- 1 SB151
- 2 173107-4
- 3 By Senator Ward
- 4 RFD: Judiciary
- 5 First Read: 09-FEB-16

173107-4:n:02/08/2016:JMH/hh LRS2015-3468R2 1 2 3 4 5 6 7 This bill would revise the Alabama Limited 8 SYNOPSIS: 9 Partnership Law as Chapter 9A of Title 10A of the 10 Code of Alabama 1975. 11 This bill would harmonize the existing 12 limited partnership law and the existing limited 13 liability company law by reducing the differences between the two laws. 14 15 This bill would harmonize, to the extent 16 possible, the various processes of formation, 17 filings, notice, amendment and restatement of 18 certificates of formation, admission of limited 19 partners and general partners, contributions and 20 distributions, dissociation of partners and the 21 effects thereof, transfers of interests, charging 22 orders, rights of personal representatives, dissolution and winding up, direct and derivative 23 24 actions, and conversions and mergers. 25 This bill would continue to specify various 26 default provisions which would apply to a

1 partnership agreement unless modified by the 2 partners in the partnership agreement. This bill would continue to provide that 3 certain obligations, such as the implied 4 contractual covenant of good faith and fair 5 dealing, could not be modified in the partnership 6 7 agreement. This bill would continue the requirement the 8 filings necessary to form, dissolve, merge, or 9 10 convert a limited partnership include information 11 necessary to notify the state and third parties 12 that the limited partnership exists and how to 13 contact it. 14 This bill would continue to require the 15 details related to the operation would be contained 16 in the partnership agreement. 17 This bill would continue to require the 18 certificate of formation to list all of the general 19 partners. 20 This bill would specify that a partnership 21 could be dissolved by filing a statement of 22 dissolution rather than by amending the certificate 23 of formation. 24 This bill would specify that when both the 25 converting entity and the converted entity are 26 domestic entities, the statement of conversion and

1	the certificate of formation would be filed
2	simultaneously with the Secretary of State.
3	
4	A BILL
5	TO BE ENTITLED
6	AN ACT
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8	To adopt a revised Alabama Limited Partnership Law
9	as Chapter 9A of Title 10A of the Code of Alabama 1975; to
10	provide for the various processes of formation of a limited
11	partnership; to provide default provisions; to provide that
12	certain obligations of a limited partnership may not be
13	modified in the agreement; to specify the information required
14	to be included in various filings; to specify that when both
15	the converting entity and the converted entity are domestic
16	entities, the statement of conversion and the certificate of
17	formation would be filed simultaneously with the Secretary of
18	State; to make various harmonizing changes to the limited
19	liability company law; to amend Sections 10A-1-1.03,
20	10A-1-1.06, 10A-1-1.08, 10A-1-4.26, 10A-1-6.02, 10A-1-6.13,
21	10A-1-6.25, 10A-1-7.07, 10A-5A-1.10, 10A-5A-4.01, 10A-5A-5.04,
22	10A-5A-7.01, 10A-5A-7.02, 10A-5A-10.03, 10A-5A-10.04,
23	10A-5A-10.07, and 10A-5A-10.08, Code of Alabama 1975; and to
24	repeal Sections 10A-9-1.01 to 10A-9-12.08, inclusive, Code of
25	Alabama 1975.
26	BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 9A of Title 10A, comprised of
 Articles 1 to 11, inclusive, is added to the Code of Alabama
 1975, as follows:

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Chapter 9A. Alabama Limited Partnership Law. Article 1. General Provisions.

6 § 10A-9A-1.01. Short title. This chapter and the 7 provisions of Chapter 1, to the extent applicable to limited 8 partnerships, shall be known and may be cited as the Alabama 9 Limited Partnership Law.

10 § 10A-9A-1.02. Definitions. Notwithstanding Section 11 10A-1-1.03, as used in this chapter, unless the context 12 otherwise requires, the following terms mean:

(1) "Certificate of Formation" with respect to a
limited partnership means the certificate of formation
required by Section 10A-9A-2.01, and the certificate of
formation as amended or restated.

17 (2) "Distribution" except as otherwise provided in
18 Section 10A-9A-5.08(f), means a transfer of money or other
19 property from a limited partnership to another person on
20 account of a transferable interest.

(3) "Foreign limited liability limited partnership"
means a foreign limited partnership whose general partners
have limited liability for the obligations of the foreign
limited partnership under a provision similar to Section
10A-9A-4.04(c).

26 (4) "Foreign limited partnership" means a
 27 partnership formed under the laws of a jurisdiction other than

this state and required by those laws to have one or more 1 2 general partners and one or more limited partners. The term includes a foreign limited liability limited partnership. 3 (5) "General partner" means: 4 (A) with respect to a limited partnership, a person 5 that: 6 7 (i) is admitted as a general partner under Section 10A-9A-4.01; 8 9 or 10 (ii) was a general partner in a limited partnership 11 limited partnership became subject to this chapter when the 12 under Section 10A-9A-11.01(a); and 13 (B) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to 14 those of a general partner in a limited partnership. 15 16 (6) "Limited liability limited partnership," except 17 in the phrase "foreign limited liability limited partnership," means a limited partnership whose certificate of formation 18 19 states that the limited partnership is a limited liability 20 limited partnership. (7) "Limited partner" means: 21 22 (A) with respect to a limited partnership, a person 23 that: 24 (i) is admitted as a limited partner under Section 10A-9A-3.01; or 25

(ii) was a limited partner in a limited partnership
 when the limited partnership became subject to this chapter
 under Section 10A-9A-11.01(a); and

4 (B) with respect to a foreign limited partnership, a
5 person that has rights, powers, and obligations similar to
6 those of a limited partner in a limited partnership.

7 (8) "Limited partnership," except in the phrases 8 "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one or more 9 10 general partners and one or more limited partners, which is 11 formed under this chapter by two or more persons or becomes 12 subject to this chapter under Article 10 or Section 10A-9A-11.01(a). The term includes a limited liability 13 14 limited partnership.

15 (9) "Partner" means a limited partner or general16 partner.

(10) "Partnership agreement" means any agreement (whether referred to as a partnership agreement or otherwise), written, oral or implied, of the partners as to the activities and affairs of a limited partnership. The partnership agreement includes any amendments to the partnership agreement.

(11) "Person dissociated as a general partner" means
a person dissociated as a general partner of a limited
partnership.

(12) "Required information" means the information 1 2 that a limited partnership is required to maintain under Section 10A-9A-1.11. 3 (13) "Transfer" means an assignment, conveyance, 4 deed, bill of sale, lease, mortgage, security interest, 5 encumbrance, gift, or transfer by operation of law. 6 7 (14) "Transferable interest" means a partner's right to receive distributions from a limited partnership. 8 (15) "Transferee" means a person to which all or 9 10 part of a transferable interest has been transferred, whether 11 or not the transferor is a partner. § 10A-9A-1.03. Knowledge and notice. 12 13 (a) A person knows a fact when the person: (1) has actual knowledge of it; or 14 (2) is deemed to know it under law other than this 15 16 chapter. 17 (b) A person has notice of a fact when the person: 18 (1) knows of it; 19 (2) receives notification of it; 20 (3) has reason to know the fact from all of the 21 facts known to the person at the time in question; or 22 (4) is deemed to have notice of the fact under 23 subsection (d). 24 (c) A person notifies or gives a notification to 25 another person by taking steps reasonably required to inform 26 the other person in ordinary course, whether or not the other 27 person knows the fact.

1 (d) A person is deemed to have notice of a limited
2 partnership's:

3 (1) matters included in the certificate of formation
4 under Sections 10A-9A-2.01(a)(1), (a)(2), (a)(3), (a)(4), if
5 applicable, (a)(5), and (a)(6) upon filing;

6 (2) general partner dissociating as a general 7 partner, 90 days after the effective date of an amendment to 8 the certificate of formation which states that the general 9 partner has dissociated or 90 days after the effective date of 10 a statement of dissociation pertaining to the general partner, 11 whichever occurs first;

12 (3) dissolution, 90 days after a statement of 13 dissolution under Section 10A-9A-8.02 or Section 10A-9A-8.03 14 becomes effective;

(4) merger or conversion under Article 10 or under
Article 8 of Chapter 1, 90 days after the statement of merger
or conversion becomes effective; or

18 (5) reinstatement, 90 days after a certificate of
 19 reinstatement under Section 10A-9A-8.11 becomes effective.

20 (e) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited 21 22 partnership is effective immediately as knowledge of, notice 23 to, or receipt of a notification by the limited partnership, 24 except in the case of a fraud on the limited partnership 25 committed by or with the consent of the general partner. A 26 limited partner's knowledge, notice, or receipt of a 27 notification of a fact relating to the limited partnership is

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not effective as knowledge of, notice to, or receipt of a
 notification by the limited partnership solely by reason of
 the partner's capacity as a limited partner.

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§ 10A-9A-1.04. Nature and purpose.

5 (a) A limited partnership is a separate legal entity. A limited partnership's status for tax purposes shall 6 7 not affect its status as a separate legal entity formed under 8 this chapter. A limited partnership is the same entity regardless of whether its certificate of formation states that 9 10 the limited partnership is a limited liability limited 11 partnership. A partner has no interest in any specific 12 property of a limited partnership.

(b) A limited partnership may carry on any lawful
activity, whether or not for profit, except a banking or
insurance business.

16

§ 10A-9A-1.05. Powers; Indemnification.

17 (a) A limited partnership shall possess and may 18 exercise all the powers and privileges granted and enumerated 19 by Chapter 1 or by any other law or by its partnership 20 agreement, together with any powers incidental thereto, 21 including those powers and privileges necessary or convenient 22 to the conduct, promotion, or attainment of the business, 23 purposes, or activities and affairs of the limited partnership 24 and including the power to sue, be sued, and defend in its own 25 name and to maintain an action against a partner for harm 26 caused to the limited partnership by a breach of the

1 partnership agreement or violation of a duty to the 2 partnership.

3 (b) A limited partnership may indemnify and hold
4 harmless a partner or other person, pay in advance or
5 reimburse expenses incurred by a partner or other person, and
6 purchase and maintain insurance on behalf of a partner or
7 other person.

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§ 10A-9A-1.06. Governing law.

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(a) The law of this state governs:

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(1) the organization and internal affairs of a limited partnership;

12 (2) the liability of a partner as a partner for the
13 debts, obligations, or other liabilities of a limited
14 partnership; and

(3) the authority of the partners of a limitedpartnership.

17 (b) The law of the state or other jurisdiction under18 which a foreign limited partnership is formed governs:

19 (1) the organization and internal affairs of a20 foreign limited partnership;

(2) the liability of a partner as a partner for the
debts, obligations, or other liabilities of a foreign limited
partnership; and

24 (3) the authority of the partners of a foreign25 limited partnership.

26 § 10A-9A-1.07. Supplemental principles of law; rate 27 of interest. (a) It is the policy of this chapter and this state
 to give maximum effect to the principles of freedom of
 contract and to the enforceability of partnership agreements.

4 (b) Unless displaced by particular provisions of
5 this chapter, the principles of law and equity supplement this
6 chapter.

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

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

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

(f) Sections 7-9A-406 and 7-9A-408 of the Uniform 19 20 Commercial Code, and all successor statutes thereto, do not 21 apply to any interest in a limited partnership, including all 22 rights, powers, and interests arising under a partnership agreement or this chapter. This provision prevails over 23 24 Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, 25 and all successor statutes thereto, and is expressly intended 26 to permit the enforcement of the provisions of a partnership 27 agreement that would otherwise be ineffective under Sections

- 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all
 successor statutes thereto.
- 3 (g) Division E of Article 3 of Chapter 1 shall have4 no application to this chapter.
- 5 (h) Sections 10A-1-1.03(73), (81), (88), and (91)
 6 shall have no application to this chapter.
- 7 (i) Section 10A-1-2.13(c) shall have no application
 8 to this chapter.
- 9 § 10A-9A-1.08. Effect of partnership agreement;
 10 nonwaivable provisions.
- 11 (a) Except as otherwise provided in Subsections (b)
 12 and (c):
- (1) the partnership agreement governs relations
 among the partners as partners and between the partners and
 the partnership; and
- 16 (2) to the extent the partnership agreement does not
 17 otherwise provide for a matter described in Subsection (a)(1),
 18 this chapter governs the matter.
- 19 (b) (1) To the extent that, at law or in equity, a 20 partner or other person has duties, including fiduciary 21 duties, to a limited partnership or to another partner or to 22 another person that is a party to or is otherwise bound by a 23 partnership agreement, the partner's or other person's duties 24 may be expanded or restricted or eliminated by provisions in a 25 written partnership agreement, but the implied contractual covenant of good faith and fair dealing may not be eliminated. 26

(2) A written partnership agreement may provide for 1 2 the limitation or elimination of any and all liabilities for 3 breach of contract and breach of duties, including fiduciary 4 duties, of a partner or other person to a limited partnership 5 or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, but a 6 7 partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of 8 the implied contractual covenant of good faith and fair 9 10 dealing.

(3) A partner or other person shall not be liable to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement for breach of fiduciary duty for the partner's or other person's good faith reliance on the partnership agreement.

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(4) A partnership agreement may provide that:

(A) a partner or transferee who fails to perform in
accordance with, or to comply with the terms and conditions
of, the partnership agreement shall be subject to specified
penalties or specified consequences; and

(B) at the time or upon the happening of events
specified in the partnership agreement, a partner or
transferee may be subject to specified penalties or specified
consequences.

(5) A penalty or consequence that may be specified
 under paragraph (4) of this subsection may include and take

the form of reducing or eliminating the defaulting partner's 1 2 or transferee's proportionate interest in a limited partnership, subordinating the partner's or transferee's 3 transferable interest to that of non-defaulting partners or 4 5 transferees, forcing a sale of that transferable interest, forfeiting the defaulting partner's or transferee's 6 transferable interest, the lending by other partners or 7 transferees of the amount necessary to meet the defaulting 8 partner's or transferee's commitment, a fixing of the value of 9 10 the defaulting partner's or transferee's transferable interest 11 by appraisal or by formula and redemption or sale of the 12 transferable interest at that value, or other penalty or 13 consequence.

14 (6) A written partnership agreement may supersede,
15 in whole or in part, the provisions of Division C and Division
16 D of Article 3 of Chapter 1.

17

(c) A partnership agreement may not:

18 (1) vary the nature of the limited partnership as a
19 separate legal entity under Section 10A-9A-1.04(a);

20 (2) vary a limited partnership's power under Section
21 10A-9A-1.05 to sue, be sued, and defend in its own name;

(3) vary the law applicable to a limited partnership
 under Section 10A-9A-1.06;

(4) restrict rights under this chapter of a person
other than a partner, a dissociated partner, or a transferee;
(5) vary the requirements of Section 10A-9A-2.03;

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(6) vary the information required under Section 1 2 10A-9A-1.11 or unreasonably restrict the right to information 3 under Sections 10A-9A-3.04 or 10A-9A-4.07, but the partnership 4 agreement may impose reasonable restrictions on the 5 availability and use of information obtained under those sections and may define appropriate remedies, including 6 7 liquidated damages, for a breach of any reasonable restriction 8 on use; (7) vary the power of the court under Section 9 10 10A-9A-2.04; 11 (8) eliminate the implied contractual covenant of 12 good faith and fair dealing as provided under Section 13 10A-9A-1.08(b)(1); (9) eliminate or limit the liability of a partner or 14 other person for any act or omission that constitutes a bad 15 16 faith violation of the implied contractual covenant of good 17 faith and fair dealing as provided under Section 10A-9A-1.08(b)(2); 18 19 (10) waive the requirements of Section 20 10A - 9A - 5.02(e); (11) reduce the limitations period specified under 21 22 Section 10A-9A-5.08(d) for an action commenced under other 23 applicable law; 24 (12) waive the prohibition on issuance of a certificate of a transferable interest in bearer form under 25 Section 10A-9A-7.02(c); 26

1 (13) vary the power of a person to dissociate as a 2 general partner under Section 10A-9A-6.04(a) except that the 3 partnership agreement may require that the notice under Section 10A-9A-6.03(1) be in a writing or in a specific form 4 5 thereof; (14) vary the power of a court to decree dissolution 6 7 in the circumstances specified in Section 10A-9A-8.01(f); (15) vary the requirement to wind up the 8 partnership's activities and affairs as specified in Section 9 10 10A-9A-8.02; or 11 (16) vary the rights of a partner under Section 12 10A-9A-10.10. 13 § 10A-9A-1.09. Partnership agreement; effect on limited partnership and persons admitted as partners. 14 (a) A limited partnership is bound by and may 15 16 enforce the partnership agreement, whether or not the limited 17 partnership has itself manifested assent to the partnership 18 agreement. 19 (b) A person that is admitted as a partner of a 20 limited partnership becomes a party to and assents to the 21 partnership agreement except as provided in Section 10A-9A-7.02(g). 22 (c) Two or more persons intending to be the initial 23 24 general partner and the initial limited partner of a limited 25 partnership may make an agreement providing that upon the formation of the limited partnership, the agreement will 26 27 become the partnership agreement.

\$ 10A-9A-1.10. Partnership agreement; effect on
 third parties and relationship to writings effective on behalf
 of limited partnership.

(a) If a partnership agreement provides for the 4 5 manner in which it may be amended, including by requiring the approval of a person who is not a party to the partnership 6 7 agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, except 8 that the approval of any person may be waived by that person 9 10 and any conditions may be waived by all persons for whose benefit those conditions were intended. 11

12 (b) A partnership agreement may provide rights to 13 any person, including a person who is not a party to the 14 partnership agreement, to the extent set forth in the 15 partnership agreement.

(c) The obligations of a limited partnership and its
partners to a person in the person's capacity as a transferee
or dissociated partner are governed by the partnership
agreement. A transferee and a dissociated partner are bound by
the partnership agreement.

(d) If a writing that has been delivered by a limited partnership for filing in accordance with Chapter 1 and has become effective conflicts with a provision of the partnership agreement:

(1) The partnership agreement prevails as to
 partners, dissociated partners, and transferees; and

(2) The writing prevails as to other persons to the
 extent they reasonably rely on the writing.

3 § 10A-9A-1.11. Required information. A limited
4 partnership shall maintain the following information:

5 (1) A current list of the full name and last known 6 business or residential street and mailing address of each 7 partner, separately identifying the general partners, in 8 alphabetical order, and the limited partners, in alphabetical 9 order.

10 (2) Copies of the filed certificate of formation and
 11 all amendments thereto, together with signed copies of any
 12 powers of attorney under which any certificate of formation,
 13 amendment, or restatement has been signed.

14 (3) Copies of any filed statement of conversion or15 merger.

16 (4) Copies of the limited partnership's federal,
17 state, and local income tax returns and reports, if any, for
18 the three most recent years.

19 (5) Copies of the then effective partnership20 agreement and any amendment thereto.

(6) Copies of any financial statement of the limited
 partnership for the three most recent years.

(7) Copies of any writing made by the limited
partnership during the past three years of any approval or
consent given by or taken of any partner pursuant to this
chapter or the partnership agreement.

(8) Unless contained in a partnership agreement made
 in a writing, a writing stating:

3 (A) the amount of cash, and a description and
4 statement of the agreed value of the other benefits,
5 contributed and agreed to be contributed by each partner;

6 (B) the times at which, or events on the happening 7 of which, any additional contributions agreed to be made by 8 each partner are to be made;

9 (C) for any person that is both a general partner 10 and a limited partner, a specification of what transferable 11 interest the person owns in each capacity; and

(D) any events upon the happening of which the
limited partnership is to be dissolved and its activities and
affairs wound up.

15 § 10A-9A-1.12. Transactions of partner with 16 partnership. A partner may lend money to and transact other 17 activities or affairs with the limited partnership and has the 18 same rights and obligations with respect to the loan or other 19 transaction as a person that is not a partner.

20 § 10A-9A-1.13. Dual capacity. A person may be both a 21 general partner and a limited partner. A person that is both a 22 general and limited partner has the rights, powers, duties, 23 and obligations provided by this chapter and the partnership 24 agreement in each of those capacities. When the person acts as 25 a general partner, the person is subject to the obligations, 26 duties and restrictions under this chapter and the partnership 27 agreement for general partners. When the person acts as a

limited partner, the person is subject to the obligations,
 duties, and restrictions under this chapter and the
 partnership agreement for limited partners.

§ 10A-9A-1.14. Consent and proxies of partners.
Action requiring the consent of partners under this chapter
may be taken without a meeting, and a partner may appoint a
proxy to consent or otherwise act for the partner by signing a
writing of appointment, either personally or by the partner's
attorney in fact.

Article 2. Formation; Certificate of Formation and other Filings.

12 § 10A-9A-2.01. Formation of limited partnership;
13 certificate of formation.

14 (a) In order to form a limited partnership, a person
15 must deliver a certificate of formation for filing to the
16 filing officer as provided in subsection (e). Notwithstanding
17 Section 10A-1-3.05, the certificate of formation shall set
18 forth:

(1) the name of the limited partnership, which mustcomply with Article 5 of Chapter 1;

(2) the address of the registered office required by
 Article 5 of Chapter 1;

(3) the name of the registered agent at the
registered office as required by Article 5 of Chapter 1;

25 (4) the name and the street and mailing address of 26 each general partner; (5) whether the limited partnership is a limited
 liability limited partnership;

3 (6) any additional information required by Article 8
4 of Chapter 1 or by Article 10 of this Chapter; and

5 (7) any other matters the partners determine to
6 include therein which comply with Section 10A-9A-1.08.

7 (b) A limited partnership is formed when the
8 certificate of formation becomes effective in accordance with
9 Article 4 of Chapter 1.

10 (c) The fact that a certificate of formation has 11 been filed and is effective in accordance with Article 4 of 12 Chapter 1 is notice of the matters required to be included by 13 Subsections (a) (1), (a) (2), (a) (3), (a) (4), if applicable, 14 (a) (5), and (a) (6), but is not notice of any other fact.

(d) A partnership agreement shall be entered into either before, after, or at the time of filing the certificate of formation and, whether entered into before, after, or at the time of filing, may be made effective as of the filing of the certificate of formation or at any other time or date provided in the partnership agreement.

(e) A certificate of formation shall be delivered for filing to the judge of probate of the county in which the initial registered office of the limited partnership is located pursuant to Article 4 of Chapter 1 unless the certificate of formation is required to be delivered for filing to a different filing officer under Article 8 of Chapter 1 or Article 10 of this Chapter. \$ 10A-9A-2.02. Amendment or restatement of
 certificate of formation.

3 Notwithstanding Division B of Article 3 of Chapter
4 1:

5 (a) A certificate of formation may be amended at any 6 time.

7 (b) A certificate of formation may be restated with8 or without amendment at any time.

9 (c) To amend its certificate of formation, a limited 10 partnership must deliver a certificate of amendment for filing 11 to the filing officer provided for in subsection (j) which 12 certificate of amendment shall state:

(1) the name of the limited partnership;
(2) the date of filing of its certificate of
formation, and of all prior amendments and the office or
offices where filed; and

17 (3) the changes the amendment makes to the18 certificate of formation as most recently amended or restated.

(d) Prior to a statement of dissolution being delivered to the filing officer for filing, a limited partnership shall promptly deliver a certificate of amendment for filing with the filing officer provided for in subsection (j) to reflect:

(1) the admission of a new general partner; or
(2) the dissociation of a person as a general
partner.

(e) Prior to a statement of dissolution being 1 2 delivered to the filing officer for filing, if a general partner knows that any information in a filed certificate of 3 formation was inaccurate when the certificate of formation was 4 5 filed or has become inaccurate due to changed circumstances and if such information is required to be set forth in a newly 6 7 filed certificate of formation under this Chapter, the general partner shall promptly: 8

9 (1) cause the certificate of formation to be 10 amended; or

(2) if appropriate, deliver for filing with the filing officer provided for in subsection (j) a statement of change in accordance with Division D of Article 4 of Chapter 1 or a statement of correction in accordance with Division C of Article 5 of Chapter 1.

(f) A certificate of formation may be amended at any time pursuant to this section for any other proper purpose as determined by the limited partnership. A certificate of formation may also be amended in a statement of merger pursuant to Article 8 of Chapter 1 or Article 10 of this Chapter.

(g) In order to restate its certificate of formation, a limited partnership must deliver a restated certificate of formation for filing with the filing officer provided for in subsection (j). A restated certificate of formation must:

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(1) be designated as such in the heading;

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(2) state the name of the limited partnership;

2 (3) state the date of filing of its certificate of
3 formation, and of all prior amendments and the filing office
4 or offices where filed; and

5 (4) set forth any amendment or change effected in 6 connection with the restatement of the certificate of 7 formation. Any such restatement that effects an amendment 8 shall be subject to any other provision of this chapter not 9 inconsistent with this section, which would apply if a 10 separate certificate of amendment were filed to effect the 11 amendment or change.

(h) The original certificate of formation, as theretofore amended, shall be superseded by the restated certificate of formation and thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited partnership, but the original effective date of formation shall remain unchanged.

(i) An amended or restated certificate of formation may contain only the provisions that would be permitted at the time of the amendment if the amended or restated certificate of formation were a newly filed original certificate of formation.

(j) If a limited partnership is not an organization
described in Section 10A-1-4.02(c)(4), then that limited
partnership shall deliver the certificate of amendment or
restated certificate of formation for filing with the judge of

probate in whose office the original certificate of formation is filed. If a limited partnership is an organization described in Section 10A-1-4.02(c)(4), then that limited partnership shall deliver the certificate of amendment or restated certificate of formation for filing with the Secretary of State.

7 (k) The filing of a certificate of amendment to the
8 certificate of formation shall have the effect, and shall take
9 effect, as provided in Section 10A-1-3.14.

10 (1) The filing of a restated certificate of
11 formation shall have the effect, and shall take effect, as
12 provided in Section 10A-1-3.18.

13

§ 10A-9A-2.03. Execution of documents.

(a) A writing delivered to a filing officer for
filing pursuant to this chapter must be signed as provided by
this section.

(1) A limited partnership's initial certificate of
 formation must be signed by all general partners listed in the
 certificate of formation.

(2) An amendment adding or deleting a statement that
the limited partnership is a limited liability limited
partnership must be signed by all general partners listed in
the certificate of formation.

(3) An amendment designating as general partner a
person admitted under Section 10A-9A-8.01(c) following the
dissociation of a limited partnership's last general partner
must be signed by the person or persons so designated.

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(4) Any other amendment must be signed by:

2

(A) at least one general partner; and

3 (B) each other person designated in the amendment as4 a new general partner.

5 (5) A restated certificate of formation must be 6 signed by at least one general partner and, to the extent the 7 restated certificate of formation effects a change under any 8 other paragraph of this subsection, the restated certificate 9 of formation must be signed in a manner that satisfies that 10 paragraph.

(6) a statement of dissolution must be signed by all general partners or by the person or persons appointed pursuant to Section 10A-9A-8.03(b) or (c) to wind up the dissolved limited partnership's activities and affairs.

15 (7) A statement of conversion must be signed by each16 general partner of the limited partnership.

17 (8) A statement of merger must be signed by each18 general partner of the limited partnership.

(9) Any other writing delivered on behalf of a
limited partnership for filing must be signed by at least one
general partner.

(10) A statement of withdrawal by a person pursuant
to Section 10A-9A-3.06 must be signed by that person.

(11) A writing delivered on behalf of a foreign
limited partnership to the Secretary of State for filing must
be signed by at least one general partner of the foreign
limited partnership.

(12) Any other writing delivered on behalf of any
 person for filing must be signed by that person.

3 (b) Any writing to be filed under this chapter may
4 be signed by an agent, including an attorney-in-fact. Powers
5 of attorney relating to the signing of the writing need not be
6 delivered to the filing officer.

7 (c) Any writing which is required in this chapter to
8 be signed by a person need not be signed by any person:

9 (1) who is deceased or dissolved or for whom a 10 guardian or general conservator has been appointed, if the 11 record so states; or

(2) who has previously delivered for filing with the
filing officer pursuant to Article 4 of Chapter 1 a statement
of dissociation or withdrawal.

15 § 10A-9A-2.04. Signing and filing pursuant to judicial order.

17 (a) If a person required by this chapter to sign a 18 writing or deliver a writing to a filing officer for filing 19 under this chapter does not do so, any other person that is 20 aggrieved by that failure may petition the circuit court in the county in which the limited partnership's principal place 21 22 of business within this state is located, and if the limited 23 partnership does not have a principal place of business within 24 this state then the circuit court for the county in which the 25 limited partnership's most recent registered office is 26 located, to order:

27

(1) the person to sign the writing;

(2) the person to deliver the writing to the filing
 officer for filing; or

3

(3) the filing officer to file the writing unsigned.

4 (b) If a petitioner under subsection (a) is not the 5 limited partnership or foreign limited partnership to whom the writing pertains, the petitioner shall make the limited 6 7 partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (a) may seek the 8 remedies provided in subsection (a) in a separate action 9 10 against the person required to sign or deliver the writing or 11 as a part of any other action concerning the limited 12 partnership or foreign limited partnership in which the person 13 required to sign or deliver the writing is made a party.

14 (c) A writing filed unsigned pursuant to this15 section is effective without being signed.

(d) A court may award reasonable expenses, including reasonable attorneys' fees, to the party or parties who prevail, in whole or in part, with respect to any claim made under subsection (a).

20 § 10A-9A-2.05. Liability for false information in a 21 filed writing.

If a writing delivered for filing under this chapter and filed under this chapter contains information which is false in any material respect and if such information is required to be set forth on a newly filed certificate of formation under this chapter, a person that suffers loss by 1 reasonable reliance on the information may recover damages for 2 the loss from:

3 (1) a person that signed the writing, or caused
4 another to sign it on the person's behalf, and knew the
5 information to be false at the time the writing was signed;
6 and

7 (2) a general partner that has notice that the information was false when the writing was filed or has become 8 false because of changed circumstances, if the general partner 9 10 has notice for a reasonably sufficient time before the 11 information is relied upon to enable the general partner to 12 effect an amendment under Section 10A-9A-2.02, file a petition pursuant to Division B of Article 5 of Chapter 1, or deliver 13 for filing a statement of change or a statement of correction 14 pursuant to Division C of Article 5 of Chapter 1. 15

16 § 10A-9A-2.06. Certificate of existence or 17 authorization.

18 (a) The Secretary of State, upon request and payment 19 of the requisite fee, shall furnish to any person a 20 certificate of existence for a limited partnership if the writings filed in the office of the Secretary of State show 21 22 that the limited partnership has been formed under the laws of 23 this state. A certificate of existence shall reflect only the 24 information on file with the Secretary of State. To the extent 25 writings have been delivered to the Secretary of State, the certificate of existence must state: 26

27

(1) the limited partnership's name;

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(2) that the limited partnership was formed under
 the laws of this state, the date of formation, and the filing
 office in which the certificate of formation was filed;

4 (3) whether a statement of dissolution of the
5 limited partnership has been delivered to the Secretary of
6 State for filing;

7 (4) whether the limited partnership has delivered to
8 the Secretary of State for filing a certificate of
9 reinstatement; and

10 (5) other facts of record in the office of the11 Secretary of State which may be requested by the applicant.

12 (b) The Secretary of State, upon request and payment 13 of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited partnership 14 if the writings filed in the Office of the Secretary of State 15 show that the Secretary of State has filed a certificate of 16 17 authority, has not revoked the certificate of authority, and 18 has not filed a notice of cancellation. A certificate of authorization must state: 19

(1) the foreign limited partnership's name and any
alternate name for use in this state under Article 5 of
Chapter 1;

(2) that the foreign limited partnership is
authorized to conduct activities and affairs in this state;

(3) that the Secretary of State has not revoked the
foreign limited partnership's certificate of authority;

(4) that the foreign limited partnership has not
 filed with the Secretary of State a certificate of withdrawal,
 a notice of cancellation, or otherwise terminated its
 certificate of authority; and

5 (5) other facts of record in the office of the
6 Secretary of State which may be requested by the applicant.

(c) Subject to any qualification stated in the
certificate, a certificate of existence or authorization
issued by the Secretary of State may be relied upon as
conclusive evidence that the limited partnership or foreign
limited partnership is in existence or is authorized to
transact activities and affairs in this state.

(d) The Secretary of State shall not be required to
issue a certificate of existence for a limited partnership if
its certificate of formation was filed prior to January 1,
2011; provided, however, that the Secretary of State shall
issue a certificate of existence upon the filing by the
limited partnership of a certificate of information with the
Secretary of State which must:

20 (1) state all information required in Section
21 10A-9A-2.01(a)(1), (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6);
22 and

(2) list and attach certified copies of all writingsfiled as to the limited partnership.

25 Article 3. Limited Partners.

26 § 10A-9A-3.01. Admission of limited partner.

1 (a) The initial limited partner or limited partners 2 of a limited partnership are admitted as a limited partner or limited partners upon the formation of the limited 3 4 partnership. (b) After formation, a person is admitted as a 5 limited partner of the limited partnership: 6 7 (1) as provided in the partnership agreement; (2) as the result of a transaction effective under 8 Article 10 of this chapter or Article 8 of Chapter 1; 9 10 (3) with the consent of all the partners; or 11 (4) as provided in Section 10A-9A-8.01(d) or (e). 12 (c) A person may be admitted as a limited partner without: 13 (1) acquiring a transferable interest; or 14 15 (2) making or being obligated to make a contribution 16 to the limited partnership. 17 § 10A-9A-3.02. No right or power as limited partner 18 to bind limited partnership. 19 A limited partner does not have the right or the 20 power as a limited partner to act for or bind the limited 21 partnership. § 10A-9A-3.03. No Liability as Limited Partner for 22 23 Limited Partnership Obligation. 24 A debt, obligation, or other liability of a limited 25 partnership, whether arising in contract, tort, or otherwise, 26 is not the debt, obligation, or other liability of a limited 27 partner. A limited partner is not personally liable, directly

or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

6 § 10A-9A-3.04. Right of limited partner and former 7 limited partner to information.

8 Notwithstanding the provisions of Sections
9 10A-1-3.32 and 10A-1-3.33:

(a) Subject to subsection (g), on 10 days' demand,
made in a writing received by the limited partnership, a
limited partner may inspect and copy required information
during regular business hours and at a reasonable location
specified by the limited partnership. The limited partner need
not have any particular purpose for seeking the information.

16 (b) Subject to subsection (q), during regular 17 business hours and at a reasonable location specified by the 18 limited partnership, a limited partner may obtain from the 19 limited partnership and inspect and copy true and full 20 information regarding the state of the activities and affairs and financial condition of the limited partnership and other 21 22 information regarding the activities and affairs of the 23 limited partnership as is just and reasonable if:

(1) the limited partner seeks the information for a
purpose reasonably related to the partner's interest as a
limited partner;

(2) the limited partner makes a demand in a writing 1 2 received by the limited partnership, describing with 3 reasonable particularity the information sought and the 4 purpose for seeking the information; and (3) the information sought is directly connected to 5 the limited partner's purpose. 6 7 (c) Within 10 days after receiving a demand pursuant to subsection (b), the limited partnership in a writing shall 8 inform the limited partner that made the demand: 9 10 (1) what information the limited partnership will 11 provide in response to the demand; 12 (2) when and where the limited partnership will 13 provide the information; (3) if the limited partnership declines to provide 14 15 any demanded information, the limited partnership's reasons 16 for declining; and 17 (4) what, if any, restrictions will be imposed 18 pursuant to the partnership agreement or subsection (g). 19 (d) Subject to subsections (f) and (g), a person 20 dissociated as a limited partner may inspect and copy required 21 information during regular business hours and at a reasonable 22 location specified by the limited partnership if: 23 (1) the required information pertains to the period 24 during which the person was a limited partner; 25 (2) the person seeks the required information in good faith; and 26

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(3) the person meets the requirements of subsection(b).

3 (e) The limited partnership shall respond to a
4 demand made pursuant to subsection (d) in the same manner as
5 provided in subsection (c).

6 (f) If a limited partner dies, Section 10A-9A-7.04 7 applies.

8 (g) In addition to any restriction or condition 9 stated in its limited partnership agreement, a limited 10 partnership, as a matter within the ordinary course of its 11 activities and affairs, may:

(1) 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; and

17 (2) keep confidential from the partners and any 18 other person, for such period of time as the limited 19 partnership deems reasonable, any information that the limited 20 partnership reasonably believes to be in the nature of trade secrets or other information that disclosure of which the 21 22 limited partnership in good faith believes is not in the best 23 interest of the limited partnership or could damage the 24 limited partnership or its activities and affairs, or that the 25 limited partnership is required by law or by agreement with a 26 third party to keep confidential.

In a dispute concerning the reasonableness of a 1 2 restriction under this subsection, the limited partnership has 3 the burden of proving reasonableness. Any general partner, or 4 any agent, officer or employee of a general partner or any 5 agent of a limited partnership, who, without reasonable cause, refuses to allow any limited partner or the limited partner's 6 7 agent or attorney to inspect or copy any information of the 8 limited partnership to which such limited partner is entitled under subsection (a) or (b) shall be personally liable to the 9 10 limited partner for a penalty in an amount not to exceed ten 11 percent of the fair market value of the limited partnership 12 interest of the limited partner in addition to any other 13 damages or remedy.

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

(i) A limited partner or person dissociated as a
limited partner may exercise the rights under this section
through an attorney or other agent. Any restriction imposed
under subsection (g) or by the partnership agreement applies
both to the attorney or other agent and to the limited partner
or person dissociated as a limited partner.

(j) The rights stated in this section do not extend
to a person as transferee, but may be exercised by the legal
representative of an individual under legal disability who is
a limited partner or person dissociated as a limited partner.
\$ 10A-9A-3.05. Limited duties of limited partners.

(a) Except as otherwise provided in subsection (b),
 a limited partner does not have any duty to the limited
 partnership or to any other partner solely by reason of being
 a limited partner.

5 (b) A limited partner shall discharge the duties to 6 the limited partnership and the other partners under the 7 partnership agreement and exercise any rights under this 8 chapter or the partnership agreement consistently with the 9 implied contractual covenant of good faith and fair dealing.

10 (c) A limited partner does not violate a duty or 11 obligation under this chapter or under the partnership 12 agreement merely because the limited partner's conduct 13 furthers the limited partner's own interest.

14 § 10A-9A-3.06. Person erroneously believing self to 15 be limited partner.

16 (a) Except as otherwise provided in subsection (b), 17 a person that makes an investment in an organization and 18 erroneously but in good faith believes that the person has 19 become a limited partner in the organization is not liable for 20 the organization's obligations by reason of making the 21 investment, receiving distributions from the organization, or 22 exercising any rights of or appropriate to a limited partner, 23 if, on ascertaining the mistake, the person:

(1) causes an appropriate certificate of formation,
amendment, or statement of correction to be signed and filed
with the filing officer in accordance with Article 4 of
Chapter 1; or

(2) withdraws from future participation as an owner
 in the organization by signing a statement of withdrawal and
 filing it with the Secretary of State.

4 (b) A person that makes an investment described in 5 subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with 6 7 the organization, believing in good faith that the person is a general partner, before the statement of withdrawal, 8 certificate of formation, amendment, or statement of 9 10 correction to show that the person is not a general partner is 11 filed with the filing officer in accordance with Article 4 of 12 Chapter 1.

13 (c) If a person makes a diligent effort in good faith to comply with subsection (a) (1) and is unable to cause 14 15 the appropriate certificate of formation, amendment, or 16 statement of correction to be signed and filed with the filing 17 officer in accordance with Article 4 of Chapter 1, the person 18 has the right to withdraw from the organization pursuant to subsection (a) (2) even if the withdrawal would otherwise 19 20 breach an agreement with others that are or have agreed to 21 become co-owners of the organization.

22

23

Article 4. General Partners.

§ 10A-9A-4.01. Admission of general partner.

(a) Upon formation of a limited partnership, a
 person is admitted as a general partner as agreed among the
 persons that are to be the initial partners.

- (b) After formation of a limited partnership, a
 person is admitted as a general partner:
- 3 (1) as provided in the partnership agreement;
 4 (2) as the result of a transaction effective under
 5 Article 10 or Article 8 of Chapter 1;
- 6 (3) with the consent of all the partners; or
 7 (4) as provided in Section 10A-9A-8.01(c) or (e).
 8 (c) A person may be admitted as a general partner
 9 without:
- 10

(1) acquiring a transferable interest; or

11 (2) making or being obligated to make a contribution 12 to the partnership.

13 § 10A-9A-4.02. General partner agent of limited 14 partnership.

15 (a) Each general partner is an agent of the limited 16 partnership for the purposes of its activities and affairs. An 17 act of a general partner, including the signing of a writing 18 in the partnership's name, for apparently carrying on in the 19 ordinary course the limited partnership's activities and 20 affairs or activities and affairs of the kind carried on by 21 the limited partnership binds the limited partnership, unless 22 the general partner did not have authority to act for the 23 limited partnership in the particular matter and the person 24 with which the general partner was dealing knew, had received 25 a notification, or had notice under Section 10A-9A-1.03(d) that the general partner lacked authority. 26

1 (b) An act of a general partner which is not 2 apparently for carrying on in the ordinary course the limited 3 partnership's activities and affairs or activities and affairs 4 of the kind carried on by the limited partnership binds the 5 limited partnership only if the act was actually authorized by 6 all the other partners.

7 § 10A-9A-4.03. Limited partnership liable for
8 general partner's actionable conduct.

9 (a) A limited partnership is liable for loss or 10 injury caused to a person, or for a penalty incurred, as a 11 result of a wrongful act or omission, or other actionable 12 conduct, of a general partner acting in the ordinary course of 13 activities and affairs of the limited partnership or with 14 authority of the limited partnership.

(b) If, in the course of the limited partnership's activities and affairs or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

22

§ 10A-9A-4.04. General partner's liability.

(a) Except as otherwise provided in subsections (b)
and (c), all general partners are liable jointly and severally
for all debts, obligations, and liabilities of the limited
partnership unless otherwise agreed by the claimant or
provided by law.

1 (b) A person that becomes a general partner of an 2 existing limited partnership is not personally liable for any 3 debt, obligation, or liability of a limited partnership 4 incurred before the person became a general partner.

5 (c) A debt, obligation, or liability of a limited partnership incurred while the limited partnership is a 6 7 limited liability limited partnership, whether arising in 8 contract, tort, or otherwise, is solely the debt, obligation, or liability of the limited partnership. A general partner of 9 10 a limited liability limited partnership is not personally 11 liable, directly or indirectly, by way of indemnification, 12 contribution, assessment or otherwise, for such a debt, 13 obligation, or liability solely by reason of being or acting, or omitting to act, as a general partner. This subsection 14 15 applies despite anything inconsistent in the partnership 16 agreement that existed immediately before the consent required 17 to become a limited liability limited partnership under 18 Section 10A-9A-4.06(b)(2).

19 § 10A-9A-4.05. Actions by and against partnership 20 and partners.

(a) To the extent not inconsistent with Section
10A-9A-4.04, a general partner may be joined in an action
against the limited partnership or named in a separate action.

(b) A judgment against a limited partnership is not
by itself a judgment against a general partner. A judgment
against a limited partnership may not be satisfied from a

general partner's assets unless there is also a judgment against the general partner.

3 (c) A judgment creditor of a general partner may not
4 levy execution against the assets of the general partner to
5 satisfy a judgment based on a claim against the limited
6 partnership, unless the partner is personally liable for the
7 claim under Section 10A-9A-4.04 and either:

8 (1) a judgment based on the same claim has been 9 obtained against the limited partnership and a writ of 10 execution on the judgment has been returned unsatisfied in 11 whole or in part;

12 (2) the limited partnership is a debtor in13 bankruptcy;

14 (3) the general partner has agreed that the creditor15 need not exhaust limited partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the general partner by
law or contract independent of the existence of the limited
partnership.

26

§ 10A-9A-4.06. Management rights of general partner.

(a) Each general partner has equal rights in the
management and conduct of the limited partnership's activities
and affairs. Except as expressly provided in this chapter, any
matter relating to the activities and affairs of the limited
partnership is decided exclusively by the general partner or,
if there is more than one general partner, by a majority of
the general partners.

8 (b) The consent of all of the partners is necessary 9 to:

10

(1) amend the partnership agreement;

(2) amend the certificate of formation to add or delete a statement that the limited partnership is a limited liability limited partnership; and

(3) sell, lease, exchange, or otherwise dispose of
all, or substantially all, of the limited partnership's
property, with or without the good will, other than in the
usual and regular course of the limited partnership's
activities and affairs.

(c) A limited partnership shall reimburse a general
partner for payments made and indemnify a general partner for
liabilities incurred by the general partner in the ordinary
course of the activities and affairs of the limited
partnership or for the preservation of its activities and
affairs or its property.

(d) A limited partnership shall reimburse a general
 partner for an advance to the limited partnership beyond the
 amount of capital the general partner agreed to contribute.

1 (e) A payment or advance made by a general partner 2 which gives rise to an obligation of the limited partnership 3 under subsection (c) or (d) constitutes a loan to the limited 4 partnership which accrues interest from the date of the 5 payment or advance.

6 (f) A general partner is not entitled to7 remuneration for services performed for the partnership.

8 (g) Notwithstanding the provisions of Article 6 of 9 Chapter 1, a limited partnership may indemnify and hold 10 harmless a partner or other person, pay in advance or 11 reimburse expenses incurred by a partner or other person, and 12 purchase and maintain insurance on behalf of a partner or 13 other person.

14 § 10A-9A-4.07. Right of general partner and former
15 general partner to information.

16 Notwithstanding Sections 10A-1-3.32 and 10A-1-3.33:

(a) Subject to subsection (f), a general partner,
without having any particular purpose for seeking the
information, may inspect and copy during regular business
hours at a reasonable location specified by the limited
partnership, required information and any other records
maintained by the limited partnership regarding the limited
partnership's activities and affairs and financial condition.

(b) Subject to subsection (f), each general partner
and the limited partnership shall furnish to a general
partner:

1 (1) without demand, any information concerning the 2 limited partnership's activities and affairs and activities 3 and affairs reasonably required for the proper exercise of the 4 general partner's rights and duties under the partnership 5 agreement or this chapter; and

6 (2) on demand, any other information concerning the 7 limited partnership's activities and affairs, except to the 8 extent the demand or the information demanded is unreasonable 9 or otherwise improper under the circumstances.

10 (c) Subject to subsections (e) and (f), on 10 days' 11 demand made in a writing received by the limited partnership, 12 a person dissociated as a general partner may have access to 13 the information and records described in subsection (a) at the 14 location specified in subsection (a) if:

(1) the information or writing pertains to the
 period during which the person was a general partner;

17 (2) the person seeks the information or record in18 good faith; and

(3) the person satisfies the requirements imposed on
a limited partner by Section 10A-9A-3.04(b).

(d) The limited partnership shall respond to a
demand made pursuant to subsection (c) in the same manner as
provided in Section 10A-9A-3.04(c).

24 (e) If a general partner dies, Section 10A-9A-7.04
25 applies.

26 (f) In addition to any restriction or condition
27 stated in its limited partnership agreement, a limited

partnership, as to a matter within the ordinary course of its activities and affairs, may:

3 (1) impose reasonable restrictions and conditions on
4 access to and use of information to be furnished under this
5 Section, including designating information confidential and
6 imposing nondisclosure and safeguarding obligations on the
7 recipient; and

(2) keep confidential from the partners and any 8 other person, for such period of time as the limited 9 10 partnership deems reasonable, any information that the limited 11 partnership reasonably believes to be in the nature of trade 12 secrets or other information the disclosure of which the 13 limited partnership in good faith believes is not in the best interest of the limited partnership or could damage the 14 15 limited partnership or its activities and affairs, or that the 16 limited partnership is required by law or by agreement with a 17 third party to keep confidential.

In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

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

(h) A general partner or person dissociated as a
general partner may exercise the rights under this section
through an attorney or other agent. Any restriction imposed
under subsection (f) or by the partnership agreement applies

both to the attorney or other agent and to the general partner
 or person dissociated as a general partner.

(i) The rights under this section do not extend to a
person as transferee, but the rights under subsection (c) of a
person dissociated as a general partner may be exercised by
the legal representative of an individual who dissociated as a
general partner under Section 10A-9A-6.03(6).

(j) Any general partner who, without reasonable 8 cause, refuses to allow any general partner or person 9 10 dissociated as a general partner, or their agent or attorney 11 to inspect or copy any records of the limited partnership to 12 which such general partner or person disassociated as a 13 general partner is entitled under this section, shall be personally liable to the general partner or person dissociated 14 15 as a general partner for a penalty in an amount not to exceed 16 10 percent of the fair market value of the partnership 17 interest of the general partner or person dissociated as a 18 general partner, in addition to any other damages or remedy.

19 § 10A-9A-4.08. General standards of general 20 partner's conduct.

(a) The duties that a general partner has to the
limited partnership and to the other partners include the duty
of loyalty and the duty of care as described in subsections
(b) and (c).

(b) A general partner's duty of loyalty to the limited partnership and to the other partners includes each of the following: (1) to account to the limited partnership and to
hold as trustee for it any property, profit, or benefit
derived by the general partner in the conduct or winding up of
the limited partnership's activities and affairs or derived
from a use by the general partner of limited partnership
property, including the appropriation of a limited partnership
opportunity;

8 (2) to refrain from dealing with the limited 9 partnership in the conduct or winding up of the limited 10 partnership's activities and affairs as or on behalf of a 11 party having an interest adverse to the limited partnership; 12 and

(3) to refrain from competing with the limited
partnership in the conduct or winding up of the limited
partnership's activities and affairs.

(c) A general partner's duty of care to the limited partnership and to the other partners in the conduct or winding up of the limited partnership's activities and affairs includes refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A general partner shall discharge the duties to the limited partnership and to the other partners under this chapter and under the partnership agreement and exercise any rights consistently with the implied contractual covenant of good faith and fair dealing. (e) A general partner does not violate a duty or
 obligation under this chapter or under the partnership
 agreement merely because the general partner's conduct
 furthers the general partner's own interest.

5

§ 10A-9A-4.09 Reliance on reports and information.

A general partner of a limited partnership shall be 6 7 fully protected in relying in good faith upon the records of 8 the limited partnership and upon information, opinions, reports, or statements presented by another general partner or 9 10 agent of the limited partnership, or by any other person as to 11 matters the general partner reasonably believes are within 12 that other person's professional or expert competence, 13 including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or 14 15 losses of the limited partnership, or the value and amount of 16 assets or reserves or contracts, agreements, or other 17 undertakings that would be sufficient to pay claims and 18 obligations of the limited partnership, or to make reasonable 19 provision to pay those claims and obligations, or any other 20 facts pertinent to the existence and amount of assets from 21 which distributions to partners or creditors might properly be 22 paid.

23

Article 5. Contributions and Distributions.

24 § 10A-9A-5.01. Form of contribution. A contribution
25 by a partner may be made to a limited partnership as agreed by
26 the partners.

27

§ 10A-9A-5.02. Liability for contribution.

(a) A partner's obligation to make a contribution to
 a limited partnership is not excused by the partner's death,
 disability, or other inability to perform personally.

4 (b) If a partner does not make a contribution 5 required by an enforceable promise, the partner or the partner's estate is obligated, at the election of the limited 6 partnership, to contribute money equal to the value of the 7 portion of the contribution that has not been made. The 8 foregoing election shall be in addition to, and not in lieu 9 10 of, any other rights, including the right to specific 11 performance, that the limited partnership may have under the 12 partnership agreement or applicable law.

13 (c) The obligation of a partner to make a contribution to a limited partnership may be compromised only 14 15 by consent of all partners. A conditional obligation of a 16 partner to make a contribution to a limited partnership may 17 not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that partner. Conditional 18 19 obligations include contributions payable upon a discretionary 20 call of a limited partnership before the time the call occurs.

(d) A creditor of a limited partnership which
extends credit or otherwise acts in reliance on an obligation
described in subsection (a), without notice of any compromise
under this subsection, may enforce the original obligation.

(e) A promise by a partner to make a contribution to
a limited partnership is not enforceable unless set forth in a
writing signed by the partner.

\$ 10A-9A-5.03. Sharing of distributions before
 dissolution.

All partners shall share equally in any
distributions made by a limited partnership before its
dissolution and winding up.

6

§ 10A-9A-5.04. Interim distributions.

A partner has a right to a distribution before the dissolution and winding up of a limited partnership as provided in the partnership agreement. A decision to make a distribution before the dissolution and winding up of the limited partnership is a decision in the ordinary course of the activities and affairs of the limited partnership.

13 § 10A-9A-5.05. No distribution on account of 14 dissociation.

A partner's dissociation does not entitle thedissociated partner to a distribution.

17

 $\$ 10A-9A-5.06. Distribution in kind.

A partner does not have a right to demand and receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in Section 10A-9A-8.09(c), a limited partnership may distribute an asset in kind if each partner receives a percentage of the asset in proportion to the partner's share of distributions.

24

§ 10A-9A-5.07. Right to distribution.

If a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

6 § 10A-9A-5.08. Limitations on distribution and
7 liability for improper distributions.

(a) A limited partnership shall not make a 8 distribution to a partner to the extent that at the time of 9 10 the distribution, after giving effect to the distribution, all 11 liabilities of the limited partnership, other than liabilities 12 to partners on account of their transferable interests and 13 liabilities for which the recourse of creditors is limited to specific property of the limited partnership, exceed the fair 14 15 value of the assets of the limited partnership, except that 16 the fair value of the property that is subject to a liability for which recourse of creditors is limited shall be included 17 18 in the assets of the limited liability partnership only to the 19 extent that the fair value of the property exceeds that 20 liability.

(b) A general partner who consents to a distribution in violation of subsection (a) or the partnership agreement, and who knew at the time of the distribution that the distribution violated subsection (a) or the partnership agreement, shall be liable to the limited partnership for the amount of that distribution.

(c) A limited partner who receives a distribution in 1 2 violation of subsection (a) or the partnership agreement, and who knew at the time of the distribution that the distribution 3 violated subsection (a) or the partnership agreement, shall be 4 liable to the limited partnership for the amount of the 5 distribution received by that partner. A limited partner who 6 7 receives a distribution in violation of subsection (a) or the partnership agreement, and who did not know at the time of the 8 distribution that the distribution violated subsection (a) or 9 10 the partnership agreement, shall not be liable for the amount 11 of the distribution received by that partner.

12 (d) Except as provided in subsection (e), this 13 section shall not affect any obligation or liability of a 14 partner under other applicable law for the amount of a 15 distribution.

(e) An action under this section or other applicable
law is barred if not commenced within two years after the
distribution.

(f) For purposes of subsection (a), "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of the limited partnership's activities and affairs under a bona fide retirement plan or other benefits program.

(g) This section shall not apply to distributions
 made in accordance with Section 10A-9A-8.09.

Article 6. Dissociation.

27

§ 10A-9A-6.01. Dissociation as limited partner. 1 (a) A person does not have a right to dissociate as 2 a limited partner before the dissolution and winding up of the 3 4 limited partnership. 5 (b) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of 6 7 the following events: (1) an event stated in the partnership agreement as 8 causing the person's dissociation as a limited partner; 9 10 (2) the person is expelled as a limited partner 11 pursuant to the partnership agreement; 12 (3) the person is expelled as a limited partner by 13 the unanimous consent of the other partners if: (A) it is unlawful to carry on the limited 14 15 partnership's activities and affairs with the person as a 16 limited partner; 17 (B) there has been a transfer of all of the person's 18 transferable interest in the limited partnership, other than a 19 transfer for security purposes; 20 (C) the person is an organization and, within 90 21 days after the limited partnership notifies the person that it 22 will be expelled as a limited partner because it has filed a 23 statement of dissolution or the equivalent, or its right to 24 conduct activities and affairs has been suspended by its 25 jurisdiction of formation, the statement of dissolution or the 26 equivalent has not been revoked or its right to conduct 27 activities and affairs has not been reinstated; or

1 (D) the person is an organization and, within 90 2 days after the limited partnership notifies the person that it 3 will be expelled as a limited partner because the person has 4 been dissolved and its activities and affairs are being wound 5 up, the organization has not been reinstated or the 6 dissolution and winding up have not been revoked or cancelled;

7 (4) on application by the limited partnership, the
8 person is expelled as a limited partner by judicial order
9 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 partnership's activities
and affairs;

(B) has willfully or persistently committed, or is
willfully or persistently committing, a material breach of the
partnership agreement or the person's duty or obligation under
this chapter or other applicable law; or

(C) has engaged, or is engaging, in conduct relating to the activities and affairs of the limited partnership that makes it not reasonably practicable to carry on the activities and affairs with the person as limited partner;

(5) in the case of a person who is an individual, the person dies, there is appointed a guardian or general conservator for the person or there is a judicial determination that the person has otherwise become incapable of performing the person's duties as a limited partner under this chapter or the partnership agreement; (6) the person becomes a debtor in bankruptcy,
 executes an assignment for the benefit of creditors, or seeks,
 consents, or acquiesces to the appointment of a trustee,
 receiver, or liquidator of the person or of all or
 substantially all of the person's property, but this
 subsection (6) shall not apply to a person who is the sole
 remaining limited partner of the limited partnership;

8 (7) in the case of a person that is a trust or is 9 acting as a limited partner by virtue of being a trustee of a 10 trust, the trust's entire transferable interest in the limited 11 partnership is distributed, but not solely by reason of the 12 substitution of a successor trustee;

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

(9) in the case of a person that is not an individual, the legal existence of the person otherwise terminates;

(10) the transfer of a limited partner's entire
 remaining transferable interest to another partner;

(11) the transfer of a limited partner's entire
 remaining transferable interest to a transferee upon the
 transferee's becoming a partner; or

(12) the limited partnership's participation in a
 conversion or merger under Article 10, or Article 8 of Chapter
 1 of this title if the limited partnership:

4

(A) is not the converted or surviving entity; or

5 (B) is the converted or surviving entity but, as a 6 result of the conversion or merger, the person ceases to be a 7 limited partner.

8 § 10A-9A-6.02. Effect of dissociation as limited
9 partner.

10 (a) Upon a person's dissociation as a limited11 partner:

12 (1) subject to Section 10A-9A-7.04, the person does
13 not have further rights as a limited partner;

14 (2) the person's implied contractual covenant of
15 good faith and fair dealing as a limited partner under Section
16 10A-9A-3.05(b) continues only as to matters arising and events
17 occurring before the dissociation; and

(3) subject to Section 10A-9A-7.04, and Article 10,
and Article 8 of Chapter 1 of this title, any transferable
interest owned by the person in the person's capacity as a
limited partner immediately before dissociation is owned by
the person immediately after dissociation as a mere
transferee.

(b) A person's dissociation as a limited partner
does not of itself discharge the person from any duty, debt,
obligation, or liability to the limited partnership or the

other partners that the person incurred while a limited
 partner.

3

§ 10A-9A-6.03. Dissociation as general partner.

A person is dissociated from a limited partnership as a general partner when any of the following occurs:

6 (1) the limited partnership has notice of the 7 person's express will to dissociate as a general partner, 8 except that if the person specifies a dissociation date later 9 than the date the limited partnership had notice, then the 10 person is dissociated as a general partner on that later date;

(2) an event stated in the partnership agreement as
 causing the person's dissociation as a general partner occurs;

13 (3) the person is expelled as a general partner14 pursuant to the partnership agreement;

15 (4) the person is expelled as a general partner by16 the unanimous consent of the other partners if:

17 (A) it is unlawful to carry on the limited
18 partnership's activities and affairs with the person as a
19 general partner;

(B) there has been a transfer of all of the person's
transferable interest in the limited partnership, other than a
transfer for security purposes;

(C) the person is an organization and, within 90
days after the limited partnership notifies the person that it
will be expelled as a general partner because it has filed a
statement of dissolution or the equivalent, or its right to
conduct activities and affairs has been suspended by its

jurisdiction of formation, the statement of dissolution or the equivalent has not been revoked or its right to conduct activities and affairs has not been reinstated; or

4 (D) the person is a limited liability company or
5 partnership that has been dissolved and whose activities and
6 affairs are being wound up;

7 (5) on application by the limited partnership, or a
8 partner in a direct action under Section 10A-9A-9.01, the
9 person's expulsion as a general partner by judicial order
10 because the person:

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

(B) has willfully or persistently committed, or is
willfully or persistently committing, a material breach of the
partnership agreement or the person's duty or obligation under
this chapter or other applicable law; or

(C) has engaged, or is engaging, in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a general partner;

(6) in the case of a person who is an individual,
the person dies, there is appointed a guardian or general
conservator for the person or there is a judicial
determination that the person has otherwise become incapable

of performing the person's duties as a general partner under this chapter or the partnership agreement;

3 (7) the person becomes a debtor in bankruptcy,
4 executes an assignment for the benefit of creditors, or seeks,
5 consents, or acquiesces to the appointment of a trustee,
6 receiver, or liquidator of the person or of all or
7 substantially all of the person's property;

8 (8) in the case of a person that is a trust or is 9 acting as a general partner by virtue of being a trustee of a 10 trust, the trust's entire transferable interest in the limited 11 partnership is distributed, but not merely by reason of the 12 substitution of a successor trustee;

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

(10) in the case of a general partner that is not an individual, the legal existence of the person otherwise terminates;

(11) the transfer of a general partner's entireremaining transferable interest to another partner;

(12) the transfer of a general partner's entire
remaining transferable interest to a transferee upon the
transferee's becoming a partner; or

(13) the limited partnership's participation in a 1 2 conversion or merger under Article 10 or Article 8 of Chapter 3 1 of this title, if the limited partnership: 4 (A) is not the converted or surviving entity; or (B) is the converted or surviving entity but, as a 5 result of the conversion or merger, the person ceases to be a 6 7 general partner. § 10A-9A-6.04. Person's power to dissociate as 8 general partner; wrongful dissociation. 9 10 (a) A person has the power to dissociate as a 11 general partner at any time, rightfully or wrongfully, by 12 express will pursuant to Section 10A-9A-6.03(1). 13 (b) A person's dissociation as a general partner is wrongful only if: 14 15 (1) it is in breach of an express provision of the 16 limited partnership; or 17 (2) it occurs before the completion of the winding 18 up of the limited partnership, and: 19 (A) the person dissociates as a general partner by 20 express will; (B) the person is expelled as a general partner by 21 22 judicial order under Section 10A-9A-6.03(5); 23 (C) the person is dissociated as a general partner 24 by becoming a debtor in bankruptcy; or 25 (D) in the case of a person that is not an 26 individual, trust other than a business trust, or estate, the

person is expelled or otherwise dissociated as a general
 partner because it willfully dissolved or terminated.

3 (c) A person that wrongfully dissociates as a
4 general partner is liable to the limited partnership and,
5 subject to Section 10A-9A-9.01, to the other partners for
6 damages caused by the dissociation. The liability is in
7 addition to any other obligation of the general partner to the
8 limited partnership or to the other partners.

9 § 10A-9A-6.05. Effect of dissociation as general
10 partner.

11 (a) Upon a person's dissociation as a general12 partner:

(1) the person's right to participate as a general
partner in the management and conduct of the partnership's
activities and affairs terminates;

16 (2) the person's duty to refrain from competing with 17 the limited partnership in the conduct or winding up of the 18 limited partnership's activities and affairs terminates;

19 (3) the person's following duties continue only with 20 regard to matters arising and events occurring before the 21 person's dissociation as a general partner:

(A) the duty to account to the limited partnership
and hold as trustee for it any property, profit, or benefit
derived by the general partner in the conduct and winding up
of the limited partnership's activities and affairs or derived
from a use by the general partner of limited partnership

property, including the appropriation of a limited partnership
opportunity;

3 (B) the duty to refrain from dealing with the 4 limited partnership in the conduct or winding up of the 5 limited partnership's activities and affairs as or on behalf 6 of a party having an interest adverse to the limited 7 partnership; and

8

(C) the duty of care under Section 10A-9A-4.08;

9 (4) the person may sign and deliver for filing in 10 accordance with Article 4 of Chapter 1, a statement of 11 dissociation pertaining to the person and, at the request of 12 the limited partnership, if the limited partnership has not 13 filed a statement of dissolution, shall sign an amendment to 14 the certificate of formation which states that the person has 15 dissociated; and

(5) subject to Section 10A-9A-7.04, Article 10, and
Article 8 of Chapter 1 of this title, any transferable
interest owned by the person immediately before dissociation
in the person's capacity as a general partner is owned
immediately after dissociation by the person as a mere
transferee.

(b) A person's dissociation as a general partner
does not of itself discharge the person from any duty, debt,
obligation, or liability to the limited partnership or the
other partners which the person incurred while a general
partner.

\$ 10A-9A-6.06. Power to bind and liability to
 limited partnership before dissolution of partnership of
 person dissociated as general partner.

(a) After a person is dissociated as a general
partner and before the limited partnership is dissolved,
converted under Article 10 or under Article 8 of Chapter 1 of
this title, or merged out of existence under Article 10 or
Article 8 of Chapter 1 of this title, the limited partnership
is bound by an act of the person only if:

(1) the act would have bound the limited partnership
 under Section 10A-9A-4.02 before the dissociation; and

(2) at the time the other party enters into the transaction the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under
subsection (a), the person dissociated as a general partner
which caused the limited partnership to be bound is liable:

(1) to the limited partnership for any damage caused
to the limited partnership arising from the obligation
incurred under subsection (a); and

(2) if a general partner or another person
dissociated as a general partner is liable for the obligation,
to the general partner or other person for any damage caused
to the general partner or other person arising from the
liability.

\$ 10A-9A-6.07. Liability to other persons of person
 dissociated as general partner.

(a) A person's dissociation as a general partner
does not of itself discharge the person's liability as a
general partner for a debt, obligation, or liability of the
limited partnership incurred before dissociation. Except as
otherwise provided in subsections (b) and (c), the person is
not liable for a limited partnership's debts, obligations, or
liabilities incurred after dissociation.

(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities and affairs is liable to the same extent as a general partner under Section 10A-9A-4.04 on an obligation incurred by the limited partnership under Section 10A-9A-8.04.

(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the limited partnership after the dissociation only if:

(1) a general partner would be liable on thetransaction; and

(2) at the time the other party enters into the
transaction the other party does not have notice of the
dissociation and reasonably believes that the person is a
general partner.

(d) By agreement with a creditor of a limited
 partnership and the limited partnership, a person dissociated
 as a general partner may be released from liability for an
 obligation of the limited partnership.

5 (e) A person dissociated as a general partner is 6 released from liability for a debt, obligation, or liability 7 of the limited partnership if the limited partnership's 8 creditor, with notice of the person's dissociation as a 9 general partner but without the person's consent, agrees to a 10 material alteration in the nature or time of payment of the 11 debt, obligation, or liability.

Article 7. Transferable Interests and Rights ofTransferees and Creditors.

14 § 10A-9A-7.01. Transferable interest. The only 15 interest of a partner which is transferable is the partner's 16 transferable interest. A transferable interest is personal 17 property.

18 § 10A-9A-7.02. Transfer of partner's transferable 19 interest.

20 (a) A transfer, in whole or in part, of a partner's21 transferable interest:

22

(1) is permissible;

23 (2) does not by itself cause the partner's
24 dissociation;

(3) does not by itself cause a dissolution and
winding up of the limited partnership; and

(4) subject to Section 10A-9A-7.04, does not entitle
 the transferee to:

3 (A) participate in the management or conduct of the
4 limited partnership's activities and affairs; or

5 (B) except as otherwise provided in subsection (d), 6 have access to required information, records, or other 7 information concerning the partnership's activities and 8 affairs.

9 (b) A transferee has the right to receive, in 10 accordance with the transfer, distributions to which the 11 transferor would otherwise be entitled.

(c) A transferable interest may be evidenced by a certificate of transferable interest issued by the limited partnership. A partnership agreement may provide for the transfer of the transferable interest represented by the certificate and make other provisions with respect to the certificate. No certificate of transferable interest shall be issued in bearer form.

(d) In a dissolution and winding up, a transferee is
entitled to an account of the limited partnership's
transactions only from the date of dissolution.

(e) Except as otherwise provided in Sections
10A-9A-6.01(b)(3), 10A-9A-6.01(b)(10), 10A-9A-6.01(b)(11),
10A-9A-6.03(4)(B), 10A-9A-6.03(11), and 10A-9A-6.03(12) when a
partner transfers a transferable interest, the transferor
retains the rights of a partner other than the right to

distributions transferred and retains all duties and
 obligations of a partner.

3 (f) A limited partnership need not give effect to a
4 transferee's rights under this section until the limited
5 partnership has notice of the transfer.

6 (g) When a partner transfers a transferable interest 7 to a person that is admitted as a partner with respect to the 8 transferred interest, the transferee is liable for the 9 partner's obligations under Sections 10A-9A-5.02 and 10 10A-9A-5.08 to the extent that the obligations are known to 11 the transferee when the transferee voluntarily accepts 12 admission as a partner.

13 § 10A-9A-7.03. Rights of creditor of partner or 14 transferee.

(a) On application to a court of competent 15 jurisdiction by any judgment creditor of a partner or 16 17 transferee, the court may charge the transferable interest of 18 the judgment debtor with payment of the unsatisfied amount of 19 the judgment with interest. To the extent so charged and after 20 the limited partnership has been served with the charging 21 order, the judgment creditor has only the right to receive any 22 distribution or distributions to which the judgment debtor 23 would otherwise be entitled in respect of the transferable 24 interest.

(b) The limited partnership, after being served with
a charging order and its terms, shall be entitled to pay or
deposit any distribution or distributions to which the

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judgment debtor would otherwise be entitled in respect of the 1 2 charged transferable interest into the hands of the clerk of the court so issuing the charging order, and the payment or 3 deposit shall discharge the limited partnership and the 4 5 judgment debtor from liability for the amount so paid or deposited and any interest that might accrue thereon. Upon 6 7 receipt of the payment or deposit, the clerk of the court shall notify the judgment creditor of the receipt of the 8 payment or deposit. The judgment creditor shall, after any 9 10 payment or deposit into the court, petition the court for 11 payment of so much of the amount paid or deposited as is held by the court as may be necessary to pay the judgment 12 13 creditor's judgment. To the extent the court has excess amounts paid or deposited on hand after the payment to the 14 15 judgment creditor, the excess amounts paid or deposited shall 16 be distributed to the judgment debtor and the charging order 17 shall be extinguished. The court, may in its discretion, order 18 the clerk to deposit, pending the judgment creditor's 19 petition, any money paid or deposited with the clerk, in an 20 interest bearing account at a bank authorized to receive 21 deposits of public funds.

(c) A charging order constitutes a lien on thejudgment debtor's transferable interest.

24

(d) Subject to subsection (c):

(1) a judgment debtor that is a partner retains the
rights of a partner and remains subject to all duties and
obligations of a partner; and

1 (2) a judgment debtor that is a transferee retains 2 the rights of a transferee and remains subject to all duties 3 and obligations of a transferee.

4 (e) This chapter does not deprive any partner or
5 transferee of the benefit of any exemption laws applicable to
6 the partner's or transferee's transferable interest.

7 (f) This section provides the exclusive remedy by 8 which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable 9 10 interest and the judgment creditor shall have no right to 11 foreclose, under this chapter or any other law, upon the 12 charging order, the charging order lien, or the judgment 13 debtor's transferable interest. A judgment creditor of a partner or transferee shall have no right to obtain possession 14 15 of, or otherwise exercise legal or equitable remedies with 16 respect to, the property of a limited partnership. Court 17 orders for actions or requests for accounts and inquiries that 18 the judgment debtor might have made, are not available to the 19 judgment creditor attempting to satisfy the judgment out of 20 the judgment debtor's transferable interest and may not be 21 ordered by a court.

\$ 10A-9A-7.04. Power of Personal Representative of
 Deceased Partner. If a partner dies, the deceased partner's
 personal representative or other legal representative may:

(a) for the period of time that the deceasedpartner's personal representative or other legal

- 1 representative holds the deceased partner's transferable
 2 interest:
- 3 (1) exercise the rights of a holder of transferable
 4 interests under this chapter;

5 (2) exercise the rights of a transferee under
6 Section 10A-9A-7.02; and

7 (3) for purposes of settling the estate, exercise
8 the rights of a current limited partner under Section
9 10A-9A-3.04; and

10 (b) for the period of time that the deceased 11 partner's personal representative or other legal 12 representative does not hold the deceased partner's 13 transferable interest, for purposes of settling the estate, 14 exercise the rights of a person dissociated as a limited 15 partner under Section 10A-9A-3.04.

16

23

Article 8. Dissolution and Winding Up.

17 § 10A-9A-8.01. Events of Dissolution. A limited 18 partnership is dissolved and its activities and affairs shall 19 be wound up upon the occurrence of the first of the following 20 events:

(a) An event or circumstance that the partnershipagreement states causes dissolution.

(b) Consent of all partners to dissolve.

24 (c)When there isno remaining general partner, unless25 either of the following applies:

26 (1) All of the limited partners agree in writing,
27 within 90 days after the dissociation of the last general

partner, to continue the activities and affairs of the limited
 partnership and to admit one or more new general partners.

3 (2) The activities and affairs of the limited
4 partnership are continued and one or more new general partners
5 are admitted in the manner stated in the partnership
6 agreement.

7 (d) When there is no remaining limited partner,
8 unless either of the following applies:

9 (1) All of the general partners agree in writing, 10 within 90 days after the dissociation of the last limited 11 partner, to continue the activities and affairs of the limited 12 partnership and to admit one or more new limited partners.

13 (2) The activities and affairs of the limited
14 partnership are continued and one or more new limited partners
15 are admitted in the manner stated in the partnership
16 agreement.

(e) When there are no remaining partners, unlesseither of the following applies:

(1) The holders of all of the transferable interests
in the limited partnership agree in writing, within 90 days
after the dissociation of the last general partner, to
continue the activities and affairs of the limited partnership
and to admit one or more new general partners and one or more
new limited partners.

(2) The activities and affairs of the limited
 partnership are continued and one or more new general partners

and one or more new limited partners are admitted in the
 manner stated in the partnership agreement.

(f) On application by a partner, the entry of an 3 4 order dissolving the limited partnership on the grounds that 5 it is not reasonably practicable to carry on the limited partnership's activities and affairs in conformity with the 6 partnership agreement, which order is entered by the circuit 7 court for the county in which the limited partnership's 8 principal place of business within this state is located, and 9 10 if the limited partnership does not have a principal place of 11 business within this state then by the circuit court for the 12 county in which the limited partnership's most recent 13 registered office is located.

14 § 10A-9A-8.02. Effect of dissolution.
15 Notwithstanding Section 10A-1-9.12:

(a) A dissolved limited partnership continues its
existence as a limited partnership but may not carry on any
activities and affairs except as is appropriate to wind up and
liquidate its activities and affairs, including:

20

(1) collecting its assets;

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

(3) discharging or making provisions for discharging
 its liabilities;

(4) distributing its remaining property in
accordance with Section 10A-9A-8.09; and

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

3 (b) In winding up its activities and affairs, a
4 limited partnership may:

5 (1) deliver for filing a statement of dissolution to 6 the filing officer provided for in subsection (e) setting 7 forth:

(A) The name of the limited partnership;

9 (B) The date of filing its certificate of formation, 10 and all amendments and restatements thereof, and the office or 11 offices where filed;

12

8

(C) That the limited partnership has dissolved;

(D) The name and street mailing address of the general partner who will be winding up the affairs of the limited partnership pursuant to Section 10A-9A-8.03(a), and if none, the name and street address of the person appointed pursuant to Section 10A-9A-8.03(b) or (c) to wind up the activities and affairs of the limited partnership; and

19 (E) Any other information the limited partnership20 deems appropriate;

(2) preserve the limited partnership's activities and affairs and property as a going concern for a reasonable time;

(3) prosecute, defend, or settle actions or
proceedings whether civil, criminal or administrative;
(4) transfer the limited partnership's assets;

1 (5) resolve disputes by mediation or arbitration; 2 and 3 (6) merge or convert in accordance with Article 10 4 of this chapter or Article 8 of Chapter 1. 5 (c) The dissolution of a limited partnership does 6 not: 7 (1) transfer title to the limited partnership's 8 property; (2) prevent the commencement of a proceeding by or 9 10 against the limited partnership in its limited partnership 11 name; 12 (3) terminate, abate, or suspend a proceeding 13 pending by or against the limited partnership on the effective date of dissolution; 14 (4) terminate the authority of its registered agent; 15 16 or 17 (5) abate, suspend, or otherwise alter the application of Sections 10A-9A-3.03 and 10A-9A-4.04(b) and 18 (C). 19 20 (d) A statement of dissolution shall be deemed to be 21 a filing instrument under Chapter 1. 22 (e) If a limited partnership is not an organization 23 described in Section 10A-1-4.02(c)(4), then that limited 24 partnership shall deliver the statement of dissolution for 25 filing to the judge of probate in whose office the original 26 certificate of formation is filed. If a limited partnership is 27 an organization described in Section 10A-1-4.02(c)(4), then

that limited partnership shall deliver the statement of
 dissolution for filing to the Secretary of State.

3 § 10A-9A-8.03. Right to wind up activities and
4 affairs.

5 (a) If a dissolved limited partnership has a general 6 partner or general partners that have not dissociated, that 7 general partner or those general partners shall wind up the 8 activities and affairs of the limited partnership and shall 9 have the powers set forth in Section 10A-9A-8.04.

10 (b) If a dissolved limited partnership does not have 11 a general partner, a person or persons to wind up the 12 dissolved limited partnership's activities and affairs may be 13 appointed by the consent of a majority of the limited 14 partners.

(c) The circuit court for the county in which the 15 limited partnership's principal place of business within this 16 17 state is located, and if the limited partnership does not have 18 a principal place of business within this state then the 19 circuit court for the county in which the limited 20 partnership's most recent registered office is located, may 21 order judicial supervision of the winding up of a dissolved 22 limited partnership, including the appointment of a person to 23 wind up the limited partnership's activities and affairs:

(1) on application of a partner, if the applicantestablishes good cause;

(2) on application of a partner or transferee, if
 the limited partnership does not have a general partner and

within a reasonable time following the dissolution no person having the authority to wind up the activities and affairs of the limited partnership has been appointed pursuant to subsection (b);

5 (3) on application of a partner or transferee, if 6 the limited partnership does not have a general partner and 7 within a reasonable time following the dissolution the person 8 appointed pursuant to subsection (b) is not winding up the 9 activities and affairs of the limited partnership; or

10 (4) in connection with a proceeding under Section
11 10A-9A-8.01(f).

12 (d) A person appointed under subsection (b) or (c)13 is not a general partner but:

(1) has the powers of a general partner under
Section 10A-9A-8.04 but is not liable for the debts,
liabilities, and other obligations of the limited partnership
solely by reason of having or exercising those powers or
otherwise acting to wind up the activities and affairs of the
dissolved limited partnership; and

(2) shall promptly deliver for filing a statement of
dissolution to the filing officer provided for in subsection
(e) setting forth the items listed in Section
10A-9A-8.02(b)(1) and the following:

24 (A) that the limited partnership does not have a25 general partner;

(B) the name and street mailing address of each
 person that has been appointed to wind up the activities and
 affairs of the limited partnership;

4 (C) that each person has been appointed pursuant to
5 this subsection to wind up the activities and affairs of the
6 limited partnership; and

7 (D) pursuant to this Section, that each person has 8 the powers of a general partner under Section 10A-9A-8.04 but 9 is not liable for the debts, liabilities, and other 10 obligations of the limited partnership solely by reason of 11 having or exercising those powers or otherwise acting to wind 12 up the activities and affairs of the dissolved limited 13 partnership.

(e) If the limited partnership is not an 14 15 organization described in Section 10A-1-4.02(c)(4), then the 16 person or persons appointed pursuant to subsection (b) or (c) 17 shall deliver the statement of dissolution for filing to the 18 judge of probate in whose office the original certificate of 19 formation is filed. If the limited partnership is an 20 organization described in Section 10A-1-4.02(c)(4), then the 21 person or persons appointed pursuant to subsection (b) or (c) 22 shall deliver the statement of dissolution for filing to the 23 Secretary of State.

\$10A-9A-8.04. Power of General Partner and Person
 Dissociated as General Partner to Bind Partnership after
 Dissolution.

- (a) A limited partnership is bound by a general
 partner's act after dissolution which:
- 3 (1) is appropriate for winding up the limited
 4 partnership's activities and affairs; or

5 (2) would have bound the limited partnership under 6 Section 10A-9A-4.02 before dissolution, if, at the time the 7 other party enters into the transaction, the other party does 8 not have notice of the dissolution.

9 (b) A person dissociated as a general partner binds 10 a limited partnership through an act occurring after 11 dissolution only if:

(1) at the time the other party enters into the transaction the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

16

(2) the act:

17 (A) is appropriate for winding up the limited
18 partnership's activities and affairs; or

(B) would have bound the limited partnership under
Section 10A-9A-4.02 before dissolution and at the time the
other party enters into the transaction the other party does
not have notice of the dissolution.

\$10A-9A-8.05. Liability after Dissolution of General
 Partner and Person Dissociated as General Partner to Limited
 Partnership, Other General Partners, and Persons Dissociated
 as General Partner.

(a) If a general partner having knowledge of the 1 2 dissolution causes a limited partnership to incur an obligation under Section 10A-9A-8.04(a) by an act that is not 3 4 appropriate for winding up the partnership's activities and 5 affairs, the general partner is liable: (1) to the limited partnership for any damage caused 6 7 to the limited partnership arising from the obligation; and (2) if another general partner or a person 8 dissociated as a general partner is liable for the obligation, 9 10 to that other general partner or person for any damage caused 11 to that other general partner or person arising from the 12 liability. 13 (b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under 14 Section 10A-9A-8.04(b), the person is liable: 15 (1) to the limited partnership for any damage caused 16 17 to the limited partnership arising from the obligation; and 18 (2) if a general partner or another person 19 dissociated as a general partner is liable for the obligation, 20 to the general partner or other person for any damage caused 21 to the general partner or other person arising from the 22 liability. 23 § 10A-9A-8.06. Known claims against dissolved 24 limited partnership. 25 Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21: 26 (a) A dissolved limited partnership may dispose of 27 any known claims against it by following the procedures

described in subsection (b) at any time after the effective
 date of the dissolution of the limited partnership.

3 (b) A dissolved limited partnership may give notice
4 of the dissolution in a record to the holder of any known
5 claim. The notice must:

6

(1) identify the dissolved limited partnership;

7 (2) describe the information required to be included8 in a claim;

9 (3) provide a mailing address to which the claim is 10 to be sent;

(4) state the deadline, which may not be fewer than
12 120 days from the effective date of the notice, by which the
13 dissolved partnership must receive the claim;

14 (5) state that if not sooner barred, the claim will
15 be barred if not received by the deadline; and

(6) unless the limited partnership has been
throughout its existence a limited liability limited
partnership, state that the barring of a claim against the
limited partnership will also bar any corresponding claim
against any general partner or person dissociated as a general
partner which is based on Section 10A-9A-4.04.

(c) Unless sooner barred by any other statute
limiting actions, a claim against a dissolved limited
partnership is barred:

(1) if a claimant who was given notice under
subsection (b) does not deliver the claim to the dissolved
limited partnership by the deadline; or

1 (2) if a claimant whose claim was rejected by the 2 dissolved limited partnership, does not commence a proceeding 3 to enforce the claim within 90 days from the effective date of 4 the rejection notice.

5 (d) For purposes of this section, "known claim" or 6 "claim" includes unliquidated claims, but does not include a 7 contingent liability that has not matured so that there is no 8 immediate right to bring suit or a claim based on an event 9 occurring after the effective date of dissolution.

10 (e) Nothing in this section shall be deemed to11 extend any otherwise applicable statute of limitations.

12 § 10A-9A-8.07. Other claims against dissolved
13 limited partnership.

14 Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:

(a) A dissolved limited partnership may publish
notice of its dissolution and request that persons with claims
against the dissolved limited partnership present them in
accordance with the notice.

19

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

(1) be published at least one time in a newspaper of general circulation in the county in which the dissolved limited partnership's principal place of business is located or, if it has none in this state, in the county in which the limited partnership's registered office is or was last located; 1 (2) describe the information that must be included 2 in a claim and provide a mailing address to which the claim is 3 to be sent;

4 (3) state that if not sooner barred, a claim against
5 the dissolved limited partnership will be barred unless a
6 proceeding to enforce the claim is commenced within two years
7 after the publication of the notice; and

8 (4) unless the limited partnership has been 9 throughout its existence a limited liability limited 10 partnership, state that the barring of a claim against the 11 limited partnership will also bar any corresponding claim 12 against any general partner or person dissociated as a general 13 partner which is based on Section 10A-9A-4.04.

(c) If a dissolved limited partnership publishes a newspaper notice in accordance with subsection (b), unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited partnership within two years after the publication date of the newspaper notice:

(1) a claimant who was not given notice under
Section 10A-9A-8.06;

(2) a claimant whose claim was timely sent to the
dissolved limited partnership but not acted on by the
dissolved limited partnership; and

26 (3) a claimant whose claim is contingent at the
 27 effective date of the dissolution of the limited partnership,

or is based on an event occurring after the effective date of
 the dissolution of the limited partnership.

3 (d) A claim that is not barred under this section,
4 any other statute limiting actions, or Section 10A-9A-8.06 may
5 be enforced:

6 (1) against a dissolved limited partnership, to the 7 extent of its undistributed assets;

(2) except as provided in subsection (h), if the 8 assets of a dissolved limited partnership have been 9 10 distributed after dissolution, against the person or persons 11 owning the transferable interests to the extent of that 12 person's proportionate share of the claim or of the assets 13 distributed to that person after dissolution, whichever is less, but a person's total liability for all claims under 14 15 subsection (d) may not exceed the total amount of assets 16 distributed to that person after dissolution of the limited 17 partnership; or

18 (3) against any person liable on the claim under
19 Section 10A-9A-4.04 and 10A-9A-6.07.

20 (e) A dissolved limited partnership that published a 21 notice under this section may file an application with the 22 circuit court in the county in which the dissolved limited 23 partnership's principal place of business is located and if 24 the limited partnership does not have a principal place of 25 business within this state, in the county in which the 26 dissolved limited partnership's most recent registered office 27 is located, for a determination of the amount and form of

security to be provided for payment of claims that are 1 2 contingent or have not been made known to the dissolved limited partnership or that are based on an event occurring 3 after the effective date of the dissolution of the limited 4 5 partnership but that, based on the facts known to the dissolved limited partnership, are reasonably estimated to 6 7 arise after the effective date of the dissolution of the limited partnership. Provision need not be made for any claim 8 that is or is reasonably anticipated to be barred under 9 10 subsection (c).

(f) Within ten days after the filing of the application provided for in subsection (e), notice of the proceeding shall be given by the dissolved limited partnership to each potential claimant as described in subsection (e).

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

(h) Provision by the dissolved limited partnership for security in the amount and the form ordered by the circuit court under subsection (e) shall satisfy the dissolved limited partnership's obligation with respect to claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after the effective date of the dissolution of the limited partnership,

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and those claims may not be enforced against a person owning a transferable interest to whom assets have been distributed by the dissolved limited partnership after the effective date of the dissolution of the limited partnership.

5 (i) Nothing in this section shall be deemed to
6 extend any otherwise applicable statute of limitations.

(j) If a claim has been satisfied, disposed of, or
barred under Section 10A-9A-8.06, this section, or other law,
the person or persons designated to wind up the affairs of a
limited partnership, and the owners of the transferable
interests receiving assets from the limited partnership, shall
not be liable for that claim.

\$ 10A-9A-8.08. Liability of General Partner and
Person Dissociated as General Partner When Claim against
Limited Partnership Barred. If a claim against a dissolved
limited partnership is barred under Section 10A-9A-8.06 or
10A-9A-8.07, any corresponding claim under Section 10A-9A-4.04
or 10A-9A-6.07 is also barred.

19 § 10A-9A-8.09. Disposition of Assets, When
20 Contributions Required. Notwithstanding Section 10A-1-9.12,
21 upon the winding up of a limited partnership, the assets of
22 the limited partnership, including any obligation under
23 Article 5 of this Chapter, and any contribution required by
24 this section, shall be applied as follows:

(a) Payment, or adequate provision for payment,
shall be made to creditors, including, to the extent permitted

by law, partners who are creditors, in satisfaction of
 liabilities of the limited partnership.

3 (b) After a limited partnership complies with
4 subsection (a), any surplus must be distributed:

5 (1) first, to each person owning a transferable 6 interest that reflects contributions made on account of the 7 transferable interest and not previously returned, an amount 8 equal to the value of the person's unreturned contributions; 9 and

10 (2) then to each person owning a transferable
11 interest in the proportions in which the owners of
12 transferable interests share in distributions before
13 dissolution.

(c) If the limited partnership does not have
sufficient surplus to comply with subsection (b)(1), any
surplus must be distributed among the owners of transferable
interests in proportion to the value of their respective
unreturned contributions.

(d) If a limited partnership's assets are
insufficient to satisfy all of its obligations under
subsection (a), with respect to each unsatisfied obligation
incurred when the limited partnership was not a limited
liability limited partnership, the following rules apply:

(1) Each person that was a general partner when the
obligation was incurred and that has not been released from
the obligation under Section 10A-9A-6.07 shall contribute to
the limited partnership for the purpose of enabling the

limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount 6 7 required under paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the other persons 8 required to contribute by paragraph (1) on account of the 9 10 obligation shall contribute the additional amount necessary to 11 discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to 12 13 receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was 14 15 incurred.

(3) If a person does not make the additional
contribution required by paragraph (2), further additional
contributions are determined and due in the same manner as
provided in that paragraph.

20 (e) A person that makes an additional contribution 21 under subsection (d)(2) or (3) may recover from any person 22 whose failure to contribute under subsection (d)(1) or (2) 23 necessitated the additional contribution. A person may not 24 recover under this subsection more than the amount 25 additionally contributed. A person's liability under this 26 subsection may not exceed the amount the person failed to 27 contribute.

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(f) The estate of a deceased individual is liable
 for the person's obligations under this section.

3 (g) An assignee for the benefit of creditors of a
4 limited partnership or a partner, or a person appointed by a
5 court to represent creditors of a limited partnership or a
6 partner, may enforce a person's obligation to contribute under
7 subsection (d).

§ 10A-9A-8.10. Reinstatement after dissolution.
9 Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32, a limited
10 partnership that has been dissolved may be reinstated upon
11 compliance with the following conditions:

12 (a) the consent shall have been obtained from the
13 partners or other persons entitled to consent at the time that
14 is:

15 (1) required for reinstatement under the partnership16 agreement; or

17 (2) if the partnership agreement does not state the
18 consent required for reinstatement, sufficient for dissolution
19 under the partnership agreement; or

(3) if the partnership agreement neither states the
consent required for reinstatement nor for dissolution,
sufficient for dissolution under this chapter;

(b) in the case of a written objection to
reinstatement having been delivered to the limited partnership
before or at the time of the consent required by subsection
(a) by the partners or other persons having authority under
the partnership agreement to bring about or prevent

dissolution of the limited partnership, those partners or persons withdrawing that written objection effective at the time of the consent required by subsection (a);

4 (c) in the case of a limited partnership dissolved
5 in a judicial proceeding initiated by one or more of the
6 partners, the consent of each of those partners shall have
7 been obtained and shall be included in the consent required by
8 subsection (a); and

9 (d) the filing of a certificate of reinstatement in
10 accordance with Section 10A-9A-8.11.

11

§ 10A-9A-8.11. Certificate of reinstatement.

(a) In order to reinstate a limited partnership
under this article, a certificate of reinstatement shall be
delivered for filing to the filing officer provided for in
subsection (d) which certificate of reinstatement shall have
attached thereto a true and complete copy of the limited
partnership's certificate of formation. The certificate of
reinstatement shall state:

19 (1) the name of the limited partnership before20 reinstatement;

(2) the name of the limited partnership following
 reinstatement, which limited partnership name shall comply
 with Section 10A-9A-8.12;

24 (3) the date of formation of the limited25 partnership;

26 (4) the date of dissolution of the limited27 partnership, if known;

(5) a statement that all applicable conditions of
 Section 10A-9A-8.10 have been satisfied; and

3 (6) the address of the registered office and the
4 name of the registered agent at that address in compliance
5 with Article 5 of Chapter 1.

6 (b) A limited partnership shall not be required to 7 file a statement of dissolution in order to file a certificate 8 of reinstatement.

9 (c) A certificate of reinstatement shall be deemed 10 to be a filing instrument under Chapter 1.

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

19 § 10A-9A-8.12. Limited partnership name upon 20 reinstatement. The name of a limited partnership following 21 reinstatement shall be determined as follows:

(a) If the limited partnership remains in the
Secretary of State's records as a limited partnership which
has not been dissolved, then the name of the limited
partnership following reinstatement shall be that limited
partnership name at the time of reinstatement.

(b) If the limited partnership is listed in the 1 2 Secretary of State's records as a limited partnership that has been dissolved, then the name of a limited partnership 3 following reinstatement shall be that limited partnership name 4 at the time of reinstatement if that limited partnership name 5 complies with Article 5 of Chapter 1 at the time of 6 reinstatement. If that limited partnership name does not 7 comply with Article 5 of Chapter 1, the name of the limited 8 partnership following reinstatement shall be that limited 9 10 partnership name followed by the word "reinstated."

(c) A limited partnership shall not be required to file a statement of dissolution in order to retain or obtain the name of the limited partnership.

14

§ 10A-9A-8.13. Effect of reinstatement.

(a) Subject to subsection (b), upon reinstatement,
the limited partnership shall be deemed for all purposes to
have continued its activities and affairs as if dissolution
had never occurred; and each right inuring to, and each debt,
obligation, and liability incurred by, the limited partnership
after the dissolution shall be determined as if the
dissolution had never occurred.

(b) The rights of persons acting in reliance on the
dissolution before those persons had notice of the
reinstatement shall not be adversely affected by the
reinstatement.

Article 9. Actions by Partners.
\$ 10A-9A-9.01. Direct action by partner.

(a) Subject to subsection (b), a partner may 1 2 maintain a direct action against another partner or partners or the limited partnership, with or without an accounting as 3 to the partnership's activities and affairs, to enforce the 4 5 partner's rights and otherwise protect the partner's interests, including rights and interests under the 6 7 partnership agreement or this chapter or arising independently of the partnership relationship. 8

9 (b) A partner maintaining a direct action under 10 subsection (a) must plead and prove an actual or threatened 11 injury that is not solely the result of an injury suffered or 12 threatened to be suffered by the limited partnership.

(c) A partner may maintain a direct action to
enforce a right of a limited partnership if all partners at
the time of suit are parties to the action.

16 (d) The accrual of, and any time limitation on, a 17 right of action for a remedy under this section is governed by 18 other law.

(e) A right to an accounting upon a dissolution andwinding up does not revive a claim barred by law.

S 10A-9A-9.02. Right of derivative action. A partner may commence or maintain a derivative action in the right of a limited partnership to enforce a right of the limited partnership by complying with this article.

25 § 10A-9A-9.03. Standing. A partner may commence or 26 maintain a derivative action in the right of the limited 27 partnership only if the partner: (1) fairly and adequately represents the interests
 of the limited partnership in enforcing the right of the
 limited partnership; and

4 (2) either:

5 (A) was a partner of the limited partnership at the 6 time of the act or omission of which the partner complains; or

(B) whose status as a partner devolved upon the
person by operation of law or pursuant to the terms of the
partnership agreement from a person who was a partner at the
time of the act or omission of which the partner complains.

11 § 10A-9A-9.04. Demand. A partner may commence a 12 derivative action in the right of the limited partnership, if:

(a) the partner first makes a written demand upon general partners requesting that they cause the limited partnership to bring an action to enforce the right and the general partners do not bring the action within a reasonable time; or

(b) a demand under subsection (a) would be futile.
\$ 10A-9A-9.05. Pleading. In a derivative action, the
complaint must state with particularity:

(a) the date and content of plaintiff's demand and
the general partner's response by the limited partnership to
the demand; or

(b) why the demand should be excused as futile.
(b) why the demand should be excused as futile.
\$ 10A-9A-9.06. Stay of proceedings. For the purpose
of allowing the general partners and the limited partnership
time to undertake an inquiry into the allegations made in the

1 demand or complaint commenced pursuant to this article, the 2 court may stay any derivative action for the period the court 3 deems appropriate.

§ 10A-9A-9.07. Discontinuance or settlement. A
derivative action may not be dismissed or compromised without
the approval of the court, and notice of the proposed
dismissal or compromise shall be given to partners of the
limited partnership in such manner as the court directs.

9

10

\$ 10A-9A-9.08. Proceeds and expenses.

(a) Except as otherwise provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff; and

(2) if the derivative plaintiff receives any
proceeds, the derivative plaintiff shall immediately remit
them to the limited partnership.

(b) If a derivative action is successful in whole or
in part, the court may award the plaintiff reasonable
expenses, including reasonable attorney's fees, from the
recovery of the limited partnership.

§ 10A-9A-9.09. Applicability to foreign limited partnerships. In any derivative action in the right of a foreign limited partnership, the right of a person to commence or maintain a derivative action in the right of a foreign limited partnership, and any matters raised in the action covered by Sections 10A-9A-9.02 through 10A-9A-9.08, shall be 1 governed by the law of the jurisdiction under which the 2 foreign limited partnership was formed; except that any 3 matters raised in the action covered by Sections 10A-9A-9.06, 4 10A-9A-9.07, and 10A-9A-9.08 shall be governed by the law of 5 this state.

6

Article 10. Conversions and Mergers.

S 10A-9A-10.01. Definitions. Notwithstanding Section
10A-1-1.03, as used in this article, unless the context
otherwise requires, the following terms mean:

10 (1) "Constituent Limited Partnership" means a11 constituent organization that is a limited partnership.

12 (2) "Constituent Organization" means an organization13 that is party to a merger under this article.

14 (3) "Converted Organization" means the organization
15 into which a converting organization converts pursuant to this
16 article.

17 (4) "Converting Limited Partnership" means a18 converting organization that is a limited partnership.

(5) "Converting Organization" means an organization
 that converts into another organization pursuant to this
 article.

(6) "General Partner" means a general partner of alimited partnership.

(7) "Governing Statute" of an organization means the
 statute that governs the organization's internal affairs.

(8) "Organization" means a general partnership,
 including a limited liability partnership; limited

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

7

(9) "Organizational Documents" means:

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

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

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

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

(E) for a corporation for profit or foreign
 corporation for profit, its certificate of formation, bylaws,
 and other agreements among its shareholders that are

authorized by its governing statute, or comparable writings as
 provided in its governing statute;

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

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

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

16 (10) "Surviving Organization" means an organization 17 into which one or more other organizations are merged under 18 this article, whether the organization pre-existed the merger 19 or was created pursuant to the merger.

20

§ 10A-9A-10.02. Conversion.

(a) An organization other than a limited partnership
may convert to a limited partnership, and a limited
partnership may convert to an organization other than a
limited partnership pursuant to this section, Sections
10A-9A-10.03 through 10A-9A-10.05, and a plan of conversion,
if:

(1) the governing statute of the organization that
 is not a limited partnership authorizes the conversion;

3 (2) the law of the jurisdiction governing the
4 converting organization and the converted organization does
5 not prohibit the conversion; and

6 (3) the converting organization and the converted 7 organization each comply with the governing statute and 8 organizational documents applicable to that organization in 9 effecting the conversion.

10 (b) A plan of conversion must be in writing and must 11 include:

12 (1) the name, type of organization, and mailing
13 address of the principal office of the converting organization
14 before conversion;

(2) the name, type of organization, and mailing
address of the principal office of the converted organization
after conversion;

(3) the terms and conditions of the conversion,
including the manner and basis for converting interests in the
converting organization into any combination of money,
interests in the converted organization, and other
consideration allowed in Section 10A-9A-10.02(c); and

23 (4) the organizational documents of the converted24 organization.

(c) In connection with a conversion, rights or
securities of or interests in the converting organization may
be exchanged for or converted into cash, property, or rights

1 or securities of or interests in the converted organization, 2 or, in addition to or in lieu thereof, may be exchanged for or 3 converted into cash, property, or rights or securities of or 4 interests in another organization or may be cancelled.

5 § 10A-9A-10.03. Action on plan of conversion by
6 converting limited partnership.

7 (a) Subject to Section 10A-9A-10.10, a plan of
8 conversion must be consented to by all the partners of a
9 converting limited partnership.

10 (b) Subject to Section 10A-9A-10.10 and any 11 contractual rights, after a conversion is approved, and at any 12 time before a filing is made under Section 10A-9A-10.4, a 13 converting limited partnership may amend the plan or abandon 14 the planned conversion:

15

(1) as provided in the plan; and

16 (2) except as prohibited by the plan, by the same17 consent as was required to approve the plan.

18 § 10A-9A-10.04. Filings required for conversion;
19 effective date.

20

27

(a) After a plan of conversion is approved:

(1) if the converting organization is an
organization formed under the laws of this state, the
converting organization shall file a statement of conversion
in accordance with subsection (c), which statement of
conversion must be signed in accordance with Section
10A-9A-2.03(a) and which must include:

(A) the name of the converting organization;

(B) the date of the filing of the certificate of 1 2 formation of the converting organization, if any, and all 3 prior amendments and the filing office or offices, if any, where such is filed; 4 (C) a statement that the converting organization has 5 been converted into the converted organization; 6 7 (D) the name and type of organization of the converted organization and the jurisdiction of its governing 8 9 statute; 10 (E) the street and mailing address of the principal 11 office of the converted organization; (F) the date the conversion is effective under the 12 13 governing statute of the converted organization; (G) a statement that the conversion was approved as 14 15 required by this chapter; 16 (H) a statement that the conversion was approved as 17 required by the governing statute of the converted 18 organization; and 19 (I) if the converted organization is a foreign 20 organization not authorized to conduct activities and affairs 21 in this state, the street and mailing address of an office for 22 the purposes of Section 10A-9A-10.05(b); and 23 (2) if the converted organization is a limited 24 partnership, the converting organization shall file a 25 certificate of formation in accordance with subsection (d), 26 which certificate of formation must include, in addition to 27 the information required by Section 10A-9A-2.01(a):

(A) a statement that the limited partnership was
 converted from the converting organization;

3 (B) the name and type of organization of the
4 converting organization and the jurisdiction of the converting
5 organization's governing statute; and

6 (C) a statement that the conversion was approved in 7 a manner that complied with the converting organization's 8 governing statute.

9

(b) A conversion becomes effective:

10 (1) if the converted organization is a limited 11 partnership, when the certificate of formation takes effect; 12 and

(2) if the converted organization is not a limited
partnership, as provided by the governing statute of the
converted organization.

(c) If the converting organization is an
organization formed under the laws of this state, then the
converting organization shall file the statement of conversion
required under subsection (a) (1) with the Secretary of State
in accordance with Section 10A-1-4.02(c) (1).

(d) If the converted organization is a limited partnership, then, notwithstanding Section 10A-1-4.02(b), the converting organization shall file the certificate of formation required under subsection (a) (2) with the Secretary of State in accordance with Section 10A-1-4.02(c) (5), along with the fees specified in Section 10A-1-4.31 subject to subsection (f) (3). 1 (e) If the converting organization is required to 2 file a statement of conversion and a certificate of formation 3 with the Secretary of State, then the converting organization 4 shall file the statement of conversion and the certificate of 5 formation with the Secretary of State simultaneously.

6 (f) In the case of a statement of conversion that is 7 to be filed with the Secretary of State pursuant to 8 subsections (c):

9 (1) if the converting organization has a certificate 10 of formation filed with the judge of probate, the Secretary of 11 State shall within 10 days transmit a certified copy of the 12 statement of conversion to the office of the judge of probate 13 in the county in which the certificate of formation for such 14 converting organization was filed along with the proper fee 15 for the judge of probate.

(2) if the converting organization did not file its
certificate of formation with the judge of probate, but rather
in accordance with this title filed its certificate of
formation with the Secretary of State, the Secretary of State
shall not transmit a certified copy of the statement of
conversion to the office of the judge of probate and shall not
collect any fee for the judge of probate.

(3) if the converting organization is, immediately
prior to the conversion becoming effective, an organization
described in Section 10A-1-4.02(c)(4), but is not required
under this title to file its organizational documents with the
judge of probate, the Secretary of State shall not transmit a

certified copy of the statement of the statement of conversion
 to the office of the judge of probate and shall not collect
 any fee for the judge of probate.

(g) In the case of a certificate of formation that
is to be filed with the Secretary of State pursuant to
subsection (d), the Secretary of State shall not transmit a
certified copy of the certificate of formation to the office
of the judge of probate and shall not collect any fee for the
judge of probate, but shall collect the fee provided for the
Secretary of State in Section 10A-1-4.31(a)(1).

(h) After a conversion becomes effective, if the converted organization is a limited partnership, then all filing instruments required to be filed under this title regarding that converted organization shall be filed with the Secretary of State.

16

(i) If:

(1) the converting organization is a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(2) the converted organization will be a filing
entity or a foreign filing entity registered to conduct
activities and affairs in this state;

(3) the name of the converting organization and the
converted organization are to be the same, other than words,
phrases or abbreviations indicating the type of entity; and

26 (4) the name of the converted organization complies
27 with Division A of Article 5 of Chapter 1 or Section

1 10A-1-7.07, as the case may be; then notwithstanding Division 2 B of Article 5 of Chapter 1, no name reservation shall be 3 required and the converted organization shall for all purpose 4 of this title be entitled to utilize the name of the 5 converting organization without any further action by the 6 converting organization or the converted organization.

7 (j) A certified copy of any document required to be 8 filed under this section may be filed in the real estate records in the office of the judge of probate in any county in 9 10 which the converting organization owned real property, without 11 payment and without collection by the judge of probate of any 12 deed or other transfer tax or fee. The judge of probate shall, 13 however, be entitled to collect a filing fee of five dollars 14 (\$5). Any such filing shall evidence chain of title, but lack 15 of filing shall not affect the converted organization's title 16 to such real property.

17 (k) A statement of conversion shall be a filing18 instrument under Chapter 1.

(1) Except as set forth in subsection (f) (2), the
filing fees for a statement of conversion shall be the same
fee as provided in Section 10A-1-4.31(a) (5).

22

§ 10A-9A-10.05. Effect of conversion.

23

(a) When a conversion takes effect:

(1) all property owned by the converting
organization remains vested in the converted organization
without reservation or impairment and the title to any
property vested by deed or otherwise in the converting

1 organization shall not revert or be in any way impaired by 2 reason of the conversion;

3 (2) all debts, obligations, or other liabilities of
4 the converting organization continue as debts, obligations, or
5 other liabilities of the converted organization and neither
6 the rights of creditors, nor the liens upon the property of
7 the converting organization shall be impaired by the
8 conversion;

9 (3) an action or proceeding pending by or against 10 the converting organization continues as if the conversion had 11 not occurred;

(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

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

(6) except as otherwise agreed, for all purposes of the laws of this state, the converting organization shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting organization;

(7) for all purposes of the laws of this state, the
rights, privileges, powers, interests in property, debts,
liabilities and duties of the converting organization, shall
be the rights, privileges, powers, interests in property,

debts, liabilities and duties of the converted organization,
 and shall not be deemed as a consequence of the conversion, to
 have been transferred to the converted organization;

(8) if the converted organization is a limited
partnership, for all purposes of the laws of this state, the
limited partnership shall be deemed to be the same
organization as the converting organization, and the
conversion shall constitute a continuation of the existence of
the converting organization in the form of a limited
partnership;

(9) if the converted organization is a limited partnership, the existence of the limited partnership shall be deemed to have commenced on the date the converting organization commenced its existence in the jurisdiction in which the converting organization was first created, formed, organized, incorporated, or otherwise came into being;

17 (10) the conversion shall not affect the choice of
18 law applicable to matters arising prior to conversion; and

19 (11) if the Secretary of State has assigned a unique 20 identifying number or other designation to the converting organization and (i) the converted organization is formed 21 22 pursuant to the laws of this state or (ii) the converted 23 organization is, within 30 days after the effective date of 24 the conversion, registered to transact business in this state, 25 then that unique identifying number or other designation shall 26 continue to be assigned to the converted organization.

(b) A converted organization that is a foreign 1 2 entity consents to the jurisdiction of the courts of this 3 state to enforce any debt, obligation or other liability for 4 which the converting limited partnership, or series thereof, is liable if, before the conversion, the converting limited 5 partnership was subject to suit in this state on the debt, 6 7 obligation or other liability. If a converted organization 8 that is a foreign entity fails to designate or maintain a registered agent, or the designated registered agent cannot 9 10 with reasonable diligence be served, then service of process 11 on that converted organization for the purposes of enforcing a 12 debt, obligation, or other liability under this subsection may 13 be made in the same manner and has the same consequences as 14 provided in Section 10A-1-5.35.

15

§ 10A-9A-10.06. Merger.

(a) A limited partnership may merge with one or more
other constituent organizations pursuant to this section,
Sections 10A-9A-10.07 through 10A-9A-10.09, and a plan of
merger, if:

20 (1) the governing statute of each of the other
21 organizations authorizes the merger;

(2) the merger is not prohibited by the law of a
 jurisdiction that enacted any of those governing statutes; and

24 (3) each of the other organizations complies with25 its governing statute in effecting the merger.

26 (b) A plan of merger must be in writing and must27 include:

(1) the name, type of organization, and mailing
 address of the principal office of each constituent
 organization;

4 (2) the name, type of organization, and mailing
5 address of the principal office of the surviving organization
6 and, if the surviving organization is to be created pursuant
7 to the merger, a statement to that effect;

8 (3) the terms and conditions of the merger, 9 including the manner and basis for converting the interests in 10 each constituent organization into any combination of money, 11 interests in the surviving organization, and other 12 consideration as allowed by subsection (c);

(4) if the surviving organization is to be created
pursuant to the merger, the surviving organization's
organizational documents; and

16 (5) if the surviving organization is not to be 17 created pursuant to the merger, any amendments to be made by 18 the merger to the surviving organization's organizational 19 documents.

(c) In connection with a merger, rights or
securities of or interests in a constituent organization may
be exchanged for or converted into cash, property, or rights
or securities of or interests in the surviving organization,
or, in addition to or in lieu thereof, may be exchanged for or
converted into cash, property, or rights or securities of or
interests in another organization or may be cancelled.

§ 10A-9A-10.07. Action on plan of merger by 1 2 constituent limited partnership. (a) Subject to Section 10A-9A-10.10, a plan of 3 merger must be consented to by all the partners of a 4 5 constituent limited partnership. (b) Subject to Section 10A-9A-10.10 and any 6 7 contractual rights, after a merger is approved, and at any time before a filing is made under Section 10A-9A-10.08, a 8 constituent limited partnership may amend the plan or abandon 9 10 the merger: 11 (1) as provided in the plan; and 12 (2) except as prohibited by the plan, with the same 13 consent as was required to approve the plan. § 10A-9A-10.08. Filings required for merger; 14 15 effective date. 16 (a) After each constituent organization has approved 17 the plan of merger, a statement of merger must be signed on 18 behalf of: 19 (1) each constituent limited partnership, as 20 provided in Section 10A-9A-2.03(a); and 21 (2) each other constituent organization, as provided 22 by its governing statute. 23 (b) A statement of merger under this section must 24 include: 25 (1) the name, type of organization, and mailing 26 address of the principal office of each constituent 27 organization and the jurisdiction of its governing statute;

(2) the name, type of organization, and mailing 1 2 address of the principal office of the surviving organization, 3 the jurisdiction of its governing statute, and, if the surviving organization is created pursuant to the merger, a 4 5 statement to that effect; (3) the date of the filing of the certificate of 6 7 formation, if any, and all prior amendments and the filing 8 office or offices, if any, and where such is filed of each constituent organization which was formed under the laws of 9 10 this state; 11 (4) the date the merger is effective under the 12 governing statute of the surviving organization; 13 (5) if the surviving organization is to be created 14 pursuant to the merger: 15 (A) if it will be a limited partnership, the limited 16 partnership's certificate of formation; or 17 (B) if it will be an organization other than a 18 limited partnership, any organizational document that creates 19 the organization that is required to be in a public writing; 20 (6) if the surviving organization exists before the 21 merger, any amendments provided for in the plan of merger for 22 the organizational document that created the organization that 23 are in a public writing; 24 (7) a statement as to each constituent organization 25 that the merger was approved as required by the organization's 26 governing statute;

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(8) if the surviving organization is a foreign
 organization not authorized to conduct activities and affairs
 in this state, the street and mailing address of an office for
 the purposes of Section 10A-9A-10.09(b); and

5 (9) any additional information required by the6 governing statute of any constituent organization.

7 (c) The statement of merger shall be delivered for 8 filing to the Secretary of State in accordance with Section 10A-1-4.02(c)(1), along with the fees specified in Section 9 10 10A-1-4.31, subject to the last sentence of this subsection 11 (c). For each constituent organization which is formed under 12 the laws of this state and which is not, immediately prior to the merger becoming effective, an organization described in 13 Section 10A-1-4.02(c)(4), the Secretary of State shall within 14 15 10 days transmit a certified copy of the statement of merger 16 to the office of the judge of probate in the county in which the certificate of formation for each such constituent 17 18 organization was filed along with the proper fee for the judge 19 of probate. For each constituent organization which is formed 20 under the laws of this state and which is, immediately prior 21 to the merger becoming effective, an organization described in 22 Section 10A-1-4.02(c)(4), but which has a certificate of 23 formation filed with the judge of probate, the Secretary of 24 State shall transmit a certified copy of the statement of 25 merger to the office of the judge of probate in the county in which the certificate of formation for each such constituent 26 27 organization was filed along with the proper fee for the judge

of probate. For each constituent organization which (1) is 1 2 formed under the laws of this state, (2) is, immediately prior to the merger becoming effective, an organization described in 3 Section 10A-1-4.02(c)(4), and (3) did not file its certificate 4 of formation with the judge of probate, but rather in 5 accordance with this title filed its certificate of formation 6 7 with the Secretary of State, the Secretary of State shall not transmit a certified copy of the statement of merger to the 8 office of the judge of probate and shall not collect any fee 9 10 for the judge of probate.

11

(d) A merger becomes effective under this article:

12 (1) if the surviving organization is a limited13 partnership, upon the later of:

14 (A) the filing of the statement of merger with the15 Secretary of State; or

16

(B) as specified in the statement of merger; or

17 (2) if the surviving organization is not a limited
18 partnership, as provided by the governing statute of the
19 surviving organization.

(e) After a merger becomes effective, if the
surviving organization is a limited partnership, then all
filing instruments required to be filed under this title
regarding that surviving organization shall be filed with the
Secretary of State.

(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect the filing fee of five dollars (\$5). Any such filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to such real property.

8 (g) A statement of merger shall be a filing
9 instrument under Chapter 1.

10 (h) Except as provided in the last sentence of 11 subsection (c), the filing fees for a statement of merger 12 shall be the same fees as provided in Section

13 10A-1-4.31(a)(5).

14

§ 10A-9A-10.09. Effect of merger.

15

(a) When a merger becomes effective:

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

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

(3) all property owned by each constituent
organization that ceases to exist vests in the surviving
organization without reservation or impairment and the title
to any property vested by deed or otherwise in the surviving
organization shall not revert or be in any way impaired by
reason of the merger;

(4) all debts, obligations or other liabilities of
 each constituent organization that ceases to exist continue as
 debts, obligations or other liabilities of the surviving
 organization and neither the rights of creditors, nor any
 liens upon the property of any constituent organization, shall
 be impaired by the merger;

7 (5) an action or proceeding pending by or against 8 any constituent organization continues as if the merger had 9 not occurred;

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

14 (7) except as otherwise provided in the plan of 15 merger, the terms and conditions of the plan of merger take 16 effect;

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

20 (9) if the surviving organization is created
21 pursuant to the merger:

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

(B) if it is an organization other than a limited
partnership, the organizational document that creates the
organization becomes effective; and

1 (10) if the surviving organization existed before 2 the merger, any amendments provided for in the statement of 3 merger for the organizational document that created the 4 organization become effective.

5 (b) A surviving organization that is a foreign entity consents to the jurisdiction of this state to enforce 6 7 any debt, obligation, or other liability owed by a constituent 8 organization, if before the merger the constituent organization was subject to suit in this state on the debt, 9 10 obligation, or other liability. If a surviving organization 11 that is a foreign entity fails to designate or maintain a 12 registered agent, or the designated registered agent cannot 13 with reasonable diligence be served, then the service of process on that surviving organization for the purposes of 14 15 enforcing a debt, obligation, or other liability under this 16 subsection may be made in the same manner and has the same 17 consequences as provided in Section 10A-1-5.35.

18 § 10A-9A-10.10. Restrictions on approval of mergers,
 19 conversions and on relinquishing LLLP status.

(a) If a partner of a converting or constituent
limited partnership will have personal liability with respect
to a converted or surviving organization, approval and
amendment of a plan of conversion or plan of merger are
ineffective without that partner's consent to the plan.

(b) An amendment to a certificate of formation whichdeletes a statement that the limited partnership is a limited

liability limited partnership is ineffective without each
 general partner's written consent to such amendment.

3 (c) A partner does not give the consent required by 4 subsection (a) or (b) merely by consenting to a provision of 5 the partnership agreement that permits the partnership 6 agreement to be amended with the consent of fewer than all the 7 partners.

8 § 10A-9A-10.11. Liability of general partner after
9 conversion or merger.

10 (a) A conversion or merger under this article does 11 not discharge any liability under Sections 10A-9A-4.04 and 12 10A-9A-6.07 of a person that was a general partner in or 13 dissociated as a general partner from a converting or 14 constituent limited partnership, but:

(1) the provisions of this chapter pertaining to the
collection or discharge of the liability continue to apply to
the liability;

(2) for the purposes of applying those provisions,
the converted or surviving organization is deemed to be the
converting or constituent limited partnership; and

(3) if a person is required to pay any amount underthis subsection:

(A) the person has a right of contribution from each
other person that was liable as a general partner under
Section 10A-9A-4.04 when the obligation was incurred and has
not been released from the obligation under Section
10A-9A-6.07; and

1 (B) the contribution due from each of those persons 2 is in proportion to the right to receive distributions in the 3 capacity of general partner in effect for each of those 4 persons when the obligation was incurred.

5 (b) In addition to any other liability provided by 6 law:

7 (1) a person that immediately before a conversion or merger became effective was a general partner in a converting 8 or constituent limited partnership that was not a limited 9 10 liability limited partnership is personally liable for each 11 obligation of the converted or surviving organization arising 12 from a transaction with a third party after the conversion or 13 merger becomes effective, if, at the time the third party enters into the transaction, the third party: 14

15 (A) does not have notice of the conversion or16 merger; and

17

(B) reasonably believes that:

(i) the converted or surviving business is theconverting or constituent limited partnership;

20 (ii) the converting or constituent limited
21 partnership is not a limited liability limited partnership;
22 and

(iii) the person is a general partner in the
 converting or constituent limited partnership; and

(2) a person that was dissociated as a general
 partner from a converting or constituent limited partnership
 before the conversion or merger became effective is personally

liable for each obligation of the converted or surviving
 organization arising from a transaction with a third party
 after the conversion or merger becomes effective, if:

4 (A) immediately before the conversion or merger
5 became effective the converting or surviving limited
6 partnership was not a limited liability limited partnership;
7 and

8 (B) at the time the third party enters into the9 transaction the third party:

10

(i) does not have notice of the dissociation;

11 (ii) does not have notice of the conversion or 12 merger; and

(iii) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

19 § 10A-9A-10.12. Power of general partners and 20 persons dissociated as general partners to bind organization 21 after conversion or merger.

(a) An act of a person that immediately before a
conversion or merger became effective was a general partner in
a converting or constituent limited partnership binds the
converted or surviving organization after the conversion or
merger becomes effective, if:

(1) before the conversion or merger became
 effective, the act would have bound the converting or
 constituent limited partnership under Section 10A-9A-4.02; and

4 (2) at the time the third party enters into the5 transaction, the third party:

6 (A) does not have notice of the conversion or 7 merger; and

8 (B) reasonably believes that the converted or 9 surviving business is the converting or constituent limited 10 partnership and that the person is a general partner in the 11 converting or constituent limited partnership.

(b) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became
effective, the act would have bound the converting or
constituent limited partnership under Section 10A-9A-4.02 if
the person had been a general partner; and

(2) at the time the third party enters into thetransaction, the third party:

23

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion ormerger; and

26 (C) reasonably believes that the converted or
 27 surviving organization is the converting or constituent

limited partnership and that the person is a general partner
 in the converting or constituent limited partnership.

3 (c) If a person having knowledge of the conversion 4 or merger causes a converted or surviving organization to 5 incur an obligation under subsection (a) or (b), the person is 6 liable:

7 (1) to the converted or surviving organization for
8 any damage caused to the organization arising from the
9 obligation; and

10 (2) if another person is liable for the obligation,
11 to that other person for any damage caused to that other
12 person arising from the liability.

13 § 10A-9A-10.13. Article not exclusive. This article 14 is not exclusive. This article does not preclude an entity 15 from being converted or merged under law other than this 16 chapter.

17

Article 11. Miscellaneous Provisions.

18 § 10A-9A-11.01. Application to Existing
19 Relationships.

(a) Beginning January 1, 2017, this chapter governs
 all limited partnerships and all foreign limited partnerships.

(b) With respect to a limited partnership formed
before January 1, 2010, the following rules apply except as
the partners otherwise elect in the manner provided in the
partnership agreement or by law for amending the partnership
agreement:

(1) Section 10A-1-3.03 does not apply and the 1 2 limited partnership has whatever duration it had under the law 3 applicable immediately before January 1, 2010. 4 (2) The limited partnership is not required to amend 5 its certificate of formation to comply with Section 10A-9A-2.01(a)(5); but once amended or restated, the 6 7 certificate of formation must comply with Section 10A-9A-2.01(a)(5). 8 (3) Sections 10A-9A-6.01 and 10A-9A-6.02 do not 9 10 apply and a limited partner has the same right and power to 11 dissociate from the limited partnership, with the same 12 consequences, as existed immediately before January 1, 2010. 13 (4) Section 10A-9A-6.03(4) does not apply. (5) Section 10A-9A-6.03(5) does not apply and a 14 15 court has the same power to expel a general partner as the 16 court had immediately before January 1, 2010. 17 (6) Section 10A-9A-8.01(c) does not apply and the 18 connection between a person's dissociation as a general 19 partner and the dissolution of the limited partnership is the 20 same as existed immediately before January 1, 2010. 21 (c) With respect to limited partnerships formed 22 before January 1, 2017: 23 (1) the limited partnership's formation document, 24 whether a certificate of limited partnership or a certificate 25 of formation is deemed to be the limited partnership's certificate of formation; and 26

1

2

(2) the limited partnership's partnership agreementis deemed the limited partnership's partnership agreement.

3 (d) With respect to a limited partnership formed
4 before October 1, 1998, the term "partnership agreement" as
5 defined in Section 10A-9A-1.02(10), includes the certificate
6 of partnership.

5 10A-9A-11.02. Severability Clause. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

13 § 10A-9A-11.03. Relation to Electronic Signatures In 14 Global And National Commerce Act. This chapter modifies, 15 limits, or supersedes the federal Electronic Signatures in 16 Global and National Commerce Act, 15 U.S.C. Section 7001 et 17 seq., but this chapter does not modify, limit, or supersede 18 Section 101(c) of that act or authorize electronic delivery of 19 any of the notices described in Section 103(b) of that act.

20 § 10A-9A-11.04. Effective Date. This chapter takes
21 effect January 1, 2017.

\$ 10A-9A-11.05. Repeals. Effective January 1, 2017,
the following parts of the Code of Alabama 1975 are repealed:
Sections 10A-9-1.01 to 10A-9-12.08, inclusive, as amended and
in effect immediately before the effective date of this act.

\$ 10A-9A-11.06. Savings Clause. This chapter does
 not affect an action commenced, proceeding brought, or right
 accrued before this chapter takes effect.

§ 10A-9A-11.07. Classification. For purposes of income taxation, other than under Chapter 14A of Title 40, a domestic or foreign limited partnership or limited liability limited partnership shall be treated as a partnership unless it is classified otherwise for federal income tax purposes, in which case it shall be classified in the same manner as it is for federal income tax purposes.

Section 2. Sections 10A-1-1.03, 10A-1-1.06, 10A-1-1.08, and 10A-1-4.26, Code of Alabama 1975, are amended to read as follows:

14

"§10A-1-1.03.

15 "(1) AFFILIATE. A person who controls, is controlled 16 by, or is under common control with another person. An 17 affiliate of an individual includes the spouse, or a parent or 18 sibling thereof, of the individual, or a child, grandchild, 19 sibling, parent, or spouse of any thereof, of the individual, 20 or an individual having the same home as the individual, or a trust or estate of which an individual specified in this 21 22 sentence is a substantial beneficiary; a trust, estate, 23 incompetent, conservatee, protected person, or minor of which 24 the individual is a fiduciary; or an entity of which the 25 individual is director, general partner, agent, employee or the governing authority or member of the governing authority. 26

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

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

5

"(i) an officer or governing person; or

6 "(ii) a beneficial owner of 10 percent or more of a 7 class of voting ownership interests or similar securities of 8 the entity or organization;

9 "(B) a trust or estate in which the person has a 10 substantial beneficial interest or for which the person serves 11 as trustee or in a similar fiduciary capacity;

12 "(C) the person's spouse or a relative of the person 13 related by consanguinity or affinity within the fifth degree 14 who resides with the person; or

15 "(D) a governing person or an affiliate or officer16 of the person.

17 "(3) ASSOCIATION. Includes, but is not limited to, 18 an unincorporated nonprofit association as defined in Section 19 10A-17-1.02(2) and an unincorporated professional association 20 as defined in Section 10A-30-1.01(2).

"(4) BUSINESS CORPORATION. A corporation within the
 meaning of <u>Section</u> 10A-2-1.40(3) or Section 10A-2-1.40(9).

"(5) BUSINESS TRUST. A business trust within themeaning of Section 10A-16-1.01.

25

"(6) CERTIFICATE OF FORMATION.

26 "(A) the document required to be filed publicly 27 under Article 3 to form a filing entity; and "(B) if appropriate, a restated certificate of
 formation and all amendments of an original or restated
 certificate of formation.

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

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

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

19 "(10) CERTIFICATION. Duly authenticated by the 20 proper officer of the state or county under the laws of which 21 a domestic or foreign entity is formed.

"(11) CONTRIBUTION. A tangible or intangible benefit that a person transfers to an entity in consideration for an ownership interest in the entity or otherwise in the person's capacity as an owner or a member. In the case of an entity to which Section 234 of the Constitution of Alabama of 1901, now appearing as Section 234 of the Official Recompilation of the

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

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

"(B) that the person intends to be a loan to theentity.

21

"(12) CONVERSION.

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

24 "(B) the continuance of a foreign entity as a25 domestic entity of any type; or

"(C) the continuance of a domestic entity of onetype as a domestic entity of another type.

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

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

6 "(15) COOPERATIVE. Includes an employee cooperative 7 within the meaning of Section 10A-11-1.02(2).

"(16) CORPORATION. Includes a business corporation
within the meaning of Section 10A-2-1.40(3) or Section
10 10A-2-1.40(9), a nonprofit corporation within the meaning of
Section 10A-3-1.02(7) or Section 10A-3-1.02(4), a professional
corporation within the meaning of Section 10A-4-1.03(3) or
Section 10A-4-1.03(4), and those entities specified in Chapter
20 as corporate.

15 "(17) COURT. Every court and judge having16 jurisdiction in a case.

17 "(18) DAY. When used in the computation of time 18 excludes the first day and includes the last day of the period 19 so computed, unless the last day is a Saturday, Sunday, or 20 legal holiday, in which event the period runs until the end of 21 the next day that is not a Saturday, a Sunday, or a legal 22 holiday. When the period of time to be computed is less than 7 23 days, intermediate Saturdays, Sundays, and legal holidays 24 shall be excluded.

25 "(19) DEBTOR IN BANKRUPTCY. A person who is the 26 subject of:

"(A) an order for relief under the United States 1 2 bankruptcy laws, Title 11, United States Code, or comparable 3 order under a successor statute of general application; or 4 "(B) a comparable order under federal, state, or 5 foreign law governing insolvency. "(20) DIRECTOR. An individual who serves on the 6 7 board of directors, by whatever name known, of a foreign or 8 domestic corporation. 9 "(21) DISTRIBUTION. A transfer of property, 10 including cash, from an entity to an owner or member of the 11 entity in the owner's or member's capacity as an owner or 12 member. The term includes a dividend, a redemption or purchase 13 of an ownership interest, or a liquidating distribution. "(22) DOMESTIC. With respect to an entity, that the 14 15 entity is formed and exists under this title. 16 "(23) DOMESTIC ENTITY. An organization formed and 17 existing under this title. 18 "(24) EFFECTIVE DATE OF THIS TITLE. January 1, 2011. "(25) ELECTRONIC SIGNATURE. An electronic signature 19 20 as that term is defined in the Alabama Electronic Transactions Act, Chapter 1A of Title 8, or any successor statute. 21 22 "(26) ENTITY. A domestic entity or foreign entity. 23 "(27) FILING ENTITY. A domestic entity that is a 24 corporation, limited partnership, limited liability company, 25 professional association, employee cooperative corporation, or real estate investment trust. 26

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"(28) FILING INSTRUMENT. An instrument, document, or 1 2 statement that is required or authorized by this title to be 3 filed by or for an entity with the filing officer in accordance with Article 4. 4 5 "(29) FILING OFFICER. The officer with whom a filing instrument is required or permitted to be filed under Article 6 4 or under any other provision of this title. 7 "(30) FOREIGN. With respect to an entity, that the 8 entity is formed and existing under the laws of a jurisdiction 9 10 other than this state. 11 "(31) FOREIGN ENTITY. An organization formed and 12 existing under the laws of a jurisdiction other than this 13 state. "(32) FOREIGN FILING ENTITY. A foreign entity that 14 15 registers or is required to register as a foreign entity under 16 Section 10A-1-7.01(a)(1). 17 "(33) FOREIGN GOVERNMENTAL AUTHORITY. A governmental 18 official, agency, or instrumentality of a jurisdiction other than this state. 19 20 "(34) FOREIGN LIMITED PARTNERSHIP. A limited 21 partnership within the meaning of Section 10A-9-1.02(7) 22 10A - 9A - 1.02(4). 23 "(35) FOREIGN NONFILING ENTITY. A foreign entity 24 that is not a foreign filing entity. 25 "(36) FUNDAMENTAL BUSINESS TRANSACTION. A merger, 26 interest exchange, conversion, or sale of all or substantially 27 all of an entity's assets.

1

"(37) GENERAL PARTNER.

"(A) each partner in a general partnership; or
"(B) a person who is admitted to a limited
partnership as a general partner in accordance with the
governing documents of the limited partnership.

"(38) GENERAL PARTNERSHIP. A partnership within the
meaning of Section 10A-8-1.02(3). The term includes a
registered limited liability partnership within the meaning of
Section 10A-8-1.02(7).

10 "(39) GOVERNING AUTHORITY. A person or group of 11 persons who are entitled to manage and direct the affairs of 12 an entity under this title and the governing documents of the 13 entity, except that if the governing documents of the entity or this title divide the authority to manage and direct the 14 affairs of the entity among different persons or groups of 15 16 persons according to different matters, governing authority 17 means the person or group of persons entitled to manage and direct the affairs of the entity with respect to a matter 18 19 under the governing documents of the entity or this title. The 20 term includes the board of directors of a corporation, by 21 whatever name known, or other persons authorized to perform 22 the functions of the board of directors of a corporation, the general partners of a general partnership or limited 23 24 partnership, the managers of a limited liability company that 25 is managed by managers, the members of a limited liability 26 company that is managed by members who are entitled to manage 27 the company, and the trust managers of a real estate

investment trust. The term does not include an officer who is
 acting in the capacity of an officer.

3

"(40) GOVERNING DOCUMENTS.

4

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

5 "(i) the certificate of formation for a domestic 6 filing entity or the document or agreement under which a 7 domestic nonfiling entity is formed; and

8 "(ii) the other documents or agreements, including 9 bylaws, partnership agreements of limited partnerships, 10 operating agreements of limited liability companies, or 11 similar documents, adopted by the entity under this title to 12 govern the formation or the internal affairs of the entity; or

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

17 "(41) GOVERNING PERSON. A person serving as part of18 the governing authority of an entity.

19 "(42) INDIVIDUAL. A natural person and the estate of20 an incompetent or deceased natural person.

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

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

"(45) JUDGE OF PROBATE. The judge of probate of the 1 2 county in which a domestic entity's certificate of formation 3 is filed, or, with respect to partnership statements provided for in Section 10A-8-1.06, the judge of probate of the county 4 5 in which a statement is filed. "(46) JURISDICTION OF FORMATION. 6 7 "(A) in the case of a domestic filing entity, this 8 state; "(B) in the case of a foreign filing entity, the 9 10 jurisdiction in which the entity's certificate of formation or 11 similar organizational instrument is filed; or 12 "(C) in the case of a foreign or domestic nonfiling 13 entity: "(i) the jurisdiction the laws of which are chosen 14 15 in the entity's governing documents to govern its internal 16 affairs if that jurisdiction bears a reasonable relation to 17 the owners or members or to the domestic or foreign nonfiling 18 entity's business and affairs under the principles of this 19 state that otherwise would apply to a contract among the 20 owners or members; or "(ii) if subparagraph (i) does not apply, the 21 22 jurisdiction in which the entity has its principal place of 23 business. 24 "(47) LAW. Unless the context requires otherwise, 25 both statutory and common law. "(48) LICENSE. A license, certificate of 26 27 registration, or other legal authorization.

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"(49) LICENSING AUTHORITY. The state court, state 1 2 regulatory licensing board, or other like agency which has the 3 power to issue a license or other legal authorization to 4 render professional services. 5 "(50) LIMITED LIABILITY COMPANY. A limited liability company within the meaning of Chapter 5 or Chapter 5A, as 6 7 applicable. "(51) LIMITED PARTNER. A person who has been 8 admitted to a limited partnership as a limited partner as 9 10 provided by: "(A) in the case of a domestic limited partnership, 11 12 Section 10A-9-3.01; or Section 10A-9A-3.01, as applicable; or 13 "(B) in the case of a foreign limited partnership, the laws of its jurisdiction of formation. 14 15 "(52) LIMITED PARTNERSHIP. A limited partnership 16 within the meaning of Section 10A-9-1.02(11) or Section 17 10A-9-1.02(7) or 10A-9A-1.02(8), as applicable. "(53) MANAGERIAL OFFICIAL. An officer or a governing 18 19 person. 20 "(54) MEMBER. 21 "(A) a person defined as a member under Chapter 5 or 22 Chapter 5A, as applicable; 23 "(B) in the case of a nonprofit corporation governed 24 by Article 3, a person having membership rights in a 25 corporation in accordance with its governing documents as 26 provided in Section 10A-3-1.02(5);

1 "(C) in the case of an employee cooperative 2 corporation governed by Chapter 11, a natural person who, as 3 provided in Section 10A-11-1.02(5), has been accepted for 4 membership in and owns a membership share in an employee 5 cooperative.;

6 "(D) in the case of a nonprofit association, a 7 person who, as provided in Section 10A-17-1.02(1), may 8 participate in the selection of persons authorized to manage 9 the affairs of the nonprofit association or in the development 10 of its policy.

11

"(55) MERGER.

12 "(A) the division of a domestic entity into two or 13 more new domestic entities or other organizations or into a 14 surviving domestic entity and one or more new domestic or 15 foreign entities or non-code organizations; or

16 "(B) the combination of one or more domestic 17 entities with one or more domestic entities or non-code 18 organizations resulting in:

19 "(i) one or more surviving domestic entities or 20 non-code organizations;

21 "(ii) the creation of one or more new domestic
22 entities or non-code organizations, or one or more surviving
23 domestic entities or non-code organizations; or

24 "(iii) one or more surviving domestic entities or 25 non-code organizations and the creation of one or more new 26 domestic entities or non-code organizations. "(56) NON-CODE ORGANIZATION. An organization other
 than a domestic entity.

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

7 "(58) NONPROFIT ASSOCIATION. An unincorporated
8 nonprofit association within the meaning of Section
9 10A-17-1.02(2).

10 "(59) NONPROFIT CORPORATION. A nonprofit corporation 11 within the meaning of Section 10A-3-1.02(7) or Section 12 10A-3-1.02(4).

"(60) NONPROFIT ENTITY. An entity that is a nonprofit corporation, nonprofit association, or other entity that is organized solely for one or more of the nonprofit purposes specified by the chapter or article of this title applicable to that form of nonprofit entity and no part of the income or profit of which is distributable to its members, owners, directors, officers, or other governing persons.

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

"(62) ORGANIZATION. A corporation, limited or
general partnership, limited liability company, business
trust, real estate investment trust, joint venture, joint
stock company, cooperative, association, bank, insurance
company, credit union, savings and loan association, or other

organization, regardless of whether the organization is for 1 2 profit, nonprofit, domestic, or foreign.

3 "(63) ORGANIZER. A person, who need not be an owner or member of the entity, who, having the capacity to contract, 4 5 is authorized to execute documents in connection with the formation of the entity. 6

"(64) OWNER.

"(A) with respect to a foreign or domestic business 8 corporation or real estate investment trust, a shareholder; 9

10

7

"(B) with respect to a foreign or domestic 11 partnership, a partner;

12 "(C) with respect to a foreign or domestic limited 13 liability company or association, a member; and

"(D) with respect to another foreign or domestic 14 15 entity, an owner of an equity interest in that entity.

"(65) OWNERSHIP INTEREST. An owner's interest in an 16 17 entity. The term includes the owner's share of profits and 18 losses or similar items and the right to receive distributions. The term does not include an owner's right to 19 20 participate in management or participate in the direction or oversight of the entity. An ownership interest is personal 21 22 property.

23 "(66) PARENT ENTITY OF PARENT ORGANIZATION. AN 24 entity or organization that:

25 "(A) owns at least 50 percent of the ownership or 26 membership interest of a subsidiary; or

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

"(67) PARTNER. A limited partner or general partner. 3 "(68) PARTNERSHIP. Includes a general partnership 4 within the meaning of Section 10A-8-1.02(3), including, a 5 registered limited liability partnership within the meaning of 6 7 Section 10A-8-1.02(7) and, a foreign registered limited liability partnership within the meaning of Section 8 10A-8-1.02(2) and also includes, a limited partnership within 9 10 the meaning of Section 10A-9-1.02(7) or Section 10A-9-1.02(11), a foreign limited partnership, a limited 11 liability limited partnership within the meaning of Section 12 10A-9-1.02(9) and Section 10A-9A-1.02(6), and a foreign 13 limited liability limited partnership within the meaning of 14 15 Section 10A-9-1.02(6) and Section 10A-9A-1.02(3).

"(69) PARTNERSHIP AGREEMENT. The agreement, written 16 17 or oral, among the partners concerning the affairs of the 18 general or limited partnership, as the case may be, and the 19 conduct of its business. Any agreement (whether referred to as 20 a partnership agreement or otherwise), written, oral or implied, of the partners as to the activities and affairs of a 21 22 general partnership or a limited partnership. The partnership 23 agreement includes any amendments to the partnership 24 agreement. In the case of limited partnerships formed prior to 25 October 1, 1988 1998, partnership agreement includes the certificate of partnership. 26

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

"(71) PARTY TO THE MERGER. A domestic entity or 4 5 non-code organization that under a plan of merger is divided or combined by a merger. The term does not include a domestic 6 7 entity or non-code organization that is not to be divided or 8 combined into or with one or more domestic entities or non-code organizations, regardless of whether ownership 9 10 interests of the entity are to be issued under the plan of 11 merger.

12 "(72) PERSON. An individual or an organization, 13 whether created by the laws of this state or another state or foreign country, including, without limitation, a general 14 15 partnership, registered limited liability partnership, limited 16 partnership, limited liability company, corporation, 17 professional corporation, professional association, trustee, 18 personal representative, fiduciary, as defined in Section 19 19-3-150 or person performing in any similar capacity, 20 business trust, estate, trust, association, joint venture, government, governmental subdivision, agency, or 21 22 instrumentality, or any other legal or commercial entity. 23 "(73) PRESIDENT.

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

"(B) the officer or committee of persons authorized
to perform the functions of the principal executive officer of

an entity without regard to the designated name of the officer
 or committee.

3 "(74) PROFESSIONAL ASSOCIATION. A professional
4 association within the meaning of Section 10A-30-1.01.

5 "(75) PROFESSIONAL CORPORATION. A professional
6 corporation within the meaning of Section 10A-4-1.03(2) or
7 Section 10A-4-1.03(3).

8 "(76) PROFESSIONAL ENTITY. A professional
9 association or a professional corporation.

10 "(77) PROFESSIONAL SERVICE. Any type of service that 11 may lawfully be performed only pursuant to a license issued by 12 a state court, state regulatory licensing board, or other like 13 agency pursuant to state laws.

14 "(78) PROPERTY. Includes tangible and intangible15 property and an interest in that property.

16 "(79) REAL ESTATE INVESTMENT TRUST. An 17 unincorporated trust, association, or other entity within the 18 meaning of Section 10A-10-1.02(1).

19 "(80) REGISTERED LIMITED LIABILITY PARTNERSHIP. A
20 registered limited liability partnership within the meaning of
21 Section 10A-8-1.01(7) 10A-8-1.02(7).

22

"(81) SECRETARY.

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

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

"(82) SECRETARY OF STATE. The Secretary of State of
 the State of Alabama.

3 "(83) SIGNATURE. Any symbol executed or adopted by a
4 person with present intention to authenticate a writing.
5 Unless the context requires otherwise, the term includes an
6 electronic signature and a facsimile of a signature.

7 "(84) STATE. Includes, when referring to a part of
8 the United States, a state or commonwealth, and its agencies
9 and governmental subdivisions, and a territory or possession,
10 and its agencies and governmental subdivisions, of the United
11 States.

12 "(85) SUBSCRIBER. A person who agrees with or makes 13 an offer to an entity to purchase by subscription an ownership 14 interest in the entity.

15 "(86) SUBSCRIPTION. An agreement between a 16 subscriber and an entity, or a written offer made by a 17 subscriber to an entity before or after the entity's 18 formation, in which the subscriber agrees or offers to 19 purchase a specified ownership interest in the entity.

20 "(87) SUBSIDIARY. An entity or organization at least
21 50 percent of:

"(A) the ownership or membership interest of whichis owned by a parent entity or parent organization; or

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

26

"(88) TREASURER.

"(A) the individual designated as treasurer of an 1 2 entity under the entity's governing documents; or "(B) the officer or committee of persons authorized 3 to perform the functions of treasurer of an entity without 4 5 regard to the designated name of the officer or committee. "(89) TRUSTEE. A person who serves as a trustee of a 6 7 trust, including a real estate investment trust. 8 "(90) UNCERTIFICATED OWNERSHIP INTEREST. An ownership interest in a domestic entity that is not 9 10 represented by a certificate in bearer or registered form. "(91) VICE PRESIDENT. 11 12 "(A) the individual designated as vice president of 13 an entity under the governing documents of the entity; or "(B) the officer or committee of persons authorized 14 15 to perform the functions of the president of the entity on the 16 death, absence, or resignation of the president or on the 17 inability of the president to perform the functions of office 18 without regard to the designated name of the officer or 19 committee. 20 "(92) WRITING or WRITTEN. Information that is 21 inscribed on a tangible medium or that is stored in an 22 electronic or other medium and is retrievable in perceivable 23 form. 24 "§10A-1-1.06.

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

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

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

"(2) a reference to certificate of termination 15 16 includes, in the case of a corporation or a limited liability 17 company, articles of dissolution and statement of dissolution, and in the case of a limited partnership, a certificate of 18 19 cancellation and a statement of dissolution; similarly, a 20 reference to articles of dissolution, statement of dissolution, or certificate of cancellation includes 21 22 certificate of termination and certificate of dissolution and, 23 similarly, a reference to certificate of termination includes 24 articles of dissolution, statement of dissolution, and 25 certificate of dissolution, and similarly, a reference to a 26 statement of dissolution includes articles of dissolution, 27 certificate of termination, and certificate of dissolution;

"(3) a reference to certificate of merger includes 1 2 articles of merger and statement of merger and similarly, a reference to articles of merger includes certificate of merger 3 and statement of merger, and similarly, a reference to 4 5 statement of merger includes certificate of merger and articles of merger; 6 7 "(4) a reference to authorized capital stock includes authorized shares; 8 "(5) a reference to capital stock includes 9 10 authorized and issued shares, issued shares, and stated 11 capital; 12 "(6) a reference to a certificate of registration, certificate of authority, and permit to do business includes 13 14 registration; "(7) a reference to stock and shares of stock 15 16 includes shares; 17 "(8) a reference to stockholder includes 18 shareholder; and "(9) a reference to no par stock includes shares 19 20 without par value. "\$10A-1-1.08. 21 22 "(a) The provisions of this title as described by 23 this section may be cited as provided by this section. 24 "(b) Chapter 2 and the provisions of Chapter 1 to 25 the extent applicable to business corporations may be cited as 26 the Alabama Business Corporation Law.

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

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

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

13 "(f) Chapter 8 and the provisions of Chapter 1 to 14 the extent applicable to general partnerships may be cited as 15 the Alabama Uniform Partnership Law.

16 "(g) Chapter 9 and the provisions of Chapter 1 to 17 the extent applicable to limited partnerships may be cited as 18 the Alabama Uniform Limited Partnership Law of 2010. Chapter 19 <u>9A and the provisions of Chapter 1 to the extent applicable to</u> 20 <u>limited partnerships may be cited as the Alabama Limited</u> 21 Partnership Law.

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

"(i) Chapter 11 and the provisions of Chapter 1 and
Chapter 2 to the extent applicable to employee cooperative

- corporations may be cited as the Alabama Employee Cooperative
 Corporations Law.
- 3 "(j) Chapter 17 may be cited as the Alabama
 4 Unincorporated Nonprofit Association Law.
- 5

"§10A-1-4.26.

"A filing instrument that an entity files with the 6 7 Secretary of State or the judge of probate, as the case may be, may be amended or supplemented to the extent permitted by 8 in accordance with the provisions of this title the chapter 9 10 that apply to that entity or in accordance with that entity's 11 governing documents. If neither the chapter that applies to 12 that entity nor the governing documents of that entity provides or prohibits a process for the approval and filing of 13 14 an amendment or supplement to that filing instrument for that 15 entity, then that filing instrument may be amended or 16 supplemented and filed utilizing the same process for approval 17 and filing as was used to approve and file that filing 18 instrument."

Section 3. Section 10A-1-5.05 is added to the Code of Alabama 1975, as follows:

21

§ 10A-1-5.05. Name of Limited Partnership.

(a) The name of a limited partnership may containthe name of any partner.

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

1 "limited liability limited partnership" or the abbreviation
2 "LLLP" or "L.L.P."

3 (c) The name of a limited liability limited
4 partnership must contain the phrase "limited liability limited
5 partnership" or the abbreviation "LLLP" or "L.L.L.P." and must
6 not contain the abbreviation "L.P.," "LP," or "Ltd."

7 (d) Subject to Section 10A-1-7.07, this section
8 applies to any foreign limited partnership transacting
9 business in this state, having a certificate of authority to
10 transact business in this state, or applying for a certificate
11 of authority.

12 (e) The name of a limited partnership may not 13 contain the following words: "bank," "banking," "banker," 14 "trust," "insurance," "insurer," "corporation," 15 "incorporated," or any abbreviation of such words.

 16
 Section 4. Sections 10A-1-6.02, 10A-1-6.13,

 17
 10A-1-6.25, 10A-1-7.07, 10A-5A-1.10, 10A-5A-4.01, 10A-5A-5.04,

 18
 10A-5A-7.01, 10A-5A-7.02, 10A-5A-10.03, 10A-5A-10.04,

 19
 10A-5A-10.07, and 10A-5A-10.08, Code of Alabama 1975, are

 20
 amended to read as follows:

 21
 "\$10A-1-6.02.

"(a) Except as provided by subsection (b), thisarticle does not apply to a:

24 "(1) general partnership;

- 25 "(2) limited liability company; or
- 26 "(3) limited partnership; and
- 27 "(3)(4) nonprofit corporation.

1	"(b) The governing documents of a general
2	partnership or limited liability company, limited partnership,
3	or nonprofit corporation may adopt provisions of this article
4	or may contain enforceable provisions relating to:
5	"(1) indemnification;
6	"(2) advancement <u>or reimbursement</u> of expenses; or
7	"(3) insurance <u>;</u> or
8	"(4) another arrangement to indemnify or hold
9	harmless a governing person other arrangements.
10	"§10A-1-6.13.
11	" (a) The certificate of formation of an enterprise
12	may restrict the circumstances under which the enterprise must
13	or may indemnify a person under this division.
14	"(b) The written partnership agreement of a limited
14 15	" (b) The written partnership agreement of a limited partnership may restrict the circumstances in the same manner
15	partnership may restrict the circumstances in the same manner
15 16	partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a).
15 16 17	partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a). "§10A-1-6.25.
15 16 17 18	<pre>partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a). "\$10A-1-6.25. "(a) Notwithstanding any other provision of this</pre>
15 16 17 18 19	<pre>partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a). "\$10A-1-6.25. "(a) Notwithstanding any other provision of this chapter but subject to subsection (d) and to the extent</pre>
15 16 17 18 19 20	<pre>partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a). "\$10A-1-6.25. "(a) Notwithstanding any other provision of this chapter but subject to subsection (d) and to the extent consistent with other law, an enterprise may indemnify and</pre>
15 16 17 18 19 20 21	<pre>partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a). "\$10A-1-6.25. "(a) Notwithstanding any other provision of this chapter but subject to subsection (d) and to the extent consistent with other law, an enterprise may indemnify and advance expenses to a person who is not a governing person,</pre>
15 16 17 18 19 20 21 22	<pre>partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a). "\$10A-1-6.25. "(a) Notwithstanding any other provision of this chapter but subject to subsection (d) and to the extent consistent with other law, an enterprise may indemnify and advance expenses to a person who is not a governing person, including an officer, employee, agent, or delegate, as</pre>
15 16 17 18 19 20 21 22 23	<pre>partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a). "\$10A-1-6.25. "(a) Notwithstanding any other provision of this chapter but subject to subsection (d) and to the extent consistent with other law, an enterprise may indemnify and advance expenses to a person who is not a governing person, including an officer, employee, agent, or delegate, as provided by:</pre>

"(3) resolution of the enterprise's owners or
 members;

3

4

"(4) contract; or

"(5) common law.

5 "(b) An enterprise shall indemnify and advance 6 expenses to an officer to the same extent that indemnification 7 or advancement of expenses is required under this chapter for 8 a governing person.

9 "(c) A person described by subsection (a) may seek 10 indemnification or advancement of expenses from an enterprise 11 to the same extent that a governing person may seek 12 indemnification or advancement of expenses under this chapter.

"(d) The certificate of formation of an enterprise may restrict the circumstances under which the enterprise must or may indemnify a person under this section. The written partnership agreement of a limited partnership may restrict the circumstances in the same manner as the certificate of formation of the limited partnership.

19

"§10A-1-7.07.

20 "If the name of a foreign entity does not satisfy 21 the requirements of Article 5, the entity, for use in this 22 state, may:

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

26 "(2) if a banking corporation, add to its corporate 27 name the words "bank," "banking," or "bankers";

1	"(3) if a limited partnership that is not a limited
2	liability limited partnership, add to its partnership name the
3	word "limited" or the abbreviation "Ltd." or the phrase
4	"limited partnership" or the abbreviation "L.P." or "LP" <u>but</u>
5	its name must not contain the phrase "limited liability
6	limited partnership" or the abbreviation "LLLP" or "L.L.L.P.";
7	"(4) if a limited partnership that is a limited
8	liability limited partnership, add to its partnership name the
9	phrase "limited liability limited partnership" or the
10	abbreviation "LLLP" or "L.L.P." and must not contain the
11	abbreviation "Ltd.," "L.P.," or "LP."
12	" (4)<u>(5)</u> if a limited liability company, add to its
13	company name the phrase "limited liability company" or the
14	abbreviation "L.L.C." or "LLC";
15	" (5)<u>(6)</u> if a professional corporation, add to its
16	corporate name the phrase "professional corporation" or the
17	abbreviation "P.C." or "PC";
18	" (6) (7) if a registered limited liability
19	partnership, add to its partnership name the phrase
20	"registered limited liability partnership" or the abbreviation
21	"L.L.P." or "LLP"; and
22	" (7)<u>(</u>8) use a fictitious name available for use in
23	this state that satisfies the requirements of Article 5, if it
24	delivers to the Secretary of State for filing a copy of the
25	resolution of its governing authority, certified by its
26	secretary, adopting the fictitious name.
27	"\$10A-5A-1.10.

"(a) If a limited liability company agreement 1 2 provides for the manner in which it may be amended, including 3 by requiring the approval of a person who is not a party to 4 the limited liability company agreement or the satisfaction of 5 conditions, it may be amended only in that manner or as otherwise permitted by law, except that the approval of any 6 7 person may be waived by that person and any conditions may be 8 waived by all persons for whose benefit those conditions were intended. 9

10 "(b) A limited liability company agreement may 11 provide rights to any person, including a person who is not a 12 party to the limited liability company agreement, to the 13 extent set forth in the limited liability company agreement.

14 "(c) The obligations of a limited liability company 15 and its members to a person in the person's capacity as a 16 transferee or dissociated member are governed by the limited 17 liability company agreement. A transferee and a dissociated 18 member are bound by the limited liability company agreement.

19 "(d) If a writing that has been delivered by a
20 limited liability company for filing in accordance with
21 Article 3 of Chapter 1 and has become effective conflicts with
22 a provision of the limited liability company agreement:

"(1) The limited liability company agreement
prevails as to members, dissociated members, and transferees;
and

"(2) The writing prevails as to other persons to the
extent they reasonably rely on the writing.

1	"\$10A-5A-4.01.
2	"(a) The initial member or members of a limited
3	liability company are admitted as a member or members upon the
4	formation of the limited liability company.
5	"(b) After formation of a limited liability company,
6	a person is admitted as a member of the limited liability
7	company:
8	"(1) as provided in the limited liability company
9	agreement;
10	"(2) as the result of a transaction effective under
11	Article 10;
12	"(3) with the consent of all the members; or
13	"(4) if, within 90 consecutive days after the
14	occurrence of the dissociation of the last remaining member:
14 15	occurrence of the dissociation of the last remaining member: as provided in Section 10A-5A-7.01(c)(1) or (c)(2)
15	as provided in Section 10A-5A-7.01(c)(1) or (c)(2)
15 16	as provided in Section 10A-5A-7.01(c)(1) or (c)(2) " (A) all holders of the transferable interest last
15 16 17	as provided in Section 10A-5A-7.01(c)(1) or (c)(2) "(A) all holders of the transferable interest last transferred by the last person to have been a member consent
15 16 17 18	as provided in Section 10A-5A-7.01(c)(1) or (c)(2) "(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and
15 16 17 18 19	as provided in Section 10A-5A-7.01(c)(1) or (c)(2) "(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and "(B) the designated person consents to be admitted
15 16 17 18 19 20	as provided in Section 10A-5A-7.01(c)(1) or (c)(2) "(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and "(B) the designated person consents to be admitted as a member effective as of the date the last person to have
15 16 17 18 19 20 21	as provided in Section 10A-5A-7.01(c)(1) or (c)(2) "(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and "(B) the designated person consents to be admitted as a member effective as of the date the last person to have been a member ceased to be a member.
15 16 17 18 19 20 21 22	<pre>as provided in Section 10A-5A-7.01(c)(1) or (c)(2) "(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and "(B) the designated person consents to be admitted as a member effective as of the date the last person to have been a member ceased to be a member. "(c) A person may be admitted as a member without</pre>
15 16 17 18 19 20 21 22 23	<pre>as provided in Section 10A-5A-7.01(c)(1) or (c)(2) "(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and "(B) the designated person consents to be admitted as a member effective as of the date the last person to have been a member ceased to be a member. "(c) A person may be admitted as a member without acquiring a transferable interest and without making or being</pre>

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obligated to make a contribution to the limited liability
 company.

"\$10A-5A-5.04. 3 "If a member dies, the deceased member's personal 4 5 representative or other legal representative, for purposes of settling the estate, may exercise the rights of a current 6 7 member under Section 10A-5A-4.09.: "(a) for the period of time that the deceased 8 9 member's personal representative or other legal representative 10 holds the deceased member's transferable interest: "(1) exercise the rights of a holder of transferable 11 12 interests under this chapter; 13 "(2) exercise the rights of a transferee under 14 Section 10A-9A-5.02; and 15 "(3) for purposes of settling the estate, exercise 16 the rights of a current member under Section 10A-5A-4.09; and 17 "(b) for the period of time that the deceased 18 member's personal representative or other legal representative 19 does not hold the deceased member's transferable interest, for 20 purposes of settling the estate, exercise the rights of a 21 dissociated member under Section 10A-9A-4.09. "\$10A-5A-7.01. 22 23 "A limited liability company is dissolved and its 24 affairs shall be wound up upon the occurrence of the first of 25 the following events: "(a) An event or circumstance that the limited 26 27 liability company agreement states causes dissolution.

1

"(b) Consent of all members to dissolve.

2 "(c) When there is no remaining member, unless 3 either of the following applies:

"(1) The holders of all the transferable interests 4 5 in the limited liability company agree in writing, within 90 days after the dissociation of the last member, to continue 6 7 the legal existence and activities and affairs of the limited 8 liability company and to appoint one or more new members.

9 "(2) The legal existence and activities and affairs 10 of the limited liability company are continued and one or more 11 new members are appointed in the manner stated in the limited 12 liability company agreement.

13 "(d) On application by a member, the entry of an order dissolving the limited liability company on the grounds 14 15 that it is not reasonably practicable to carry on the limited 16 liability company's activities and affairs in conformity with 17 the limited liability company agreement, which order is 18 entered by the circuit court for the county in which the 19 limited liability company's principal place of business within 20 this state is located, and if the limited liability company 21 does not have a principal place of business within this state 22 then by the circuit court for the county in which the limited 23 liability company's most recent registered office is located. 24

25

"§10A-5A-7.02.

"Notwithstanding Section 10A-1-9.12:

26 "(a) A dissolved limited liability company continues 27 its existence as a limited liability company but may not carry

on any activities and affairs except as is appropriate to wind 1 2 up and liquidate its activities and affairs, including: "(1) collecting its assets; 3 4 "(2) disposing of its properties that will not be 5 distributed in kind to persons owning transferable interests; "(3) discharging or making provisions for 6 7 discharging its liabilities; "(4) distributing its remaining property in 8 accordance with Section 10A-5A-7.06; and 9 10 "(5) doing every other act necessary to wind up and 11 liquidate its activities and affairs. 12 "(b) In winding up its activities and affairs, a 13 limited liability company may: "(1) deliver for filing a statement of dissolution 14 15 to the filing officer provided for in subsection (e) setting 16 forth: 17 "(A) The name of the limited liability company. 18 "(B) The date of filing its certificate of 19 formation, and all amendments and restatements thereof, and 20 the office or offices where filed. "(C) That the limited liability company has 21 22 dissolved. 23 "(D) The effective date of the statement of 24 dissolution, which shall be a date certain, if it is not to be 25 effective immediately. 26 "(E) (D) Any other information the limited liability 27 company deems appropriate.

"(2) preserve the limited liability company's 1 2 activities and affairs and property as a going concern for a 3 reasonable time: "(3) prosecute, defend, or settle actions or 4 5 proceedings whether civil, criminal, or administrative; "(4) transfer the limited liability company's 6 7 assets; 8 "(5) resolve disputes by mediation or arbitration; 9 and 10 "(6) merge or convert in accordance with Article 10. "(c) The dissolution of a limited liability company 11 12 does not: 13 "(1) transfer title to the limited liability company's property; 14 15 "(2) prevent the commencement of a proceeding by or against the limited liability company in its limited liability 16 17 company name; 18 "(3) terminate, abate, or suspend a proceeding 19 pending by or against the limited liability company on the 20 effective date of dissolution: "(4) terminate the authority of its registered 21 22 agent; or 23 "(5) abate, suspend, or otherwise alter the 24 application of Section 10A-5A-3.01. 25 "(d) A statement of dissolution shall be deemed to 26 be a filing instrument under Chapter 1.

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1	"(e) If a limited liability company is not an
2	organization described in Section 10A-1-4.02(c)(4), then that
3	limited liability company shall deliver the statement of
4	dissolution for filing to the judge of probate in whose office
5	the original certificate of formation is filed. If a limited
6	liability company is an organization described in
7	Section 10A-1-4.02(c)(4), then that limited liability company
8	shall deliver the statement of dissolution for filing to the
9	Secretary of State.
10	"§10A-5A-10.03.
11	"(a) After a plan of conversion is approved:
12	"(1) if the converting organization is an
13	organization formed under the laws of this state, the
14	converting organization shall file a statement of conversion
15	in accordance with subsection (c), which statement of
16	conversion must be signed in accordance with Section
17	10A-5A-2.04(a) and which must include:
18	"(A) the name of the converting organization;
19	"(B) the date of the filing of the certificate of
20	formation of the converting organization, if any, and all
21	prior amendments and the filing office or offices, if any,
22	where such is filed;
23	"(C) a statement that the converting organization
24	has been converted into the converted organization;
25	"(D) the name and type of organization of the
26	converted organization and the jurisdiction of its governing
27	statute;

"(E) the street and mailing address of the principal
 office of the converted organization;

3 "(F) the date the conversion is effective under the 4 governing statute of the converted organization;

5 "(G) a statement that the conversion was approved as 6 required by this chapter;

7 "(H) a statement that the conversion was approved as
8 required by the governing statute of the converted
9 organization; and

10 "(I) if the converted organization is a foreign 11 organization not authorized to conduct activities and affairs 12 in this state, the street and mailing address of an office for 13 the purposes of Section 10A-5A-10.04(b); and

14 "(2) if the converted organization is a limited 15 liability company, the converting organization shall file a 16 certificate of formation in accordance with subsection (d), 17 which certificate of formation must include, in addition to 18 the information required by Section 10A-5A-2.01(a):

"(A) a statement that the limited liability companywas converted from the converting organization;

"(B) the name and type of organization of the converting organization and the jurisdiction of the converting organization's governing statute; and

24 "(C) a statement that the conversion was approved in 25 a manner that complied with the converting organization's 26 governing statute.

27 "(b) A conversion becomes effective:

"(1) if the converted organization is a limited liability company, when the certificate of formation takes effect; and

4 "(2) if the converted organization is not a limited
5 liability company, as provided by the governing statute of the
6 converted organization.

7 "(c) If the converting organization is an organization formed under the laws of this state and the 8 converting organization is not an organization described in 9 10 Section 10A-1-4.02(c)(4), then the converting organization 11 shall file the statement of conversion required under 12 subsection (a) (1) in the office of the judge of probate in the 13 county required by this title for the filing of its organizational documents, if any, and if the organizational 14 documents were not required by this title to be filed in the 15 16 office of the judge of probate, then the converting 17 organization shall file the statement of conversion required 18 under subsection (a)(1) with the Secretary of State. If the 19 converting organization is an organization formed under the 20 laws of this state and the converting organization is an organization described in accordance with 21 Section 10A-1-4.02(c)(4) 10A-1-4.02(c)(1), then the converting 22 23 organization shall file the statement of conversion required 24 under subsection (a) (1) with the Secretary of State. 25 "(d) If the converted organization is a limited 26 liability company, the converting organization is an 27 organization formed under the laws of this state, and the

1 converting organization is not an organization described in then notwithstanding Section $\frac{10A-1-4.02(c)(4)}{10A-1-4.02(b)}$ 2 then the converting organization shall file the certificate of 3 formation required under subsection (a) (2) with the judge of 4 probate of the county in which a certificate of formation of a 5 limited liability company is filed under this chapter. If the 6 7 converted organization is a limited liability company, the converting organization is an organization formed under the 8 laws of this state, and the converting organization is an 9 10 organization described in Section 10A-1-4.02(c)(4), then the converting organization shall file the certificate of 11 12 formation required under subsection (a) (2) with the Secretary of State in accordance with Section 10A-1-4.02(c)(5), along 13 with the fees specified in Section 10A-1-4.31 subject to 14 15 subsection (f)(3). If the converted organization is a limited 16 liability company and the converting organization is not an 17 organization formed under the laws of this state, then the converting organization shall file the certificate of 18 19 formation required under subsection (a) (2) with the judge of 20 probate of the county in which a certificate of formation of a 21 limited liability company is filed under this chapter. 22 "(e) In the case of a statement of conversion or a

23 certificate of formation that is to be filed with the judge of 24 probate pursuant to subsections (c) and (d), the judge of 25 probate shall within 10 days transmit a certified copy of the 26 statement of conversion or certificate of formation to the 27 Secretary of State, along with the proper fee. If the 1 converting organization is required to file a statement of
2 conversion and a certificate of formation with the Secretary
3 of State, then the converting organization shall file the
4 statement of conversion and the certificate of formation with
5 the Secretary of State simultaneously.

6 "(f) In the case of a statement of conversion that 7 is to be filed with the Secretary of State pursuant to 8 subsection (c):

"(1) if the converting organization is, immediately 9 10 prior to the conversion becoming effective, an organization described in Section 10A-1-4.02(c)(4), but which has a 11 12 certificate of formation filed with the judge of probate, the Secretary of State shall within 10 days transmit a certified 13 copy of the statement of conversion to the office of the judge 14 of probate in the county in which the certificate of formation 15 16 for such converting organization was filed along with the 17 proper fee for the probate judge judge of probate.

18 "(2) if the converting organization is, immediately 19 prior to the conversion becoming effective, an organization 20 described in Section 10A-1-4.02(c)(4), and did not file its 21 certificate of formation with the probate judge of 22 probate, but rather in accordance with 23 Section 10A-1-4.02(c)(4) this title filed its certificate of 24 formation with the Secretary of State, the Secretary of State 25 shall not transmit a certified copy of the statement of

26 conversion to the office of the judge of probate and shall not 27 collect any fee for the judge of probate.

"(3) if the converting organization, immediately 1 2 prior to the conversion becoming effective, is an organization 3 described in Section 10A-1-4.02(c)(4), but is not required under this title to file its organizational documents with the 4 5 judge of probate, the Secretary of State shall not transmit a certified copy of the statement of the statement of conversion 6 7 to the office of the judge of probate and shall not collect 8 any fee for the judge of probate.

"(q) In the case of a certificate of formation that 9 10 is to be filed with the Secretary of State pursuant to 11 subsection (d), the Secretary of State shall not transmit a 12 certified copy of the statement of conversion certificate of 13 formation to the office of the judge of probate and shall not collect any fee for the judge of probate, but shall collect 14 15 the fee provided for the Secretary of State in Section 16 10A-1-4.31(a)(1).

17 "(h) After a conversion becomes effective, if the 18 converted organization is a limited liability company, then 19 all filing instruments required to be filed under this title 20 regarding that converted organization shall be filed with the 21 Secretary of State.

22

"(i) If:

"(1) the converting organization is a filing entity or a foreign filing entity registered to conduct activities and affairs in this state; 1 "(2) the converted organization will be a filing 2 entity or a foreign filing entity registered to conduct 3 activities and affairs in this state;

4 "(3) the name of the converting organization and the
5 converted organization are to be the same, other than words,
6 phrases, or abbreviations indicating the type of entity; and

7 "(4) the name of the converted organization complies 8 with Division A of Article 5 of Chapter 1 or Section 10A-1-7.07, as the case may be; then notwithstanding 9 10 Division B of Article 5 of Chapter 1, no name reservation 11 shall be required and the converted organization shall for all 12 purpose of this title be entitled to utilize the name of the 13 converting organization without any further action by the converting organization or the converted organization. 14

"(j) A certified copy of any document required to be 15 16 filed under this section may be filed in the real estate 17 records in the office of the judge of probate in any county in 18 which the converting organization owned real property, without 19 payment and without collection by the judge of probate of any 20 deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect a filing fee of five dollars 21 22 (\$5). Any such filing shall evidence chain of title, but lack 23 of filing shall not affect the converted organization's title 24 to such real property.

"(k) A statement of conversion shall be a filinginstrument under Chapter 1.

- 1 "(1) Except as set forth in subsection (f)(2), the 2 filing fees for a statement of conversion shall be the same 3 fee as provided in Section 10A-1-4.31(a)(5).
- 4

5

"§10A-5A-10.04.

"(a) When a conversion takes effect:

6 "(1) all property owned by the converting 7 organization, or series thereof, remains vested in the 8 converted organization without reservation or impairment and 9 the title to any property vested by deed or otherwise in the 10 converting organization shall not revert or be in any way 11 impaired by reason of the conversion;

"(2) all debts, obligations, or other liabilities of the converting organization, or series thereof, continue as debts, obligations, or other liabilities of the converted organization and neither the rights of creditors, nor the liens upon the property of the converting organization shall be impaired by the conversion;

18 "(3) an action or proceeding pending by or against 19 the converting organization, or series thereof, continues as 20 if the conversion had not occurred;

"(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization, or series thereof, remain vested in the converted organization;

25 "(5) except as otherwise provided in the plan of 26 conversion, the terms and conditions of the plan of conversion 27 take effect; 1 "(6) except as otherwise agreed, for all purposes of 2 the laws of this state, the converting organization, and any 3 series thereof, shall not be required to wind up its affairs 4 or pay its liabilities and distribute its assets, and the 5 conversion shall not be deemed to constitute a dissolution of 6 the converting organization, or series thereof;

7 "(7) for all purposes of the laws of this state, the 8 rights, privileges, powers, interests in property, debts, liabilities, and duties of the converting organization, and 9 10 all series thereof, shall be the rights, privileges, powers, 11 interests in property, debts, liabilities, and duties of the 12 converted organization, and shall not be deemed as a 13 consequence of the conversion, to have been transferred to the converted organization; 14

"(8) if the converted organization is a limited liability company, for all purposes of the laws of this state, the limited liability company shall be deemed to be the same organization as the converting organization, and the conversion shall constitute a continuation of the existence of the converting organization in the form of a limited liability company;

"(9) if the converted organization is a limited liability company, the existence of the limited liability company shall be deemed to have commenced on the date the converting organization commenced its existence in the jurisdiction in which the converting organization was first created, formed, organized, incorporated, or otherwise came
 into being; and

"(10) the conversion shall not affect the choice of 3 law applicable to matters arising prior to conversion $\overline{\cdot}$; and 4 5 "(11) If the Secretary of State has assigned a unique identifying number or other designation to the 6 7 converting organization and (i) the converted organization is 8 formed pursuant to the laws of this state or (ii) the converted organization is, within 30 days after the effective 9 10 date of the conversion, registered to transact business in this state, then that unique identifying number or other 11 12 designation shall continue to be assigned to the converted 13 organization.

"(b) A converted organization that is a foreign 14 15 entity consents to the jurisdiction of the courts of this 16 state to enforce any debt, obligation, or other liability for 17 which the converting limited liability company, or series 18 thereof, is liable if, before the conversion, the converting 19 limited liability company was subject to suit in this state on 20 the debt, obligation, or other liability. If a converted organization that is a foreign entity fails to designate or 21 22 maintain a registered agent, or the designated registered 23 agent cannot with reasonable diligence be served, then service 24 of process on that converted organization for the purposes of 25 enforcing a debt, obligation, or other liability under this 26 subsection may be made in the same manner and has the same 27 consequences as provided in Section 10A-1-5.35.

"§10A-5A-10.07. 1 2 "(a) After each constituent organization has 3 approved the plan of merger, a statement of merger must be signed on behalf of: 4 5 "(1) each constituent limited liability company, as provided in Section 10A-5A-2.04(a); and 6 7 "(2) each other constituent organization, as 8 provided by its governing statute. 9 "(b) A statement of merger under this section must 10 include: "(1) the name, type of organization, and mailing 11 12 address of the principal office of each constituent 13 organization and the jurisdiction of its governing statute; "(2) the name, type of organization, and mailing 14 15 address of the principal office of the surviving organization, 16 the jurisdiction of its governing statute, and, if the 17 surviving organization is created pursuant to the merger, a 18 statement to that effect: 19 "(3) the date of the filing of the certificate of 20 formation, if any, and all prior amendments and the filing office or offices, if any, and where such is filed of each 21 22 constituent organization which was formed under the laws of 23 this state; 24 "(4) the date the merger is effective under the 25 governing statute of the surviving organization; 26 "(5) if the surviving organization is to be created 27 pursuant to the merger:

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"(A) if it will be a limited liability company, the
 limited liability company's certificate of formation; or

3 "(B) if it will be an organization other than a
4 limited liability company, any organizational document that
5 creates the organization that is required to be in a public
6 writing;

7 "(6) if the surviving organization exists before the 8 merger, any amendments provided for in the plan of merger for 9 the organizational document that created the organization that 10 are in a public writing;

"(7) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

"(8) if the surviving organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-5A-10.08(b); and

18 "(9) any additional information required by the 19 governing statute of any constituent organization.

20 "(c) Each constituent organization which is formed 21 under the laws of this state shall file the The statement of 22 merger with shall be delivered for filing to the Secretary of 23 State in accordance with Section 10A-1-4.02(c)(1), along with 24 the fees specified in Section 10A-1-4.31, subject to the last 25 sentence of this subsection (c). For each constituent 26 organization which is formed under the laws of this state and 27 which is not, immediately prior to the merger becoming

1 effective, an organization described in

2 Section 10A-1-4.02(c)(4), the Secretary of State shall within 10 days transmit a certified copy of the statement of merger 3 to the office of the judge of probate in the county in which 4 5 the certificate of formation for each such constituent organization was filed along with the proper fee for the 6 7 probate judge of probate. For each constituent 8 organization which is formed under the laws of this state and which is, immediately prior to the merger becoming effective, 9 10 an organization described in Section 10A-1-4.02(c)(4), but 11 which has a certificate of formation filed with the judge of 12 probate, the Secretary of State shall transmit a certified 13 copy of the statement of merger to the office of the judge of probate in the county in which the certificate of formation 14 15 for each such constituent organization was filed along with 16 the proper fee for the judge of probate. For each constituent 17 organization which (1) is formed under the laws of this state, 18 (2) is, immediately prior to the merger becoming effective, an 19 organization described in Section 10A-1-4.02(c)(4), and (3) 20 did not file its certificate of formation with the probate judge judge of probate, but rather in accordance with 21 22 Section 10A-1-4.02(c)(4) this title filed its certificate of 23 formation with the Secretary of State, the Secretary of State 24 shall not transmit a certified copy of the statement of merger 25 to the office of the judge of probate and shall not collect 26 any fee for the judge of probate.

27

"(d) A merger becomes effective under this article:

"(1) if the surviving organization is a limited
 liability company, upon the later of:

5

3 "(A) the filing of the statement of merger with the 4 Secretary of State; or

"(B) as specified in the statement of merger; or

6 "(2) if the surviving organization is not a limited 7 liability company, as provided by the governing statute of the 8 surviving organization.

9 "(e) After a merger becomes effective, if the 10 surviving organization is a limited liability company, then 11 all filing instruments required to be filed under this title 12 regarding that surviving organization shall be filed with the 13 Secretary of State.

"(f) A certified copy of the statement of merger 14 15 required to be filed under this section may be filed in the 16 real estate records in the office of the judge of probate in 17 any county in which any constituent organization owned real 18 property, without payment and without collection by the judge 19 of probate of any deed or other transfer tax or fee. The judge 20 of probate, however, shall be entitled to collect the filing fee of five dollars (\$5). Any such filing shall evidence chain 21 22 of title, but lack of filing shall not affect the surviving 23 organization's title to such real property.

24 "(g) A statement of merger shall be a filing25 instrument under Chapter 1.

26 "(h) Except as provided in the last sentence of27 subsection (c), the filing fees for a statement of merger

1 shall be the same fees as provided in

2 Section 10A-1-4.31(a)(5).

3

"§10A-5A-10.08.

4

"(a) When a merger becomes effective:

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

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

"(3) all property owned by each constituent organization, or series thereof, that ceases to exist vests in the surviving organization without reservation or impairment and the title to any property vested by deed or otherwise in the surviving organization shall not revert or be in any way impaired by reason of the merger;

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

"(5) an action or proceeding pending by or against any constituent organization, or series thereof, continues as if the merger had not occurred;

26 "(6) except as prohibited by law other than this
27 chapter, all of the rights, privileges, immunities, powers,

and purposes of each constituent organization, or series
 thereof, vest in the surviving organization;

3 "(7) except as otherwise provided in the plan of 4 merger, the terms and conditions of the plan of merger take 5 effect;

6 "(8) except as otherwise agreed, if a constituent 7 limited liability company ceases to exist, the merger does not 8 dissolve the limited liability company for the purposes of 9 Article 7 and does not dissolve a series for purposes of 10 Article 11thereof;

11 "(9) if the surviving organization is created 12 pursuant to the merger:

13 "(A) if it is a limited liability company, the 14 certificate of formation becomes effective; or

15 "(B) if it is an organization other than a limited 16 liability company, the organizational document that creates 17 the organization becomes effective; and

18 "(10) if the surviving organization existed before 19 the merger, any amendments provided for in the statement of 20 merger for the organizational document that created the 21 organization become effective.

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

8 Section 5. Sections 10A-9-1.01 to 10A-9-12.08,
9 inclusive, Code of Alabama 1975, are repealed.

10 Section 6. This act shall become effective on 11 January 1, 2017, following its passage and approval by the 12 Governor, or its otherwise becoming law.