of competent jurisdiction may enter a decree ordering the winding up of the limited liability company, or a series thereof, if that appears necessary for the protection of any parties in interest. The decree shall designate the managers or members, or if good cause is shown, another person or persons, who are to wind up the limited liability company's, or a series' thereof, affairs.

(c) Except as otherwise provided in the certificate of organization or a written operating agreement, the persons winding up the affairs of the limited liability company, or a series thereof, pursuant to this section shall be entitled to reasonable compensation.

**SECTION 17707.05 DISTRIBUTION OF REMAINING ASSETS;
PREFERENCES.**

(a) Except as otherwise provided in the certificate of organization or the written operating agreement, after determining that all the known debts and liabilities of a limited liability company, or a series thereof, in the process of winding up, including, without limitation, debts and liabilities to members who are creditors of the limited liability company, or a series thereof, have been paid or adequately provided for, the remaining assets shall be distributed among the members according to their respective rights and preferences as follows:

(1) To members in satisfaction of liabilities for distributions pursuant to Sections 17704.04, 17704.05 and 17704.06.

(2) To members of the limited liability company, or a series thereof, for the return of their contributions.

(3) To members in the proportions in which those members share in distributions.

(b) If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period for the presentation of claims that has been prescribed by order of the court.

(c) The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(1) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof,

and the provision, including the financial responsibility of the person, was determined in good faith and with reasonable care by the members or managers of the limited liability company to be adequate at the time of any distribution of the assets pursuant to this section.

(2) The amount of the debt or liability has been deposited as provided in Section 2008 of the General Corporation Law.

This subdivision shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

SECTION 17707.06 CONTINUATION OF DISSOLVED COMPANY FOR SPECIFIED PURPOSES; DISTRIBUTION OF ASSETS PREVIOUSLY OMITTED; POWER TO BIND LIMITED LIABILITY COMPANY AFTER DISSOLUTION.

(a) A limited liability company, or a series thereof, that is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets. A limited liability company, or a series thereof, shall not continue business except so far as necessary for the winding up thereof.

(b) No action or proceeding to which a limited liability company is a party abates by the dissolution of the limited liability company, or a series thereof, or by reason of proceedings for the winding up and dissolution thereof.

(c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved limited liability company, or a series thereof, for the benefit of the persons entitled thereto upon dissolution and on realization shall be distributed accordingly.

(d) After dissolution of the limited liability company, or a series thereof, the limited liability company, or a series thereof, is bound by:

(1) The act of a person authorized to wind up the affairs of the limited liability company, or a series thereof, if the act is appropriate for winding up the limited liability company's, or a series' thereof, activities; or

(2) The act of a person authorized to act on behalf of the limited liability company, or a series thereof, if the act would have bound the limited liability company, or a series thereof, before dissolution, if the other party to the transaction did not have notice of the dissolution.

**SECTION 17707.07 CAUSES OF ACTION AGAINST DISSOLVED COMPANY;
SERVICE OF PROCESS; CONTINUATION OF COMPANY IN QUIET TITLE
ACTION.**

(a) (1) Causes of action against a dissolved limited liability company, or a series thereof, whether arising before or after the dissolution of the limited liability company, or a series thereof, may be enforced against any of the following:

(A) Against the dissolved limited liability company, or a series thereof, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the limited liability company, or a series thereof, that may be available to satisfy claims.

(B) If any of the assets of the dissolved limited liability company, or a series thereof, have been distributed to members, against members of the dissolved limited liability company, or a series thereof, to the extent of the limited liability company, or a series thereof, assets distributed to them upon dissolution of the limited liability company, or a series thereof.

Any member compelled to return distributed assets in an amount that exceeds the sum of the member's pro rata share of the claim and the amount for which the member could otherwise be held liable under Section 17704.05 or 17704.06 may seek contribution for the excess from any other member or manager, up to the sum of that other person's pro rata share of the claim and that other person's liabilities under Section 17704.05 or 17704.06; provided that in case of dissolution of a series, such member may seek contribution as provided in this Section only from another member or manager of that series.

(2) Except as set forth in subdivision (c), all causes of action against a member of a dissolved limited liability company, or a series thereof, arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that member of a dissolved limited liability company, or a series thereof, prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the limited liability company or a series thereof.

(3) As a matter of procedure only, and not for purposes of determining liability, members of the dissolved limited liability company, or a series thereof, may be sued in the name of the limited liability company, or a series thereof, upon any cause of action against the limited liability company, or a series thereof. This section does not affect the rights of the limited liability company, or a series thereof, or its creditors under Sections 17704.05 and 17704.06, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, that may arise against the member of a limited liability company, or a series thereof.

(b) Summons or other process against a limited liability company, or a series thereof, may be served by delivering a copy thereof to a manager, member, officer, or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution. If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved limited liability company, or a series thereof, by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State. Upon receipt of process and the fee therefor, the Secretary of State shall give notice to the limited liability company as provided in Section 17717.02.

(c) Every limited liability company and each series thereof shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in any such action shall bind each and all of its members or other persons having any equity or other interest in the limited liability company, or a series thereof, to the extent of their interest therein, and the action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in any action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) For purposes of Article 4 (commencing with Section 19071) of Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation Code, the liability described in this section shall be considered a liability at law within respect to a dissolved limited liability company, or a series thereof.

SECTION 17707.08 CERTIFICATE OF DISSOLUTION; CERTIFICATE OF CANCELLATION OF CERTIFICATE OF ORGANIZATION.

(a) (1) The managers shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Article 7 (commencing with Section 17707.01, unless the event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in which case the persons conducting the winding up of the limited liability company's affairs pursuant to Section 17707.04 shall have the obligation to file the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) Any other information the persons filing the certificate of dissolution determine to include.

(3) If a dissolution pursuant to subdivision (b) of Section 17707.01 is made by the vote of all of the members and a statement to that effect is added to the certificate of cancellation of certificate of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

(b) (1) The persons who filed the certificate of dissolution shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of certificate of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Section 17707.06, unless the event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in which case the persons conducting the winding up of the limited liability company's affairs pursuant to Section 17707.04 shall have the obligation to file the certificate of cancellation of certificate of organization.

(2) The certificate of cancellation of certificate of organization shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) That a final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax board, as

required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(C) Any other information the persons filing the certificate of cancellation of certificate of organization determine to include.

(3) The Secretary of State shall notify the Franchise Tax Board of the filing.

SECTION 17707.09 CERTIFICATE OF CONTINUATION.

(a) Notwithstanding the filing of a certificate of dissolution, a majority in interest of the members may cause to be filed, in the office of, and on a form prescribed by, the Secretary of State, a certificate of continuation, in any of the following circumstances:

(1) The business of the limited liability company is to be continued pursuant to a unanimous vote of the remaining members.

(2) The dissolution of the limited liability company was by vote of the members pursuant to subdivision (b) of Section 17707.01 and each member who consented to the dissolution has agreed in writing to revoke his or her vote in favor of or consent to the dissolution.

(3) The limited liability company was not, in fact, dissolved.

(b) The certificate of continuation shall set forth all of the following:

(1) The name of the limited liability company and the Secretary of State's file number.

(2) The grounds provided by subdivision (a) that are the basis for filing the certificate of continuation.

(3) Upon the filing of a certificate of continuation, the certificate of dissolution shall be of no effect from the time of the filing of the certificate of dissolution.

SECTION 17707.10 REVIVAL OF LIMITED LIABILITY COMPANY.

(a) A domestic limited liability company whose certificate of organization has been canceled pursuant to Section 17707.08 may be revived by filing with, and on a form prescribed by, the Secretary of State, a certificate of revival. The certificate of revival shall be accompanied by written confirmation by the Franchise Tax Board that all of the following have been paid to the Franchise Tax Board:

(1) The annual tax due under Section 23038 of the Revenue and Taxation Code;

(2) The annual fee due under Section 17943 of the Revenue and Taxation Code;

(3) All penalties and interest thereof for each year for which the domestic limited liability company failed to pay such annual tax, including each year between the cancellation of its certificate of organization and its revival.

(b) The certificate of revival shall set forth all of the following:

(1) The name of the limited liability company at the time its certificate of organization was cancelled, and if the name is not available at the time of revival, the name under which the limited liability company is to be revived.

(2) The date of filing of the original certificate of organization.

(3) The address of the limited liability company's designated office.

(4) The name and address of the initial agent for service of process in accordance with paragraph (1) of subdivision (a) of Section 17701.13.

(5) A statement that the certificate of revival is filed by one or more managers of a manager-managed limited liability company or one or more members of a member-managed limited liability company authorized to execute and file the certificate of revival to revive the limited liability company.

(6) The Secretary of State's file number for the original limited liability company.

(7) The name and address of each manager of a manager-managed limited liability company or each member of a member-managed limited liability company.

(8) Any other matters the managers or members executing the certificate of revival determine to include therein.

(c) The certificate of revival should be deemed to be an amendment to the certificate of organization, and the limited liability company shall not be required to take any further action to amend its certificate of organization pursuant to Section 17702.02 with respect to the matter set forth in the certificate of revival.

(d) Upon the filing of the certificate of revival, the limited liability company shall be revived with the same force and effect as if the certificate of organization had not been canceled pursuant to Section 17707.08. The revival shall validate all contracts, acts, matters, and things made, done, and performed by the limited liability company, its managers, members, employees,

and agents following the time its certificate of organization was canceled pursuant to Section 17702.08 with the same force and effect and all intents and purposes as if the certificate of organization had remained in full force and effect. This provision shall apply provided that third parties are relying on the acts of the limited liability company, its managers, members, employees, and agents. All real and personal property, and all rights and interests, that belong to a limited liability company at the time its certificate of organization was cancelled pursuant to Section 17707.08 or that were acquired by the limited liability company following the cancellation of the certificate of organization, that were not disposed of prior to the time of its revival, shall be vested in the limited liability company after its revival as fully as if they were held by the limited liability company at, and during the time after, as the case may be, the time the certificate of organization was cancelled. After its revival, the limited liability company and its managers or members shall have all of the same liability for contracts, acts, matters, and things made, done, or performed in the limited liability company's name and on behalf of its managers, members, employees, and agents, as the limited liability company and its members would have had if the limited liability company's certificate of organization had at all times remained in full force and effect.

SECTION 17707.11 REVIVAL AFTER DISSOLUTION OF A SERIES.

(a) A series that has been dissolved may be revived upon compliance with the following conditions:

(1) The affirmative vote or consent shall have been obtained from the members or other persons of the series entitled to vote or consent at the time that is.

(i) Required for revival under its operating agreement; or
(ii) If its operating agreement does not state the vote or consent required for reinstatement of that series, sufficient for dissolution of a series under this title, or such greater or lesser vote or consent as is required for dissolution of a series under its operating agreement;

(2) The members and other persons of a series having authority under this Act and under its operating agreement to bring about or prevent dissolution of a series shall not have, before or at the time of the vote or consent required by paragraph (1) of this subsection (a), voted against revival of a series or delivered to the limited liability company their written objection to revival of a series; and

(3) In the case of a series dissolved in a judicial proceeding pursuant to Section 17707.03 initiated by one or more of the members of the series, the affirmative vote or consent of each such member shall have been obtained and shall be included in the vote or consent required by paragraph (1) of this subsection (a).

(b) To the extent that an operating agreement provides for the voting rights of members or other persons of a series, for the calling of meetings, for notices of meetings, for consents and actions of members and other persons of the series without a meeting, for establishing a record date for meetings, or for other matters concerning the voting or consent of members and other persons of the series, those provisions shall govern the vote or consent required by paragraph (1) of subsection (a) of this section with respect to the series and the vote or objection of members and other persons of the series provided for in paragraph (2) of subsection (a) of this section with respect to the series.

(c) The revival shall validate all contracts, acts, matters, and things made, done, and performed by the series, its managers, members, employees, and agents following the time its dissolution with the same force and effect and all intents and purposes as if the series had remained in full force and effect. This provision shall apply provided that third parties are relying on the acts of the limited liability company, its managers, members, employees, and agents. All real and personal property, and all rights and interests, that belong to a series at the time its dissolution or that were acquired by the series following the dissolution, that were not disposed of prior to the time of its revival, shall be vested in the series after its revival as fully as if they were held by the series at, and during the time after, as the case may be, the time the dissolution. After its revival, the series and its managers or members shall have all of the same liability for contracts, acts, matters, and things made, done, or performed in the series' name and on behalf of its managers, members, employees, and agents, as the series and its members would have had if the series had at all times remained in full force and effect.

California Code Comment

This Section differs from Section 17707.10 since dissolution of a series does not require a public filing.

ARTICLE 8

FOREIGN LIMITED LIABILITY COMPANIES

SECTION 17708.01 GOVERNING LAW.

(a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(1) the organization of the limited liability company, its internal affairs, and the authority of its members and managers; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the limited liability company or a series thereof.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the limited liability company is formed and the law of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

SECTION 17708.02 APPLICATION FOR CERTIFICATE OF AUTHORITY.

(a) A foreign limited liability company, or a series thereof, may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall state:

(1) the name of the limited liability company and, if the name does not comply with Section 17701.08, an alternate name adopted pursuant to Section 17708.05(a);

(2) the name of the state or other jurisdiction under whose law the limited liability company is formed;

(3) the street and mailing addresses of the limited liability company's principal office and, if the law of the jurisdiction under which the limited liability company is formed require the limited liability company to maintain an office in that jurisdiction, the street and mailing addresses of the required office;

(4) the name and street and mailing addresses of the limited liability company's initial agent for service of process in this state; and

(5) if the foreign limited liability company is a low-profit limited liability company, the foreign limited liability company shall comply with Section 17701.08.

(b) A foreign limited liability company shall deliver with a completed application under subsection (a) a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the limited liability company's publicly filed records in the state or other jurisdiction under whose law the limited liability company is formed.

(c) The Secretary of State shall include with instructional materials, provided in conjunction with registration under subdivision (a), a notice that filing the registration will obligate the limited liability company to pay an annual tax to the Franchise Tax Board pursuant to Section 17941 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of the tax.

(d) If a foreign limited liability company establishes or provides for the establishment of one or more series of assets, that fact shall be so stated on the statement of foreign qualification. In addition, the foreign limited liability company shall state on the statement of foreign qualification whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a series, if any, shall be enforceable against the assets of that series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of that series.

SECTION 17708.03 ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.

(a) A foreign limited liability company that enters into repeated and successive transactions of business in this state, other than in interstate or foreign commerce, is considered to be transacting business in this state within the meaning of this article.

(b) Without excluding other activities which may not be considered to be transacting business in this state within the meaning of this article, activities of a foreign limited liability company, or a series thereof, which do not constitute transacting such business in this state include:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes;

- (2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
- (3) maintaining accounts in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or procuring orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, evidences of indebtedness, mortgages, liens, or security interests in real or personal property;
- (8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired;
- (9) conducting an isolated transaction that is completed within 180 days and is not in the course of a number of repeated transactions of a like nature; and
- (10) transacting business in interstate commerce.

(c) Without excluding other activities which may not be considered to be transacting business in this state within the meaning of this article, a foreign limited liability company, or a series thereof, shall not be considered to be transacting such business in this state merely because its subsidiary transacts such business in this state, or merely because of its status as any one or more of the following:

- (1) a shareholder of a domestic corporation;
- (2) a shareholder of a foreign corporation transacting intrastate business;
- (3) a limited partner of a foreign limited partnership transacting intrastate business
- (4) a limited partner of a domestic limited partnership
- (5) a member or manager of a foreign limited liability company transacting intrastate business; or
- (6) a member or manager of a domestic limited liability company.

(d) A person shall not be deemed to be transacting business in this state within the meaning of this article merely because of its status as a member or manager of a domestic limited liability company, or a series thereof, or a foreign limited liability company registered to transact intrastate business in this state.

(e) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company, or a series thereof, to service of process, taxation, or regulation under law of this state other than this article.

SECTION 17708.04 FILING OF CERTIFICATE OF AUTHORITY. Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of this article, the Secretary of State, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the limited liability company or its representative.

SECTION 17708.05 NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY.

(a) A foreign limited liability company whose name does not comply with Section 17701.08 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with Section 17701.08. A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with fictitious or assumed name statute. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the limited liability company is authorized under fictitious or assumed name statute to transact business in this state under another name.

(b) If a foreign limited liability company, or a series thereof, authorized to transact business in this state changes its name to one that does not comply with Section 17701.08, it may not thereafter transact business in this state until it complies with subsection (a) and obtains an amended certificate of authority.

SECTION 17708.06 REVOCATION OF CERTIFICATE OF AUTHORITY.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the Secretary of State in the manner provided in subsections (b) and (c) if the limited liability company does not:

(1) pay, within 60 days after the due date, any fee, tax, or penalty due to the Secretary of State under this article or law other than this article;

(2) deliver, within 60 days after the due date, its annual report required under Section 17702.09;

(3) appoint and maintain an agent for service of process as required by Section 17701.13(b); or

(4) deliver for filing a statement of a change under Section 17701.14 within 30 days after a change has occurred in the name or address of the agent.

(b) To revoke a certificate of authority of a foreign limited liability company, the Secretary of State shall prepare, sign, and file a notice of revocation and send a copy to the limited liability company's agent for service of process in this state, or if the limited liability company does not appoint and maintain a proper agent in this state, to the limited liability company's designated office. The notice shall state:

(1) the revocation's effective date, which shall be at least 60 days after the date the Secretary of State sends the copy; and

(2) the grounds for revocation under subsection (a).

(c) The authority of a foreign limited liability company and all series thereof, to transact business in this state ceases on the effective date of the notice of revocation unless before that date the limited liability company cures each ground for revocation stated in the notice filed under subsection (b). If the limited liability company cures each ground, the Secretary of State shall file a record so stating.

SECTION 17708.07 CANCELLATION OF CERTIFICATE OF AUTHORITY. To cancel its certificate of authority to transact business in this state, a foreign limited liability company shall deliver to the Secretary of State for filing a notice of cancellation stating the name of the limited liability company and that the limited liability company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

SECTION 17708.08 EFFECT OF FAILURE TO HAVE CERTIFICATE OF AUTHORITY.

(a) A foreign limited liability company, or a series thereof, transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(b) The failure of a foreign limited liability company, or a series thereof, to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the limited liability company or prevent the limited liability company from defending an action or proceeding in this state.

(c) A member or manager of a foreign limited liability company, or a series thereof, is not liable for the debts, obligations, or other liabilities of the limited liability company solely because the limited liability company transacted business in this state without a certificate of authority.

(d) If a foreign limited liability company, or a series thereof, transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the Secretary of State as its agent for service of process for rights of action arising out of the transaction of business in this state.

SECTION 17708.09 ACTION BY ATTORNEY GENERAL. The Attorney General may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this title.

ARTICLE 9

ACTIONS BY MEMBERS

SECTION 17709.01 DIRECT ACTION BY MEMBER. Any member of a series, foreign or domestic limited liability company may bring a class action on behalf of all or a class of members to enforce any claim common to those members and any such action shall be

governed by the law governing class actions generally, provided that in order to maintain the class action there shall be no requirement that the class be so numerous that joinder of all members of the class is impracticable.

SECTION 17709.02 DERIVATIVE ACTION.

(a) No action shall be instituted or maintained in right of any domestic or foreign limited liability company by any member of the limited liability company, or a series thereof, unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a member of record, or beneficiary, at the time of the transaction or any part thereof of which plaintiff complains, or that plaintiff's interest thereafter devolved upon plaintiff by operation of law from a member who was a member at the time of the transaction or any part thereof complained of. Any member who does not meet these requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing at which the court shall consider any evidence, by affidavit or testimony, as it deems material, of all of the following:

(A) There is a strong prima facie case in favor of the claim asserted on behalf of the limited liability company or a series thereof.

(B) No other similar action has been or is likely to be instituted.

(C) The plaintiff acquired the interest before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains.

(D) Unless the action can be maintained, the defendant may retain a gain derived from defendant's willful breach of a fiduciary duty.

(E) The requested relief will not result in unjust enrichment of the limited liability company or any member of the limited liability company or a series thereof.

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the managers the action plaintiff desires or the reasons for not making that effort, and alleges further that plaintiff has either informed the limited liability company, or a series thereof, or the managers in writing of the ultimate facts of each cause of action against each defendant or delivered to the limited liability company or the managers a true copy of the complaint that plaintiff proposes to file.

(b) In any action referred to in subdivision (a), at any time within 30 days after service of summons upon the limited liability company or upon any defendant who is a manager of the limited liability company, or a series thereof, or held that position at the time of the acts complained of, the limited liability company or the defendant may move the court for an order, upon notice and hearing, requiring the plaintiff to furnish security as hereinafter provided. The motion shall be based upon one or both of the following grounds:

(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the limited liability company, or a series thereof, or its members.

(2) That the moving party, if other than the limited liability company, or a series thereof, did not participate in the transaction complained of in any capacity. The court, on application of the limited liability company, or a series thereof, or any defendant, may, for good cause shown, extend the 30-day period for an additional period not exceeding 60 days.

(c) At the hearing upon any motion pursuant to subdivision (b), the court shall consider evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the limited liability company, or a series thereof, and the moving party that will be incurred in the defense of the action.

If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, that may be incurred by the moving party and the limited liability company in connection with the action. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. The amount of the security may thereafter be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or is excessive, but the court may not in any event increase the total amount of the security beyond fifty thousand dollars (\$50,000) in the aggregate for all defendants. If the court, upon a motion, makes a determination that security shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to that defendant or defendants, unless the security required by the court has been furnished within any reasonable time as may

be fixed by the court. The limited liability company and the moving party shall have recourse to the security in the amount that the court determines upon the termination of the action.

(d) If the plaintiff, either before or after a motion is made pursuant to subdivision (b), or any order or determination pursuant to that motion, posts good and sufficient bond or bonds in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff shall be deemed to have complied with the requirements of this section and with any order for security made pursuant to this section. Any motion then pending shall be dismissed and no further or additional bond or other security shall be required.

(e) If a motion is filed pursuant to subdivision (b), no pleadings need be filed by the limited liability company or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.

SECTION 17709.03 SPECIAL LITIGATION COMMITTEE.

(a) If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under Section 17704.10 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(A) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(B) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

- (2) in a manager-managed limited liability company:
 - (A) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and
 - (B) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.
- (d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:
 - (1) continue under the control of the plaintiff;
 - (2) continue under the control of the committee;
 - (3) be settled on terms approved by the committee; or
 - (4) be dismissed.
- (e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to proceed under the direction of the plaintiff.

ARTICLE 10

MERGER AND CONVERSION

SECTION 17710.01 DEFINITIONS.

For purposes of this article, the following definitions apply:

- (a) “Converted entity” means the other business entity or foreign other business entity or foreign limited liability company that results from a conversion of a domestic limited liability company under this chapter.
- (b) “Converted limited liability company” means a domestic limited liability company that results from a conversion of an other business entity or a foreign other business entity or a foreign limited liability company pursuant to Section 17710.08.

(c) “Converting limited liability company” means a domestic limited liability company that converts to an other business entity or a foreign other business entity or a foreign limited liability company pursuant to this chapter.

(d) “Converting entity” means an other business entity or a foreign other business entity or a foreign limited liability company that converts to a domestic limited liability company pursuant to the terms of Section 17710.08.

(e) “Constituent corporation” means a corporation that is merged with or into one or more limited liability companies or other business entities and that includes a surviving corporation.

(f) “Constituent limited liability company” means a limited liability company that is merged with or into one or more other limited liability companies or other business entities and that includes a surviving limited liability company.

(g) “Constituent other business entity” means an other business entity that is merged with or into one or more limited liability companies and that includes a surviving other business entity.

(h) “Disappearing limited liability company” means a constituent limited liability company that is not the surviving limited liability company.

(i) “Disappearing other business entity” means a constituent other business entity that is not the surviving other business entity.

(j) “Foreign other business entity” means an other business entity formed under the laws of any state other than this state or under the laws of a foreign country.

(k) “Other business entity” means a corporation, general liability company, limited membership, business trust, real estate investment trust, or unincorporated association (other than a nonprofit association), but excludes a limited liability company.

(l) “Surviving limited liability company” means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(m) “Surviving other business entity” means another business entity into which one or more limited liability companies are merged.

SECTION 17710.02 CONVERSION INTO FOREIGN, OTHER ENTITIES OR FOREIGN LIMITED LIABILITY COMPANIES: CONDITIONS.

(a) A limited liability company may be converted into another business entity or a foreign other business entity or a foreign limited liability company pursuant to this article if both of the following apply:

(1) Pursuant to a conversion into a domestic or foreign liability company or limited liability company or into a foreign limited liability company, each of the members of the converting limited liability company receives a percentage interest in the profits and capital of the converted entity equal to that member's percentage interest in profits and capital of the converting limited liability company as of the effective time of the conversion.

(2) Pursuant to a conversion into an other business entity or foreign other business entity not specified in paragraph (1), both of the following occur: (A) Each limited liability company interest of the same class is treated equally with respect to any distribution of cash, property, rights, interests, or securities of the converted entity, unless all limited members of the class consent. (B) The nonredeemable limited liability company interests of the converting limited liability company are converted only into nonredeemable interests or securities of the converted entity, unless all holders of the unredeemable interests consent.

(b) The conversion of a limited liability company to an other business entity or a foreign other business entity or a foreign limited liability company may be effected only if both of the following conditions are satisfied:

(1) The law under which the converted entity will exist expressly permits the formation of that entity pursuant to a conversion.

(2) The limited liability company complies with all other requirements of any other law that applies to conversion to the converted entity.

SECTION 17710.03 PLAN OF CONVERSION.

(a) A limited liability company that desires to convert to an other business entity or a foreign other business entity or a foreign limited liability company shall approve a plan of conversion. The plan of conversion shall state all of the following:

(1) The terms and conditions of the conversion.

(2) The place of the organization of the converted entity and of the converting limited liability company and the name of the converted entity after conversion.

(3) The manner of converting the membership interests of each of the members into shares of, securities of, or interests in, the converted entity.

(4) The provisions of the governing documents for the converted entity, including the limited liability company certificate of organization and operating agreement, or articles or certificate of incorporation if the converted entity is a corporation, to which the holders of interests in the converted entity are to be bound.

(5) Any other details or provisions that are required by the laws under which the converted entity is organized, or that are desired by the parties.

(b) The plan of conversion shall be approved by all managers and a majority in interest of each class of membership interest or if there are no managers, a majority in interest of each class of membership of the converting limited liability company, unless a greater or lesser approval is required by the operating agreement of the converting limited liability company.

However, if the members of the limited liability company would become personally liable for any obligations of the converted entity as a result of the conversion, the plan of conversion shall be approved by all of the limited members of the converting limited liability company, unless the plan of conversion provides that all members will have dissenters' rights as provided in Article 11 (commencing with Section 17711.01).

(c) Upon the effectiveness of the conversion, all members of the converting limited liability company, except those that exercise dissenters' rights as provided in Article 11 (commencing with Section 17711.01), shall be deemed parties to any governing documents for the converted entity adopted as part of the plan of conversion, irrespective of whether or not the member has executed the plan of conversion or the governing documents for the converted entity. Any adoption of governing documents made pursuant thereto shall be effective at the effective time or date of the conversion.

(d) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by all managers and a majority of the members or if there are no managers, a majority of the members of the converting limited liability company and, if the amendment changes any of the principal terms of the plan of conversion, the amendment is approved by the managers and members of the converting limited liability company in the same manner and to the same extent as required for the approval of the original plan of conversion.

(e) The managers by unanimous approval and the members of a converting limited liability company may, by majority approval at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the managers or members, subject to the contractual rights of third parties other than managers or members.

(f) The converted entity shall keep the plan of conversion at the principal place of business of the converted entity if the converted entity is a domestic liability company or foreign other business entity, at the principal executive office of, or registrar or transfer agent of, the converted entity, if the converted entity is a domestic corporation, or at the office at which records are to be kept under Section 17701.13 if the converted entity is a domestic limited liability company. Upon the request of a member of a converting limited liability company, the authorized person on behalf of the converted entity shall promptly deliver to the member or the holder of shares, interests, or other securities, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a member of the rights provided in this subdivision shall be unenforceable.

SECTION 17710.04 EFFECTIVE DATE OF CONVERSION; EVIDENCE OF CONVERSION.

(a) A conversion into an other business entity or a foreign other business entity or a foreign limited liability company shall become effective upon the earliest date that all of the following occur:

(1) The plan of conversion is approved by the members of the converting limited liability company, as provided in Section 17710.03.

(2) All documents required by law to create the converted entity are filed, which documents shall also contain a statement of conversion, if required under Section 17710.06.

(3) The effective date, if set forth in the plan of conversion occurs.

(b) A copy of the statement of liability company authority or certificate of organization complying with Section 17710.06, if applicable, duly certified by the Secretary of State, is conclusive evidence of the conversion of the limited liability company.

SECTION 17710.05 COMPLIANCE WITH OTHER LAWS; SERVICE OF PROCESS.

(a) The conversion of a limited liability company into a foreign limited liability company or foreign other business entity shall be required to comply with Section 17710.02.

(b) If the limited liability company is converting into a foreign limited liability company or foreign other business entity, those conversion proceedings shall be in accordance with the laws of the state or place of organization of the foreign limited liability company or foreign other business entity and the conversion shall become effective in accordance with that law.

(c) (1) To enforce an obligation of a limited liability company that has converted to a foreign limited liability company or foreign other business entity, the Secretary of State shall only be the agent for service of process in an action or proceeding against that converted foreign entity, if the agent designated for the service of process for that entity is a natural person and cannot be found with due diligence or if the agent is a corporation and no person, to whom delivery may be made, may be located with due diligence, or if no agent has been designated and if no one of the officers, members, managers, members, or agents of that entity may be located after diligent search, and it is so shown by affidavit to the satisfaction of the court. The court then may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy Secretary of State of two copies of the process together with two copies of the order, and the order shall set forth an address to which the process shall be sent by the Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the process and order and the fee set forth in Section 12206 of the Government Code, the Secretary of State shall provide notice to that entity of the service of the process by forwarding by certified mail, return receipt requested, a copy of the process and order to the address specified in the order.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State and shall record therein the time of service and the Secretary of State's action with respect thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the providing of notice thereof to that entity, and

the forwarding of the process shall be competent and prima facie evidence of the matters stated therein.

SECTION 17710.06 CERTIFICATE OR STATEMENT OF CONVERSION.

(a) Upon conversion of a limited liability company, one of the following applies:

(1) If the limited liability company is converting into a domestic limited partnership, a statement of conversion shall be completed on a certificate of limited partnership for the converted entity and shall be filed with the Secretary of State.

(2) If the limited liability company is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity. If no statement of partnership authority is filed, a certificate of conversion shall be filed separately with the Secretary of State.

(3) If the limited liability company is converting into a domestic corporation, a statement of conversion shall be completed on the articles of incorporation for the converted entity and shall be filed with the Secretary of State.

(4) If the limited liability company is converting to a foreign limited liability company or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any certificate or statement of conversion shall be executed and acknowledged by all members, unless a lesser number is provided in the certificate of organization or operating agreement, and shall set forth all of the following:

(1) The name and the Secretary of State's file number of the converting limited liability company.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the members, that equaled or exceeded the vote required under Section 17710.03, specifying each class entitled to vote and the percentage vote required of each class.

(3) The form of organization of the converted entity.

(4) The mailing address of the converted entity's agent for service of process and the chief executive office of the converted entity.

(c) The filing with the Secretary of State of a certificate of conversion or a statement of partnership authority, certificate of organization, or articles of incorporation containing a

statement of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting limited liability company, and no converting limited liability company that has made the filing is required to take any action under Article 7 as a result of that conversion.

SECTION 17710.07 REAL PROPERTY; ESTABLISHMENT OF RECORD OWNERSHIPS.

(a) Whenever a limited liability company or other business entity having any real property in this state converts into a limited liability company or an other business entity pursuant to the laws of this state or of the state or place in which the limited liability company or other business entity was organized, and the laws of the state or place of organization, including this state, of the converting limited liability company or other converting entity provide substantially that the conversion vests in the converted limited liability company or other converted entity all the real property of the converting limited liability company or other converting entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the converting limited liability company or other converting entity is located of either of the following shall evidence record ownership in the converted limited liability company or other converted entity of all interest of the converting limited liability company or other converting entity in and to the real property located in that county: (1) A certificate of conversion or statement of partnership authority, certificate of limited partnership, or certificate of organization complying with Section 17710.06, in the form prescribed and certified by the Secretary of State. (2) A copy of a certificate of conversion on a statement of limited partnership authority, certificate of limited partnership, certificate of organization, articles of incorporation, or other certificate or document evidencing the creation of a foreign other business entity or foreign limited liability company by conversion, containing a statement of conversion, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the conversion is effected.

(b) A filed and, if appropriate, recorded certificate of conversion or a statement of partnership authority, certificate of limited partnership, certificate of organization, articles or certificate of incorporation, or other certificate evidencing the creation of a foreign other business entity or foreign limited liability company by conversion, containing a statement of conversion, filed pursuant to subdivision (a) of Section 17710.06, stating the name of the

converting limited liability company or other converting entity in whose name property was held before the conversion and the name of the converted entity or converted limited liability company, but not containing all of the other information required by Section 17710.06, operates with respect to the entities named to the extent provided in subdivision (a).

(c) Recording of a certificate of conversion, or a statement of partnership authority, certificate of limited partnership, certificate of organization, articles of incorporation, or other certificate evidencing the creation of another business entity or a limited liability company by conversion, containing a statement of conversion, in accordance with subdivision (a), shall create, in favor of bona fide purchasers or encumbrances for value, a conclusive presumption that the conversion was validly completed.

SECTION 17710.08 CONVERSION TO A DOMESTIC LIMITED LIABILITY COMPANY.

(a) An other business entity or a foreign other business entity or a foreign limited liability company may be converted to a domestic limited liability company pursuant to this article only if the converting entity is authorized by the laws under which it is organized to effect the conversion.

(b) An other business entity or a foreign other business entity or a foreign limited liability company that desires to convert into a domestic limited liability company shall approve a plan of conversion or another instrument as is required to be approved to effect the conversion pursuant to the laws under which that entity is organized.

(c) The conversion of an other business entity or a foreign other business entity or a foreign limited liability company into a domestic limited liability company shall be approved by the number or percentage of the members, members, shareholders, or holders of interest of the converting entity as is required by the laws under which that entity is organized, or a greater or lesser percentage, subject to applicable laws, as set forth in the converting entity's partnership agreement, certificate of organization, operating agreement, articles or certificate of incorporation, or other governing document.

(d) The conversion by an other business entity or a foreign other business entity or a foreign limited liability company into a domestic limited liability company shall be effective under this article at the time the conversion is effective under the laws under which the converting entity is organized, as long as a certificate of organization containing a statement of

conversion has been filed with the Secretary of State. If the converting entity's governing law is silent as to the effectiveness of the conversion, the conversion shall be effective upon the completion of all acts required under this title to form a limited liability company.

(e) The filing with the Secretary of State of a certificate of conversion or a certificate of organization containing a statement of conversion pursuant to subdivision (a) shall have the effect of the filing of a certificate of cancellation by the converting foreign limited liability company or foreign limited liability company and no converting foreign limited liability company or foreign limited liability company that has made the filing is required to take any action under Article 7 concerning dissolution as a result of that conversion. If a converting other business entity is a foreign corporation qualified to transact business in this state, the foreign corporation shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

SECTION 17710.09 CONVERSION TO ANOTHER ENTITY.

(a) An entity that converts into another entity pursuant to this article is for all purposes other than for the purposes of Part 10 (commencing with Section 17701) of Part 10.20 (commencing with Section 18401) of, and Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code, the same entity that existed before the conversion and the conversion shall not be deemed a transfer of property.

(b) Upon a conversion taking effect, all of the following apply:

(1) All the rights and property, whether real, personal, or mixed, of the converting entity or converting limited liability company are vested in the converted entity or converted limited liability company.

(2) All debts, liabilities, and obligations of the converting entity or converting limited liability company continue as debts, liabilities, and obligations of the converted entity or converted limited liability company.

(3) All rights of creditors and liens upon the property of the converting entity or converting limited liability company shall be preserved unimpaired and remain enforceable against the converted entity or converted limited liability company to the same extent as against the converting entity or converting limited liability company as if the conversion had not occurred.

(4) Any action or proceeding pending by or against the converting entity or converting limited liability company may be continued against the converted entity or converted limited liability company as if the conversion had not occurred.

(c) A member of a converting limited liability company is liable for the following:

(1) All obligations of the converting limited liability company for which the member was personally liable before the conversion.

(2) All obligations of the converted entity incurred after the conversion takes effect, but those obligations may be satisfied only out of property of the entity if that member of a limited liability company, or a shareholder in a corporation, or unless expressly provided otherwise in the certificate of organization or other governing documents, a limited partner of a limited partnership, or a holder of equity securities in another converted entity if the holders of equity securities in that entity are not personally liable for the obligations of that entity under the law under which the entity is organized or its governing documents.

(d) A member of a converted limited liability company remains liable for any and all obligations of the converting entity for which the member was personally liable before the conversion, but only to the extent that the member was liable for the obligations of the converting entity prior to the conversion.

SECTION 17710.10 MERGERS. Mergers of limited liability companies shall be governed by Sections 17710.11 to 17710.19 inclusive.

SECTION 17710.11 MERGERS; CONDITIONS. The following entities may be merged pursuant to this article:

(a) Two or more limited liability companies into one limited liability company.

(b) One or more limited liability companies and one or more other business entities into one of those other business entities.

(c) One or more limited liability companies and one or more other business entities into one limited liability company.

Notwithstanding this section, the merger of any number of limited liability companies with any number of other business entities may be effected only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and

(1) if a limited liability company is the surviving limited liability company, the foreign other business entities are not prohibited by the laws under which they are organized from effecting that merger, and

(2) if a foreign limited liability company or foreign other business entity is the survivor of the merger, the laws of the jurisdiction under which the survivor is organized authorize that merger. Notwithstanding the first sentence of this paragraph, if one or more domestic corporations is also a party to the merger described in that sentence, the merger may be effected only if, with respect to any foreign other business entity that is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger.

SECTION 17710.12 AGREEMENT; APPROVAL; PARTIES; CONTRACTS; LIMITED LIABILITY COMPANY MEMBERSHIP INTERESTS; DISTRIBUTIONS; CONVERSIONS; AMENDMENTS; ABANDONMENT; DELIVERY.

(a) Each limited liability company and other business entity that desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by all managers and a majority in interest of each class of membership interests of each constituent limited liability company, unless a greater approval is required by the operating agreement of the constituent limited liability company. Notwithstanding the previous sentence, if the members of any constituent limited liability company become personally liable for any obligations of a constituent limited liability company or constituent other business entity as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the members of the constituent limited liability company, unless the agreement of merger provides that all members will have the dissenters' rights provided in Article 11 (commencing with Section 17711.01). The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons, including a parent of a constituent limited liability company, may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving limited liability company or surviving other business entity, and of each disappearing limited liability company and disappearing other business entity, and the agreement of merger may change the name of the

surviving limited liability company, which new name may be the same as or similar to the name of a disappearing domestic or foreign limited liability company, subject to Section 17710.08.

(3) The manner of converting the membership interests of each of the constituent limited liability companies into interests, shares, or other securities of the surviving limited liability company or surviving other business entity, and if limited liability company interests of any of the constituent limited liability companies are not to be converted solely into interests, shares, or other securities of the surviving limited liability company or surviving other business entity, the cash, property, rights, interests, or securities that the holders of the limited liability company interests are to receive in exchange for the membership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests, shares, or other securities of the surviving limited liability company or surviving other business entity, or that the liability company interests are canceled without consideration.

(4) Any other details or provisions that are required by the laws under which any constituent other business entity is organized, including, if a domestic corporation is a party to the merger, subdivision (b) of Section 17711.13.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional membership interests.

(b) Each membership interest of the same class of any constituent limited liability company, other than a membership interest in another constituent limited liability company that is being canceled and that is held by a constituent limited liability company or its parent or a limited liability company of which the constituent limited liability company is a parent shall, unless all members of the class consent, be treated equally with respect to any distribution of cash, property, rights, interests, or securities. Notwithstanding this subdivision, except in a merger of a limited liability company with a limited liability company in which it controls at least 90 percent of the membership interests entitled to vote with respect to the merger, the unredeemable membership interests of a constituent limited liability company may be converted only into unredeemable interests or securities of the surviving limited liability company or other business entity or a parent if a constituent limited liability company or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger, membership interests of another constituent limited liability company or interests or securities of a constituent other business entity representing more than 50 percent of the interests or securities entitled to

vote with respect to the merger of the other constituent limited liability company or constituent other business entity or more than 50 percent of the voting power, as defined in Section 194.5, of a constituent other business entity that is a domestic corporation, unless all of the members of the class consent. This subdivision shall apply only to constituent limited liability companies with over 35 members.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the certificate of merger or the agreement of merger, as provided in Section 17710.14, if the amendment is approved by the managers and members of each constituent limited liability company in the same manner as required for approval of the original agreement of merger and, if the amendment changes any of the principal terms of the agreement of merger, the amendment is approved by the managers and members of each constituent limited liability company in the same manner and to the same extent as required for the approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The managers and members of a constituent limited liability company may, in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent limited liability companies and constituent other business entities, without further approval by the membership interests, at any time before the merger is effective.

(e) An agreement of merger approved in accordance with subdivision (a) may

(1) effect any amendment to the operating agreement of any constituent limited liability company or

(2) effect the adoption of a new operating agreement for a constituent limited liability company if it is the surviving limited liability company in the merger. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger. Notwithstanding the above provisions of this subdivision, if a greater number of members is required to approve an amendment to the operating agreement of a constituent limited liability company than is required to approve the agreement of merger pursuant to subdivision (a), and the number of members that approve the agreement of merger is less than the number of members required to approve an amendment to the operating agreement of the constituent limited liability company, any amendment to the operating agreement or adoption of a new operating agreement of that constituent limited liability company made pursuant to the first sentence of this subdivision shall

be effective only if the agreement of merger provides that all of the members shall have the dissenters' rights provided in Article 11 (commencing with Section 17711.01).

(f) The surviving limited liability company or surviving other business entity shall keep the agreement of merger at its designated office or at the business address specified in paragraph (5) of subdivision (a) of Section 17710.14, as applicable, and, upon the request of a member of a constituent limited liability company or a holder of shares, interests, or other securities of a constituent other business entity, the managers or members of the surviving limited liability company or the authorized person of the surviving other business entity shall promptly deliver to the member or the holder of shares, interests, or other securities, at the expense of the surviving limited liability company or surviving other business entity, a copy of the agreement of merger. A waiver by a member or holder of shares, interests, or other securities of the rights provided in this subdivision shall be unenforceable.

SECTION 17710.13 APPROVAL OF TERMS AND CONDITIONS OF TRANSACTION BY COMMISSIONER IN APPLICATION OF SUBDIVISION (b) OF SECTION 17710.12.

Subdivision (b) of Section 17710.12 shall not apply to any transaction if the commissioner has approved the terms and conditions of the transaction and the fairness of such terms and conditions pursuant to Section 25142.

SECTION 17710.14 CERTIFICATE OF MERGER; FILING; EXECUTION; CONTENTS; EFFECT; AGREEMENT OF MERGER FILING.

(a) If the surviving entity is a limited liability company or an other business entity, other than a corporation in a merger in which a domestic corporation is a constituent party, after approval of a merger by the constituent limited liability companies and any constituent other business entities, the constituent limited liability companies and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all managers or if none all members unless a lesser number is provided in the certificate of organization or operating agreement of the domestic constituent limited liability company and by each foreign constituent limited liability company by one or more managers or if none, members, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the

constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent limited liability companies and constituent other business entities, separately identifying the disappearing limited liability companies and disappearing other business entities and the surviving limited liability company or surviving other business entity.

(2) If a vote of the members was required under Section 17710.12, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class.

(3) If the surviving entity is a limited liability company and not an other business entity, any change required to the information set forth in the certificate of organization of the surviving limited liability company resulting from the merger, including any change in the name of the surviving limited liability company resulting from the merger. The filing of a certificate of merger setting forth any such changes to the certificate of organization of the surviving limited liability company shall have the effect of the filing of a certificate of amendment by the surviving limited liability company, and the surviving limited liability company need not file a certificate of amendment under Section 17702.02 to reflect those changes.

(4) The future effective date, which shall be a date certain not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign limited liability company, the full name of the entity, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, paragraph (2) of subdivision (g) of Section 17711.13. If the surviving entity is a foreign limited liability company in a merger in which a domestic

corporation is a disappearing other business entity, a copy of the agreement of merger and attachments as required under paragraph (1) of subdivision (g) of Section 17711.13 shall be filed at the same time as the filing of the certificate of merger.

(b) If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, after approval of the merger by the constituent limited liability companies and constituent other business entities, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 17711.13. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all general members, unless a lesser number is provided in the certificate of limited liability company of the domestic constituent limited liability company.

(c) A certificate of merger or the agreement of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a certificate of cancellation for each disappearing limited liability company, and no disappearing limited liability company need take any action under Article 7 concerning dissolution as a result of the merger.

(d) If the organization disappearing into the other business entity is a foreign corporation qualified to transact intrastate business in this state, a certificate of satisfaction of the Franchise Tax Board as required by Section 23334 of the Revenue and Taxation Code shall be filed with the certificate of merger or agreement of merger, as is applicable under subdivision (a) or (b). By the filing of the certificate of merger or agreement of merger, as is applicable, the foreign corporation shall automatically surrender its right to transact intrastate business.

SECTION 17710.15 EFFECTIVE DATE OF MERGER; CONCLUSIVE EVIDENCE OF MERGER; CERTIFIED COPY OF MERGER AGREEMENT.

(a) Unless a future effective date is provided in a certificate of merger or the agreement of merger, if an agreement of merger is required to be filed under Section 17710.14, in which event the merger shall be effective at that future effective date, a merger shall be effective upon the filing of the certificate of merger or the agreement of merger, as is applicable, in the office of the Secretary of State.

(b) (1) For all purposes, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of (A) the constituent limited liability companies, either by themselves or together with constituent other business entities, into the

surviving other business entity, or (B) the constituent limited liability companies or the constituent other business entities, or both, into the surviving limited liability company.

(2) In a merger in which the surviving entity is a corporation in a merger in which a domestic corporation and a domestic limited liability company are parties to the merger, a copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation, and the performance of the conditions necessary to the adoption of any amendment to the articles of incorporation of the surviving corporation, if applicable, contained in the agreement of merger.

**SECTION 17710.16 SURVIVING LIMITED LIABILITY COMPANY
SUCCESSION TO RIGHTS AND PROPERTY AND DEBT AND LIABILITIES OF
DISAPPEARING ENTITY LIENS ON PROPERTY; PENDING ACTION.**

(a) Upon a merger of limited liability companies or limited liability companies and other business entities pursuant to this chapter, the separate existence of the disappearing limited liability companies and disappearing other business entities ceases and the surviving limited liability company or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property, whether real, personal, or mixed, of each of the disappearing limited liability companies and disappearing other business entities, and shall be subject to all the debts and liabilities of each in the same manner as if the surviving limited liability company or surviving other business entity had itself incurred them.

(b) All rights of creditors and all liens upon the property of each of the constituent limited liability companies and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving limited liability company or the surviving other business entity to the same extent as if the debt, liability, or duty which gave rise to that lien had been incurred or contracted by the surviving limited liability company or the surviving other business entity, provided that such liens upon the property of a disappearing limited liability company or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing limited liability company or disappearing other business entity may be prosecuted to judgment, which shall bind

the surviving limited liability company or surviving other business entity, or the surviving limited liability company or surviving other business entity may be proceeded against or be substituted in the place of the disappearing limited liability company or disappearing other business entity.

(d) Nothing in this article is intended to affect the liability a member of a disappearing limited liability company may have in connection with the debts and liabilities of the disappearing limited liability company existing prior to the time the merger is effective.

SECTION 17710.17 FOREIGN LIMITED LIABILITY COMPANY; MERGER WITH DOMESTIC ENTITIES; CONDITIONS; SURVIVING ENTITIES; LAW GOVERNING; EFFECTIVE DATE.

(a) The merger of any number of domestic limited liability companies with any number of foreign limited liability companies or foreign other business entities shall be required to comply with Section 17710.10.

(b) If the surviving entity is a domestic limited liability company or a domestic other business entity, the merger proceedings with respect to that limited liability company or other business entity and any domestic disappearing limited liability company shall conform to the provisions of this chapter governing the merger of domestic limited liability companies, but if the surviving entity is a foreign limited liability company or a foreign other business entity, then, subject to the requirements of subdivision (d) and Article 11 (commencing with Section 17711.01) and, with respect to any domestic constituent corporation, Section 17711.13 and Chapters 12 (commencing with Section 17712.00) and 13 (commencing with Section 17713.00) of Division 1 of Title 1, the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving limited liability company or surviving other business entity.

(c) If the surviving entity is a domestic limited liability company or domestic other business entity, other than a domestic corporation, the certificate of merger shall be filed as provided in subdivision (a) of Section 17710.14, and thereupon, subject to subdivision (a) of Section 17710.15, the merger shall be effective as to each domestic constituent limited liability company and domestic constituent other business entity. If the surviving entity is a domestic corporation, the agreement of merger with attachments shall be filed as provided in subdivision (b) of Section 17710.14, and thereupon, subject to subdivision (a) of Section 17710.15, the

merger shall be effective as to each domestic constituent limited liability company and domestic constituent other business entity unless another effective date is provided in Article 11 (commencing with Section 17711.01) of Division 1 of Title 1, with respect to any constituent corporation or constituent limited liability company.

(d) If the surviving entity is a foreign limited liability company or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving limited liability company or surviving other business entity is organized, but shall be effective as to any domestic disappearing limited liability company as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a certificate of merger or agreement of merger as provided in Section 17710.14.

(e) If a merger described in subdivision (c) or (d) also includes a foreign disappearing limited liability company previously registered for the transaction of intrastate business in this state pursuant to Section 17708.02, the filing of the certificate of merger or agreement of merger, as is applicable under Section 17710.14, automatically has the effect of a cancellation of registration for that foreign limited liability company pursuant to Section 17708.07 without the necessity of the filing of a certificate of cancellation.

(f) The provisions of subdivision (b) of Section 17710.12 and Article 11 (commencing with Section 17711.01) apply to the rights of the limited members of any of the constituent limited liability companies that are domestic limited liability companies and of any domestic limited liability company that is a parent of any foreign constituent limited liability company.

SECTION 17710.18 REAL PROPERTY RIGHTS; RECORD OF OWNERSHIP; FILING REQUIREMENTS.

Whenever a domestic or foreign limited liability company or other business entity having any real property in this state merges with another limited liability company or other business entity pursuant to the laws of this state or of the state or place in which any constituent limited liability company or constituent other business entity was organized, and the laws of the state or place of organization, including this state of any disappearing limited liability company or disappearing other business entity provide substantially that the making and filing of the agreement of merger or certificate of merger vests in the surviving limited liability company or surviving other business entity all the real property of any disappearing limited liability company

and disappearing other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing limited liability company or disappearing other business entity is located of either of the following shall evidence record ownership in the surviving limited liability company or surviving other business entity of all interest of such disappearing limited liability company or disappearing other business entity in and to the real property located in that county: (a) A certificate of merger certified by the Secretary of State, or other certificate prescribed by the Secretary of State, (b) A copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected.

SECTION 17710.19 RECORDING OF CERTIFICATE; CONCLUSIVE PRESUMPTIVE OF MERGER. Recording of the certificate of merger in accordance with Section 17710.18 shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.

ARTICLE 11

DISSENTERS' RIGHTS

SECTION 17711.01 DEFINITIONS.

- (a) For purposes of this article, "reorganization" refers to any of the following:
- (1) A conversion pursuant to Article 10 (commencing with Section 17710.02).
 - (2) A merger pursuant to Article 10 (commencing with Section 17710.10).
 - (3) The acquisition by one limited liability company in exchange, in whole or in part, for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) of membership interests or equity securities of another limited liability company or other business entity if, immediately after the acquisition, the acquiring limited liability company has control of the other limited liability company or other business entity.
 - (4) The acquisition by one limited liability company in exchange in whole or in part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity which is in control of the acquiring limited liability company) or for its debts securities (or debt securities of a limited liability company or other business entity which is in control of the acquiring limited liability company) which are not adequately secured and which have a maturity date in excess of five years after the

consummation of the acquisition, or both, of all or substantially all of the assets of another limited liability company or other business entity.

(b) For purposes of this article, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited liability company or other business entity.

SECTION 17711.02 MEMBERS’ RIGHT TO REQUIRE LIMITED LIABILITIES COMPANIES TO PURCHASE DISSENTING INTEREST.

(a) If the approval of outstanding membership interests is required for a limited liability company to participate in a reorganization, pursuant to the limited liability company agreement, or otherwise, then each member of the limited liability company holding those interests may, by complying with this article, require the limited liability company to purchase for cash, at its fair market value, the interest owned by the member in the limited liability company, if the interest is a dissenting interest as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization, excluding any appreciation or depreciation in consequence of the proposed reorganization.

(b) As used in this article, “dissenting interest” means the interest of a member that satisfies all of the following conditions:

(1) Either:

(A) Was not, immediately prior to the reorganization, either (i) listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100, or (ii) listed on the list of OTC margin stocks issued by the Board of Governors of the Federal Reserve System, provided that in either such instance the limited liability company whose outstanding interests are so listed provides, in its notice to members requesting their approval of the proposed reorganization, a summary of the provisions of this section and Sections 17711.03, 17711.04, 17711.05 and 17711.06; or

(B) If the interest is of a class of interests listed as described in clause (i) or (ii) of subparagraph (A), demands for payment are filed with respect to 5 percent or more of the outstanding interests of that class.

(2) Was outstanding on the date for the determination of members entitled to vote on the reorganization.

(3) (A) Was not voted in favor of the reorganization, or (B) if the interest is described in clause (i) or (ii) of subparagraph (A) of paragraph (1), was voted against the reorganization; provided, however, that clause (A) rather than clause (B) of this paragraph applies in any event where the approval for the proposed reorganization is sought by written consent rather than at a meeting.

(4) The member has demanded that it be purchased by the limited liability company at its fair market value in accordance with Section 17711.03.

(5) The member has submitted it for endorsement, if applicable, in accordance with Section 17711.04.

(c) As used in this article, “dissenting member” means the recordholder of a dissenting interest, and includes an assignee of record of such an interest.

SECTION 17711.03 PURCHASE OF DISSENTING INTERESTS - NOTICE OF REORGANIZATION.

(a) If members have a right under Section 17711.02, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, to require the limited liability company to purchase their membership interests for cash, such limited liability company shall mail to each such member a notice of the approval of the reorganization by the requisite vote or consent of the members, within 10 days after the date of such approval, accompanied by a copy of this section and Sections 17711.01, 17711.02, 17711.04 and 17711.05, a statement of the price determined by the limited liability company to represent the fair market value of its outstanding interests, and a brief description of the procedure to be followed if the member desires to exercise the member’s rights under such sections. The statement of price constitutes an offer by the limited liability company to purchase at the price stated any dissenting interests as defined in subdivision (b) of Section 17711.02, unless they lose their status as dissenting interests under Section 17711.11.

(b) Any member who has a right to require the limited liability company to purchase the member’s interest for cash under Section 17711.02, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, and who desires the limited liability company to purchase such interest, shall make written demand upon the limited liability company for the purchase of such interest and the payment to the member in cash of its fair market value. The demand is not effective for any purpose unless it is received by the limited liability company or

any transfer agent thereof (1) in the case of interests described in clause (i) or (ii) of subparagraph (A) of paragraph (1) of subdivision (b) of Section 17711.02, not later than the date of the members' meeting to vote upon the reorganization, or (2) in any other case, within 30 days after the date on which notice of the approval of the reorganization by the requisite vote or consent of the members is mailed by the limited liability company to the members.

(c) The demand shall state the number or amount of the member's interest in the limited liability company and shall contain a statement of what such member claims to be the fair market value of that interest on the day before the announcement of the proposed reorganization. The statement of fair market value constitutes an offer by the member to sell the interest at such price.

SECTION 17711.04 PURCHASE OF DISSENTING INTERESTS - SUBMISSION OF CERTIFICATE OR WRITTEN NOTICE OF MEMBERSHIP INTEREST. Within 30 days after the date on which notice of the approval of the outstanding interests of the limited liability company is mailed to the member pursuant to subdivision (a) of Section 17711.03, the member shall submit to the limited liability company at its principal office or at the office of any transfer agent thereof, (a) if the interest is evidenced by a certificate, the member's certificate representing the interest which the member demands that the limited liability company purchase, to be stamped or endorsed with a statement that the interest is a dissenting interest or to be exchanged for certificates of appropriate denominations so stamped or endorsed, or (b) if the interest is not evidenced by a certificate, written notice of the number or amount of interest which the member demands that the limited liability company purchase. Upon subsequent transfers of the dissenting interest on the books of the limited liability company, the new certificates or other written statement issued therefor shall bear a like statement, together with the name of the original holder of the dissenting interest.

SECTION 17711.05 AGREEMENT ON PURCHASE OF DISSENTING MEMBERSHIP INTEREST.

(a) If the limited liability company and the dissenting member agree that such member's interest is a dissenting interest and agree upon the price to be paid for the dissenting interest, the dissenting member is entitled to the agreed price with interest thereon at the legal rate on judgments from the date of consummation of the reorganization. All agreements fixing the fair market value of any dissenting member's interest as between the limited liability

company and such member shall be in writing and filed in the records of the limited liability company.

(b) Subject to the provisions of Section 17711.08, payment of the fair market value for a dissenting interest shall be made within 30 days after the amount thereof has been agreed to or within 30 days after any statutory or contractual conditions to the reorganization are satisfied, whichever is later, and in the case of dissenting interests evidenced by certificates of interest, subject to surrender of such certificates of interest, unless provided otherwise by agreement.

SECTION 17711.06 DISAGREEMENT ON PURCHASE OF DISSENTING MEMBERSHIP INTEREST - JUDICIAL RELIEF.

(a) If the limited liability company denies that a membership interest is a dissenting interest, or the limited liability company and a dissenting member fail to agree upon the fair market value of a dissenting interest, then such member or any interested limited liability company, within six months after the date on which notice of the approval of the reorganization by the requisite vote or consent of the members was mailed to the member, but not thereafter, may file a complaint in the superior court of the proper county praying the court to determine whether the interest is a dissenting interest, or the fair market value of the dissenting interest, or both, or may intervene in any action pending on such a complaint.

(b) Two or more dissenting members may join as plaintiffs or be joined as defendants in any such action and two or more such actions may be consolidated.

(c) On the trial of the action, the court shall determine the issues. If the status of the membership interest as a dissenting interest is in issue, the court shall first determine that issue. If the fair market value of the dissenting interest is in issue, the court shall determine, or shall appoint one or more impartial appraisers to determine, the fair market value of the dissenting interest.

SECTION 17711.07 APPRAISAL OF FAIR MARKET VALUE OF MEMBERSHIP INTEREST; JUDGMENT; PAYMENT; COSTS.

(a) If the court appoints an appraiser or appraisers, they shall proceed forthwith to determine the fair market value per interest of the outstanding membership interests of the limited liability company, by class if necessary. Within the time fixed by the court, the appraisers, or a majority of them, shall make and file a report in the office of the clerk of the court. Thereupon, on the motion of any party, the report shall be submitted to the court and

considered on such additional evidence as the court considers relevant. If the court finds the report reasonable, the court may confirm it.

(b) If a majority of the appraisers appointed fails to make and file a report within 30 days from the date of their appointment, or within such further time as may be allowed by the court, or the report is not confirmed by the court, the court shall determine the fair market value per interest of the outstanding membership interests of the limited liability company, by class if necessary.

(c) Subject to Section 17711.08, judgment shall be rendered against the limited liability company for payment of an amount equal to the fair market value, as determined by the court, of each dissenting interest which any dissenting member who is a party, or has intervened, is entitled to require the limited liability company to purchase, with interest thereon at the legal rate on judgments from the date of consummation of the reorganization.

(d) Any such judgment shall be payable forthwith, provided, however, that with respect to membership interests evidenced by transferable certificates of interest, only upon the endorsement and delivery to the limited liability company of those certificates representing the interests described in the judgment. Any party may appeal from the judgment.

(e) The costs of the action, including reasonable compensation for the appraisers, to be fixed by the court, shall be assessed or apportioned as the court considers equitable, but, if the appraisal exceeds the price offered by the limited liability company, the limited liability company shall pay the costs (including, in the discretion of the court, if the value awarded by the court for the dissenting interest is more than 125 percent of the price offered by the limited liability company under subdivision (a) of Section 17711.02, attorneys' fees and fees of expert witnesses).

SECTION 17711.08 WITHHOLDING OF CERTAIN PAYMENTS DUE TO DISSENTING MEMBERS. To the extent that the payment to dissenting members of the fair market value of their dissenting interests would require the dissenting members to return such payment or a portion thereof by reason of Section 17711.09 or the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code), then that payment or portion thereof shall not be made and the dissenting members shall become creditors of the limited liability company for the amount not paid, together with interest thereon at the legal rate on judgments until the date of payment, but subordinate to all other

creditors in any proceeding relating to the winding up and dissolution of the limited liability company, such debt to be payable when permissible.

SECTION 17711.09 CASH DISTRIBUTIONS CREDITED AGAINST AMOUNT TO BE PAID FOR DISSENTING INTEREST. Any cash distributions made by a limited liability company to a dissenting member after the date of consummation of the reorganization, but prior to any payment by the limited liability company for such dissenting member's interest, shall be credited against the total amount to be paid by the limited liability company for such dissenting interest.

SECTION 17711.10 RIGHTS AND PRIVILEGES OF DISSENTING MEMBERS; NO RIGHT TO WITHDRAWAL OF DEMAND FOR PAYMENT. Except as expressly limited by this article, dissenting members shall continue to have all the rights and privileges incident to their interests immediately prior to the reorganization, including limited liability, until payment by the limited liability company for their dissenting interests. A dissenting member may not withdraw a demand for payment unless the limited liability company consents thereto.

SECTION 17711.11 LOSS OF STATUS AS DISSENTING INTEREST. A dissenting interest loses its status as a dissenting interest and the holder thereof ceases to be a dissenting member and ceases to be entitled to require the limited liability company to purchase the interest upon the happening of any of the following:

(a) The limited liability company abandons the reorganization. Upon abandonment of the reorganization, the limited liability company shall pay, on demand, to any dissenting member who has initiated proceeding in good faith under this article, all reasonable expenses incurred in such proceedings and reasonable attorneys' fees.

(b) The interest is transferred prior to its submission for endorsement in accordance with Section 17711.04.

(c) The dissenting member and the limited liability company do not agree upon the status of the interest as a dissenting interest or upon the purchase price of the dissenting interest, and neither files a complaint nor intervenes in a pending action, as provided in Section 17711.06, within six months after the date upon which notice of the approval of the reorganization by the requisite vote or consent of members was mailed to the member.

(d) The dissenting member, with the consent of the limited liability company, withdraws such member's demand for purchase of the dissenting interest.

SECTION 17711.12 SUSPENSION OF PROCEEDINGS PENDING OUTCOME OF LITIGATION. If litigation is instituted to test the sufficient or regularity of the vote or consent of the members in authorizing a reorganization, any proceedings under Sections 17711.06 and 17711.07 shall be suspended until final determination of that litigation.

SECTION 17711.13 LIMITED LIABILITY COMPANIES SUBJECT TO ARTICLE.

(a) This article applies to the following:

(1) A domestic limited liability company formed on or after January 1, _____.

(2) A foreign limited liability company if (A) the foreign limited liability company was formed on or after January 1, _____ or filed an application to qualify to do business on or after January 1, _____, and (B) members holding more than 50 percent of the voting power held by all members of the foreign limited liability company reside in this state.

(3) A limited liability company if the operating agreement so provides or if all managers and a majority of the members if it is a manager-managed limited liability company or a majority if it is a member-managed liability company determine that this article shall apply.

(b) This article does not apply to membership interests governed by operating agreements whose terms and provisions specifically set forth the amount to be paid in respect of such interests in the event of a reorganization of the limited liability company, or to limited liability companies with 35 or fewer members, unless the operating agreement provides that this article shall apply or unless all managers and a majority of the members of a manager-managed limited liability company or a majority of the member of a member-managed limited liability company agree that this article shall apply.

SECTION 17711.14 RIGHTS OF MEMBERS TO CHALLENGE REORGANIZATION.

(a) No member of a limited liability company who has a right under this article to demand payment of cash for the interest owned by such member in a limited liability company shall have any right at law or in equity to attack the validity of the reorganization, or to have the reorganization set aside or rescinded, except in an action to test whether the vote or consent of members required to authorize or approve the reorganization has been obtained in accordance

with the procedures established therefor by the operating agreement of the limited liability company.

(b) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, subdivision (a) shall not apply to any member of such controlled party who has not demanded payment of cash for such member's interest pursuant to this article; but if such member institutes any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, the member shall not thereafter have any right to demand payment of cash for such member's interest pursuant to this article.

(c) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, then, in any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, (1) a party to a reorganization which controls another party to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the members of the controlled party, and (2) a person who controls two or more parties to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the members of any party so controlled.

(d) Subdivisions (b) and (c) shall not apply if a majority of the members other than members who are directly or indirectly controlled by, or under common control with, another party to the reorganization approve or consent to the reorganization.

(e) This section shall not prevent a partner of a limited liability company that is a party to a reorganization from bringing an action against a manager of the limited liability company, the limited liability company, or any person controlling a manager at law or in equity as to any matters (including, without limitation, an action for breach of fiduciary obligation or fraud) other than to attack the validity of the reorganization or to have the reorganization set aside or rescinded.

ARTICLE 12

SERIES PROVISIONS

SECTION 17712.01 SERIES OF ASSETS.

(a) If a limited liability company complies with Section 17712.02, an operating agreement may establish or provide for the establishment of one or more designated series of assets that:

(1) has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses of specified property or obligations; or

(2) has a separate purpose or investment objective.

(b) A series established in accordance with subsection (a) may carry on any activity, whether or not for profit.

SECTION 17712.02 ENFORCEABILITY OF OBLIGATIONS AND EXPENSES OF SERIES AGAINST ASSETS.

(a) Subject to subsection (b):

(1) the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series thereof; and

(2) none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of a series.

(b) Subsection (a) applies only if:

(1) the records maintained for that series account for the assets of that series separately from the other assets of the limited liability company or any other series;

(2) the operating agreement contains a statement to the effect of the limitations provided in subsection (a); and

(3) the limited liability company's certificate of organization contains a statement that the limited liability company may have one or more series of assets subject to the limitations provided in subsection (a).

SECTION 17712.03 ASSETS OF SERIES.

(a) Assets of a series may be held directly or indirectly, including being held in the name of the series, in the name of the limited liability company, through a nominee, or otherwise.

(b) If the records of a series are maintained in a manner so that the assets of the series can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any assets, or by any other

method in which the identity of the assets can be objectively determined, the records are considered to satisfy the requirements of Section 17712.02.

SECTION 17712.04 STATEMENT OF LIMITATION ON LIABILITIES OF SERIES. The statement of limitation on liabilities of a series required by Section 17712.02 is sufficient regardless of whether:

- (a) the limited liability company has established any series under this title when the statement of limitations is contained in the certificate of organization; and
- (b) the statement of limitations makes reference to a specific series of the limited liability company.

SECTION 17712.05 MEMBER'S POWER TO DISSOCIATE AS A MEMBER ASSOCIATED WITH A SERIES; WRONGFUL DISSOCIATION.

(a) A person has the power to dissociate as a member of a series at any time, rightfully or wrongfully, by withdrawing as a member of a series by express will under Section 17712.06(1).

- (b) A person's dissociation from a series is wrongful only if the dissociation:
 - (1) is in breach of an express provision of the operating agreement; or
 - (2) occurs before the termination of the series and
 - (A) the person withdraws as a member of a series by express will;
 - (B) the person is expelled as a member of the series by judicial determination under Section 17712.04; or
 - (C) the person is dissociated as a member of a series under Section 17712.06(8) by being a debtor in bankruptcy; or
 - (D) in the case of a person that is not a trust other than a business trust, an estate or an individual, the person is expelled or otherwise dissociated as a member because it dissolved or terminated

(c) A person that wrongfully dissociates as a member of a series is liable to the series and, subject to Section 17706.01, to the other members of that series for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member of a series to the series or the other members of that series.

SECTION 17712.06 EVENTS CAUSING DISSOCIATION OF A MEMBER ASSOCIATED WITH A SERIES. A person is dissociated as a member of a series when:

- (1) the series has notice of the person's express will to dissociate from the series, except if the person specifies a dissociation date later than the date the series had notice, the person is dissociated from the series on that later date;
- (2) an event stated in the operating agreement as causing the person's dissociation from the series occurs;
- (3) the person is dissociated as a member of the limited liability company pursuant to Section 17706.02;
- (4) the person is expelled as a member of that series pursuant to the operating agreement;
- (5) the person is expelled as a member of the series by the unanimous consent of the other members of that series if:
 - (A) it is unlawful to carry on the series' activities with the person as a member of that series; or
 - (B) there has been a transfer of all of the person's transferrable interest other than: (i) a transfer for security purposes, or (ii) a charging order in effect under Section 17705.03 which has not been foreclosed; or
 - (C) the person is a corporation and, within 90 days after the series notifies the person that it will be expelled as a member of that series because the person has filed a certificate of dissolution or the equivalent, or its right to conduct activities has been suspended by its jurisdiction of formation, the certificate of dissolution or the equivalent has not been revoked or its right to conduct activities has not been reinstated; or
 - (D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- (6) on application by the series, the person is expelled as a member of that series by judicial order because the person:
 - (A) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, that series' activities;
 - (B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duty or obligation under this Act or other applicable law; or

(C) has engaged in, or is engaging, in conduct relating to that series' activities that makes it not reasonably practicable to carry on the activities with the person as a member of that series;

(7) in the case of a person who is an individual: (A) the person dies, or (B) in a member managed limited liability company: (i) a guardian or general conservator is appointed, or (ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member of a series under this title or the operating agreement,

(8) the person becomes a debtor in bankruptcy;

(9) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferrable interest is distributed, but not solely by reason of the substitution of a successor trustee;

(10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferrable interest, but not solely by reason of the substitution of a successor personal representative;

(11) in the case of a member of a series that is not an individual, the legal existence of the member otherwise terminates.

(12) the series terminates.

SECTION 17712.07 EFFECT OF PERSON'S DISSOCIATION AS A MEMBER.

(a) A person who has dissociated as a member of a series shall have no right to participate in the activities and affairs of that series and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated from that series.

(b) A person's dissociation as a member of a series does not of itself discharge the person from any debt, obligation, or liability to that series, the limited liability company or the other members that the person incurred while a member of that series.

(c) A member's dissociation from a series does not, in itself, cause the member to dissociate from any other series or require the winding up of the series unless the dissociated member was the last remaining member of the series.

(d) A member's dissociation from a series does not, in itself, cause the member to dissociate from the limited liability company.

ARTICLE 13

MISCELLANEOUS PROVISIONS

SECTION 17713.01 UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 17713.02 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 17713.03 SAVINGS CLAUSE. This title does not affect an action commenced, proceeding brought, or right accrued before this title takes effect.

SECTION 17713.04 APPLICATION TO EXISTING RELATIONSHIPS.

(a) Before January 1, 2015, this title governs only:

(1) a limited liability company formed on or after January 1, 2013; and

(2) except as otherwise provided in subsection (c), a limited liability company formed before January 1, 2013 which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this title.

(b) Except as otherwise provided in subsection (c), on and after January 1, 2015 this title governs all limited liability companies.

(c) For the purposes applying this title to a limited liability company formed before January 1, 2013:

(1) the limited liability company's certificate of organization are deemed to be the limited liability company's certificate of organization; and

(2) for the purposes of applying Section 17701.02(10) and subject to Section 17701.12(d), language in the limited liability company's certificate of organization designating the limited liability company's management structure operates as if that language were in the operating agreement.

SECTION 17713.05 REPEALS. Effective January 1, 2015, the following acts and parts of acts are repealed: the Beverly-Killea Limited Liability Company act, Section 17001 et. seq.

SECTION 17713.06 EFFECTIVE DATE. This title takes effect on January 1, 2013.