

## Limited Liability Company Act

See 21-2606 for 'Articles of Organization'

Foreign LLCs: See 21-2637 thru 21-2644

Foreign LLC: [Certificate of Authority Application](#)

All filings and correspondence to:

Nebraska Secretary of State

Room 1301 - State Capitol Bldg.

Lincoln, NE 68509

Phone: (402) 471-4079 FAX: (402) 471-3666

[sos.corp@nebraska.gov](mailto:sos.corp@nebraska.gov)

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### 21-2601 Act, how cited.

Sections 21-2601 to 21-2654 shall be known and may be cited as the Limited Liability Company Act.

**Source** Laws 1993, LB 121, § 1; Laws 1994, LB 884, § 25; Laws 1997, LB 44, § 7; Laws 2006, LB 647, § 4; Laws 2009, LB35, § 2. **August 30, 2009**

### 21-2601.01 Terms, defined.

For purposes of the Limited Liability Company Act, unless the context otherwise requires:

- (1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;
- (2) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and
- (3) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the limited liability company is organized to render.

**Source** Laws 2006, LB 647, § 5; Laws 2008, LB379, § 22. July 18, 2008

### 21-2602 Organization of company; purpose; deemed a syndicate; exceptions.

- (1) A limited liability company may be organized pursuant to the Limited Liability Company Act for any lawful purpose other than for the purpose of being an insurer as described in section 44-102.
- (2) A limited liability company organized pursuant to the act shall be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska, except that a limited liability company in which the members are members of a family, or a trust created for the

benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch, and none of whom are nonresident aliens, shall not be deemed to be a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska.

**Source** Laws 1993, LB 121, § 2; Laws 1994, LB 884, § 26; Laws 1996, LB 681, § 183; Laws 2003, LB 127, § 1.

### **21-2603 Powers.**

A limited liability company organized pursuant to and existing under the Limited Liability Company Act may:

- (1) Sue, be sued, complain, and defend in its name;
- (2) Purchase, take, receive, lease, and otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or an interest in real or personal property wherever situated;
- (3) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (4) Lend money to and otherwise assist its members;
- (5) Purchase, take, receive, subscribe for, and otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, and otherwise dispose of, use, and deal in and with shares or other interests in or obligations of other limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals or direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality or of any instrumentality thereof;
- (6) Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;
- (7) Lend money for its proper purposes, invest and reinvest its funds, and take and hold real property and personal property for the payment of funds loaned or invested;
- (8) Conduct its business, carry on its operations, and have and exercise the powers granted by the act in any state, territory, district, or possession of the United States or in any foreign country;
- (9) Elect or appoint one or more managers and agents of the limited liability company and define their duties and fix their compensation;
- (10) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of the affairs of the limited liability company;
- (11)(a) Indemnify a member, manager, or former member or manager of the limited liability company against expenses actually and reasonably incurred in connection with the defense of a civil or criminal action, suit, or proceeding in which such person is made a party by reason of being or having been a member or manager except in matters as to which such person is adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty and (b) make any other indemnification that is authorized by the articles of organization or by an article of the operating agreement or resolution adopted by the members after notice;
- (12) Cease its activities and surrender its certificate of organization;

- (13) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized;
- (14) Become a member of a general partnership, limited partnership, joint venture or similar association, or other limited liability company; and
- (15) Render a professional service within or without this state.

**Source** Laws 1993, LB 121, § 3; Laws 1997, LB 631, § 1; Laws 2006, LB 647, § 6.

### **21-2604 Name.**

(1) The words limited liability company, ltd. liability company, or ltd. liability co., or the abbreviation L.L.C. or LLC, shall be the last words of the name of every limited liability company, and the limited liability company name may not:

- (a) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of organization; or
- (b) Except as provided in subsection (2) of this section, be the same as or deceptively similar to the name of a limited liability company or corporation existing under the laws of this state or a foreign limited liability company or corporation authorized to transact business in this state or a name the exclusive right to which is reserved in any manner provided under the laws of this state.

(2) A limited liability company may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:

- (a) The other limited liability company or business entity consents to the use in writing; or
- (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction that establishes the applicant's right to use the name applied for in this state.

(3) Omission of the words or an abbreviation required by subsection (1) of this section in the use of the name of the limited liability company shall render any person who participates in the omission or who knowingly acquiesces in such omission liable for indebtedness, damage, or liability caused by the omission.

(4) Identification as a limited liability company in the manner required by subsection (1) of this section shall appear at the end of the name of the limited liability company on all correspondence, stationery, checks, invoices, and documents executed by the limited liability company.

**Source** Laws 1993, LB 121, § 4; Laws 1997, LB 631, § 2; Laws 2008, LB907, § 3. July 18, 2008

### **21-2604.01 Reservation of name.**

(1) The exclusive right to the use of a name may be reserved by:

- (a) Any person intending to organize a limited liability company under the Limited Liability Company Act and to adopt that name;
- (b) Any domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;
- (c) Any foreign limited liability company intending to register in this state and currently using or intending to adopt that name; and

(d) Any person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed or canceled by filing a notice of such fact on forms prescribed by the Secretary of State. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) A fee as set forth in section 21-2634 shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

**Source** Laws 1997, LB 44, § 8.

### **21-2605 Formation.**

One or more persons may form a limited liability company by executing and delivering articles of organization in duplicate to the Secretary of State.

**Source** Laws 1993, LB 121, § 5; Laws 1994, LB 884, § 27; Laws 1997, LB 631, § 3.

### **21-2606 Articles of organization.**

(1) The articles of organization of a limited liability company shall set forth:

(a) The name of the limited liability company;

(b) The purpose for which the limited liability company is organized but, if the limited liability company provides a professional service, the articles of organization shall contain a statement of the profession to be practiced by the limited liability company;

(c) The address of its principal place of business in this state and the name and address of its current registered agent in this state. A post office box number may be provided in addition to the street address;

(d) The total amount of cash contributed to stated capital and a description and agreed value of property other than cash contributed;

(e) The total additional contributions agreed to be made by all members and the times at which or events upon the happening of which the contributions will be made;

(f) The right, if given, of the members to admit additional members and the terms and conditions of the admission; and

(g) If the limited liability company is to be managed by one or more managers, the names and addresses of the persons who will serve as managers until the successor is elected, or if the management of a limited liability company is reserved to the one or more classes of members, the names and addresses of such members.

(2) The articles of organization of a limited liability company may set forth:

(a) The period of its duration, which may be perpetual. If the articles of organization do not state a period of duration, the limited liability company shall have perpetual existence; and

(b) Any other provision not inconsistent with law which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company,

including any provisions which are required or permitted to be set out in the operating agreement of the limited liability company.

(3) It shall not be necessary to set out in the articles of organization any of the powers enumerated in the Limited Liability Company Act.

**Source** Laws 1993, LB 121, § 6; Laws 1994, LB 884, § 28; Laws 1997, LB 631, § 4; Laws 2006, LB 647, § 7; Laws 2008, LB379, § 23. July 18, 2008

**21-2607 Filing of articles of organization and current registration certificate.**

(1) Duplicate originals of the articles of organization of a limited liability company shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the limited liability company is organized to render a professional service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such articles of organization and fees. If the Secretary of State finds that the articles of organization conform to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(a) Endorse on each of the duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals and any registration certificate, if applicable, in his or her office; and

(c) Issue a certificate of organization to which he or she shall affix the other duplicate original.

(2) The certificate of organization, together with a duplicate original of the articles of organization affixed to it by the Secretary of State, shall be returned to the principal office of the limited liability company or to its representative.

**Source** Laws 1993, LB 121, § 7; Laws 2004, LB 16, § 3; Laws 2006, LB 647, § 8.

**21-2608 Effect of issuance of certificate of organization.**

(1) Upon the issuance of the certificate of organization, the limited liability company shall be considered organized unless a delayed effective date is stated in the articles of organization. The certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized pursuant to the Limited Liability Company Act except as against this state in a proceeding to cancel or revoke the certificate of organization or for involuntary dissolution of the limited liability company.

(2) A limited liability company shall not transact business or incur indebtedness, except business or indebtedness that is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the Secretary of State has issued a certificate of organization or, if later, any delayed effective date of organization stated in the articles of organization.

**Source** Laws 1993, LB 121, § 8; Laws 1997, LB 631, § 5.

**21-2609 Registered office and registered agent to be maintained.**

A limited liability company shall have and continuously maintain in this state:

(1) A registered office which may but need not be the same as its place of business; and

(2) A registered agent having a business office identical with the registered office, which agent may be an individual resident in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state.

**Source** Laws 1993, LB 121, § 9.

**21-2610 Change of registered office or registered agent.**

(1) A limited liability company, whether foreign or domestic, may change its registered office or registered agent upon filing with the Secretary of State a statement setting forth:

- (a) The name of the limited liability company;
- (b) The street address of its current registered office;
- (c) If the address of its registered office is to be changed, the new address;
- (d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;
- (e) If its registered agent is to be changed, the name of the successor registered agent;
- (f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (g) That the change was authorized by an affirmative vote of a majority in interest of the members of the limited liability company or in any other manner authorized by the articles of organization.

(2) The statement shall be executed by an authorized representative of the limited liability company and delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section, he or she shall file the statement in his or her office, and upon filing, the change of address of the registered office or the appointment of a new registered agent shall be effective.

(3) A registered agent may resign as registered agent of a limited liability company upon filing a written notice, executed in duplicate, with the Secretary of State who shall mail a copy thereof to the limited liability company at its place of business if known to the Secretary of State, otherwise at its registered office. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of State.

(4) If a registered agent changes the street address or post office box number for his or her business office, he or she may change the street address, or, if one exists, the post office box number, of the registered office of any limited liability company for which he or she is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited liability company has been notified of the change.

**Source** Laws 1993, LB 121, § 10; Laws 1994, LB 884, § 29; Laws 1997, LB 631, § 6; Laws 2006, LB 647, § 9; Laws 2008, LB379, § 24. July 18, 2008

**21-2611 Failure to maintain registered agent or registered office or pay annual fee.**

If a limited liability company has failed for ninety days to appoint and maintain a registered agent in this state, has failed for ninety days after change of its registered office or registered agent to file with the Secretary of State a statement of the change, or has failed to pay any fee required by section 21-2634, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights, or privileges acquired under the laws of this state. The Secretary of State shall mail a notice of failure to comply to the limited liability company at its registered office by certified mail. Unless the limited liability company comes into compliance within thirty days after the delivery of notice, the limited liability company shall be deemed to be defunct and to have forfeited its certificate of organization. A

defunct limited liability company may at any time after the forfeiture of its certificate be revived and reinstated by filing any necessary documents, paying any fees, and paying an additional fee of one hundred dollars. A revived and reinstated limited liability company shall have the same force and effect as if its existence had not been defunct.

**Source** Laws 1993, LB 121, § 11; Laws 1994, LB 884, § 30; Laws 2008, LB907, § 4. July 18, 2008

### **21-2612 Liability of members, managers, and employees.**

(1) The members and managers of a limited liability company shall not be liable under a judgment, decree, or order of a court or in any other manner for a debt, obligation, or liability of the limited liability company. Except as otherwise specifically set forth in the Limited Liability Company Act, no member, manager, employee, or agent of a limited liability company shall be personally liable under any judgment, decree, or order of any court, agency, or other tribunal in this or any other state, or on any other basis, for any debt, obligation, or liability of the limited liability company.

(2) Any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a limited liability company or with the authority to decide whether the limited liability company will pay taxes imposed upon a limited liability company shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a limited liability company perform such act. Such taxes shall be collected in the same manner as provided under section 77-1783.01.

**Source** Laws 1993, LB 121, § 12; Laws 1994, LB 884, § 31; Laws 1997, LB 631, § 7; Laws 2005, LB 216, § 1; Laws 2008, LB914, § 1. July 18, 2008

### **21-2613 Service of process.**

(1) The registered agent appointed by a limited liability company shall be an agent of the limited liability company upon whom any process, notice, or demand required or permitted by law to be served may be served.

(2) If a limited liability company fails to appoint or maintain a registered agent in this state or if the registered agent cannot with reasonable diligence be found at the registered office, the limited liability company shall be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service shall be perfected under this subsection at the earliest of:

(a) The date the limited liability company receives the mail;

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

(c) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed.

(3) This section shall not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

**Source** Laws 1993, LB 121, § 13; Laws 2006, LB 647, § 10.

### **21-2614 Contributions to capital; stated capital, defined.**

Contributions to capital by a member of a limited liability company may consist of any tangible or intangible property or benefit to the company. For purposes of the Limited Liability Company

Act, stated capital shall mean the sum of initial capital contributed to a limited liability company which serves as a minimum basis for capitalization.

**Source** Laws 1993, LB 121, § 14; Laws 1994, LB 884, § 32.

### **21-2615 Management.**

Unless the articles of organization provide to the contrary, management of a limited liability company shall be vested in each member in proportion to such person's contribution to the capital of the limited liability company as adjusted from time to time to properly reflect any additional contribution or withdrawal by another member. If the articles of organization provide for the management of the limited liability company by one or more managers, the managers shall be elected by one or more classes of members in a manner provided in the operating agreement. The managers shall also hold the offices and have the responsibilities accorded to them by such members and as set out in the operating agreement.

**Source** Laws 1993, LB 121, § 15; Laws 1994, LB 884, § 33; Laws 1997, LB 631, § 8.

### **21-2616 Contracting debts.**

Debt shall not be contracted and liability shall not be incurred by or on behalf of a limited liability company except by a manager, if management of the limited liability company has been vested in a manager, or by a member of one or more classes, if management of the limited liability company is retained by a member of such class.

**Source** Laws 1993, LB 121, § 16; Laws 1997, LB 631, § 9.

### **21-2617 Property.**

Real and personal property owned or purchased by a limited liability company shall be held and owned and conveyance shall be made in the name of the limited liability company. Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if executed by a manager of a limited liability company having a manager or, if management has been retained by one or more classes of members, by a member of any such class.

**Source** Laws 1993, LB 121, § 17; Laws 1997, LB 631, § 10.

### **21-2617.01 Biennial report; contents; dissolution of company; revocation of certificate; Secretary of State; powers; procedure; revival or restoration; when.**

(1) A limited liability company and a foreign limited liability company authorized to transact business in the state shall file a biennial report in the office of the Secretary of State which contains:

- (a) The name of the limited liability company and the state or other jurisdiction under whose laws the limited liability company or foreign limited liability company is formed; and
- (b) The street address of the limited liability company's principal place of business in this state or, if the limited liability company does not have an office in this state, the name and street address of the company's agent for service of process.

(2) Commencing on January 1, 2007, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited liability company files articles of organization or a foreign limited liability company becomes authorized to transact business in this state. A correction or amendment to a biennial report may be filed at any time.

(3) The Secretary of State may dissolve a limited liability company or revoke the certificate of authority to transact business of a foreign limited liability company that fails to file a biennial report when due or pay the required filing fee provided in section 21-2634. To do so, the Secretary of State shall provide the company at least sixty days' written notice of intent to dissolve or revoke. The notice shall be mailed to the company at its principal office or the office of the agent for service of process as set forth in the articles of organization, biennial report, or other filing designating the agent for service of process, whichever was most recently filed. The notice shall specify the biennial report that has not been filed, the fee that has not been paid, and the effective date of the dissolution or revocation. The dissolution or revocation is not effective if the biennial report is filed and the fee is paid before the effective date of the dissolution or revocation.

(4) Revival or restoration of the authority of a company dissolved or whose certificate of authority has been revoked pursuant to this section shall be accomplished as provided in section 21-2611, and upon completion of such requirements for revival or restoration, the revival or restoration shall relate back to the date of dissolution or revocation as if such dissolution or revocation had not occurred.

**Source** Laws 2006, LB 647, § 11.

#### **21-2618 Division of profits.**

A limited liability company may divide the profits of its business and distribute the profits to the members of the limited liability company upon the basis stipulated in the operating agreement if, after distribution is made, the aggregate fair market value of the assets of the limited liability company is in excess of all liabilities of the limited liability company other than liabilities to members on account of their contributions to capital.

**Source** Laws 1993, LB 121, § 18; Laws 1997, LB 631, § 11.

#### **21-2619 Withdrawal or reduction of members' contributions to capital.**

(1) A member shall not receive out of limited liability company property any part of such member's contributions to capital until:

(a) All liabilities of the limited liability company other than liabilities to members on account of their contributions to capital have been paid or there remains property of the limited liability company with an aggregate fair market value sufficient to pay them;

(b) The members constituting at least a majority in interest or such greater interest as specified in the articles of organization have consented unless the return of the contributions to capital may be rightfully obtained pursuant to section 21-2625; and

(c) The articles of organization are canceled or amended to set out any withdrawal or reduction of stated capital.

(2) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of such member's contributions to capital, shall have no right to demand or receive specific property in satisfaction of a withdrawal or reduction of such member's capital accounts.

(3) A member of the limited liability company who has withdrawn from membership, but whose capital account has not been liquidated pursuant to the articles of organization or the operating agreement, shall have the status of a transferee as provided in section 21-2621 unless otherwise provided in the operating agreement.

**Source** Laws 1993, LB 121, § 19; Laws 1994, LB 884, § 34; Laws 1996, LB 681, § 184; Laws 1997, LB 631, § 12.

**21-2620 Liability of member to company.**

- (1) A member shall be liable to the limited liability company:
  - (a) For the difference between such member's contributions to stated capital as actually made and as stated in the articles of organization as having been made; and
  - (b) For any unpaid contribution to stated capital which such member agreed in the articles of organization to make in the future at the time and on the conditions stated in the articles of organization.
- (2) A member holds as trustee for the limited liability company:
  - (a) Specific property stated in the articles of organization as contributed by such member but which was not contributed or which has been wrongfully or erroneously returned; and
  - (b) Money or other property wrongfully paid or conveyed to such member on account of such member's contributions to capital.
- (3) The liabilities of a member as set out in this section may be waived or compromised only by the consent of all members. A waiver or compromise shall not affect the right of a creditor of the limited liability company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the articles of organization to enforce the liabilities.
- (4) When a contributor has rightfully received the return in whole or in part of such person's contributions to capital, the contributor shall be liable to the limited liability company for any sum, not in excess of the amount returned with interest, necessary to discharge the liability to all creditors of the limited liability company who extended credit or whose claims arose before the return for a period of three years from the date of distributions.

**Source** Laws 1993, LB 121, § 20; Laws 1994, LB 884, § 35; Laws 1997, LB 631, § 13.

**21-2621 Interest in company; transferability of interest; admission of additional members.**

The interest of a member in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in the articles of organization or operating agreement. Unless otherwise provided in the articles of organization or the operating agreement, if a majority in interest of the members of the limited liability company other than the member proposing to dispose of such member's interest do not approve of the proposed transfer or assignment of part or all of the member's interest to a nonmember by written consent, the nonmember transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member, and the nonmember transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of capital to which the transferring member would otherwise be entitled. Unless otherwise provided in the articles of organization or the operating agreement, additional members shall be admitted only upon an affirmative vote of a majority in interest of the current members of the limited liability company.

**Source** Laws 1993, LB 121, § 21; Laws 1994, LB 884, § 36; Laws 1996, LB 681, § 185; Laws 1997, LB 631, § 14.

**21-2622 Dissolution.**

- (1) A limited liability company shall be dissolved only upon the occurrence of the following:

- (a) The expiration of the period fixed, if any, for the duration of the limited liability company;
- (b) The unanimous written agreement of all members;
- (c) Any other event described in the articles of organization; or
- (d) The judicial dissolution of the limited liability company.

(2) On application by or for any member, the district court may decree the dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of such limited liability company in conformity with its articles of organization or its operating agreement.

**Source** Laws 1993, LB 121, § 22; Laws 1994, LB 884, § 37; Laws 1996, LB 681, § 186; Laws 1997, LB 631, § 15.

#### **21-2623 Filing of statement of intent to dissolve.**

(1) Following the occurrence of any of the events specified in section 21-2622 effecting the dissolution of the limited liability company, the limited liability company shall execute a statement of intent to dissolve in such form as prescribed by the Secretary of State.

(2) Duplicate originals of the statement of intent to dissolve shall be delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section and all fees and taxes have been paid, he or she shall:

- (a) Endorse on each of such duplicate originals the word filed and the month, day, and year of the filing thereof;
- (b) File one of the duplicate originals in his or her office; and
- (c) Return the other duplicate original to the limited liability company or its representative.

**Source** Laws 1993, LB 121, § 23.

#### **21-2624 Effect of filing of dissolving statement.**

Upon the filing by the Secretary of State of a statement of intent to dissolve, the limited liability company shall cease to carry on its business except as may be necessary for the winding up of its business. The separate existence of the limited liability company shall continue until a certificate of dissolution has been issued by the Secretary of State or until a decree dissolving the limited liability company has been entered by a court of competent jurisdiction.

**Source** Laws 1993, LB 121, § 24.

#### **21-2625 Distribution of assets upon dissolution.**

(1) In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

- (a) Liabilities to creditors other than members of the limited liability company on account of their contributions to capital, in the order of priority provided by law;
- (b) Liabilities to members of the limited liability company in respect of their share of the profits and other compensation by way of income on their contributions; and
- (c) Liabilities to members of the limited liability company in respect of their contributions to capital.

(2) Subject to any statement in the operating agreement, members shall share in the limited liability company assets in respect to their claims for contributions to capital and in respect to their claims for profits or for compensation by way of income on their contributions to capital, respectively, in proportion to the respective amounts of the claim.

**Source** Laws 1993, LB 121, § 25.

**21-2626 Articles of dissolution.**

When all debts, liabilities, and obligations have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets have been distributed to the members, articles of dissolution shall be executed in duplicate and verified by the person signing the statement. The statement shall set forth:

- (1) The name of the limited liability company;
- (2) That the Secretary of State has filed a statement of intent to dissolve the company and the date on which the statement was filed;
- (3) That all debts, liabilities, and obligations have been paid and discharged or that adequate provision has been made therefor;
- (4) That all the remaining property and assets have been distributed to the members in accordance with their respective rights and interests; and
- (5) That there are no suits pending against the limited liability company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

**Source** Laws 1993, LB 121, § 26.

**21-2627 Filing of articles of dissolution; issuance of certificate of dissolution.**

(1) Duplicate originals of the articles of dissolution of a limited liability company shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of dissolution conform to the requirements of section 21-2626 and all fees and taxes have been paid, he or she shall:

- (a) Endorse on each of such duplicate originals the word filed and the month, day, and year of the filing thereof;
- (b) File one of the duplicate originals in his or her office; and
- (c) Issue a certificate of dissolution to which he or she shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, shall be returned to the representative of the dissolved limited liability company. Upon the issuance of the certificate of dissolution, the existence of the limited liability company shall cease except for the purpose of suits, other proceedings, and appropriate action as provided in the Limited Liability Company Act. The manager at the time of dissolution shall thereafter be trustee for the members and creditors of the dissolved limited liability company and as such shall have authority to distribute any property of the limited liability company discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

(3) The certificate of organization of a limited liability company shall be canceled by the Secretary of State upon issuance of the certificate of dissolution.

**Source** Laws 1993, LB 121, § 27.

**21-2628 Amendment of articles of organization.**

(1) The articles of organization of a limited liability company shall be amended when:

- (a) There is a change in the name of the limited liability company;
- (b) There is a change in the purpose for which the limited liability company is organized;

- (c) There is a change in stated capital that reduces the stated capital below the amount in the articles of organization;
  - (d) There is a change in the time, if any, stated in the articles of organization for the dissolution of the limited liability company;
  - (e) A time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organization; or
  - (f) The members desire to make a change in any other statement in the articles of organization so the articles will accurately represent the agreement between the members.
- (2) The form for evidencing an amendment to the articles of organization of a limited liability company shall be prescribed by the Secretary of State and shall contain such terms and provisions as determined by the Secretary of State. The articles of organization may be amended upon the affirmative vote of a majority in interest of the members or in such other manner as is provided in the articles of organization. The amendment shall be executed by an authorized representative of the limited liability company. Duplicate originals of the amendment shall be forwarded to the Secretary of State for filing with the filing fee.

**Source** Laws 1993, LB 121, § 28; Laws 1994, LB 884, § 38; Laws 1996, LB 681, § 187; Laws 1997, LB 631, § 16.

#### **21-2629 Parties to actions.**

A member of a limited liability company shall not be a proper party to proceedings by or against a limited liability company except when the object is to enforce a member's right against or liability to the limited liability company.

**Source** Laws 1993, LB 121, § 29.

#### **21-2630 Waiver of notice.**

When notice is required to be given to a member or manager under the Limited Liability Company Act, the articles of organization, or the operating agreement, a waiver in writing signed by the person or persons entitled to the notice, whether before or after the time stated in the notice, shall be the equivalent to the giving of notice.

**Source** Laws 1993, LB 121, § 30.

#### **21-2631 Professional service; license and registration certificate required; filing.**

(1) Each member, manager, employee, or agent of a limited liability company organized under the Limited Liability Company Act who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such person renders a professional service within this state or under the law of the state, territory, or other jurisdiction in which such person renders the professional service.

(2) Before rendering a professional service, the limited liability company shall (a)(i) file with the Secretary of State a registration certificate issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member as of the last day of the month preceding the filing, and (ii) certify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise authorized to perform the professional service for which the limited liability company is

organized or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-2631.01.

(3) The registration certificate requirements of this section and sections 21-2631.01 to 21-2632 shall apply to both domestic and foreign limited liability companies.

**Source** Laws 1993, LB 121, § 31; Laws 1994, LB 884, § 39; Laws 1996, LB 681, § 188; Laws 1997, LB 631, § 17; Laws 2004, LB 16, § 4; Laws 2006, LB 647, § 13.

**21-2631.01 Registration certificate; application; contents; issuance; fees; display; Secretary of State; access electronic licensing records; verification; suspension.**

(1) An application for issuance of a registration certificate shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, and professional employees of the limited liability company, the street address at which the applicant proposes to perform a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, and professional employee of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession of the applicant and that each member, manager, or professional employee required by law to be licensed is not otherwise disqualified from performing the professional service of the applicant, such regulatory body shall certify in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body that the proposed or existing limited liability company complies with the provisions of the Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such registration certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

One copy of such certificate shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and one copy shall be filed with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be filed in the office of the Secretary of State with the articles of organization. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(2) When licensing records of regulating boards are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The limited liability company shall file with the Secretary of State an application setting forth the names of all members, managers, and professional employees of such limited liability company who are required by law to be licensed or otherwise authorized to practice the professional service for which the limited liability company is organized as of the last day of the month preceding the date of application and shall file with the Secretary of State an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee of fifty dollars.

The Secretary of State shall verify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise legally authorized to render the same professional service or ancillary service as those which the limited liability company renders through electronic accessing of the regulating board's records. If any member, manager, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the limited liability company was organized to render, the limited liability company

shall be suspended. The suspension shall remain in effect and a biennial report shall not be filed in the office of the Secretary of State until the limited liability company attests in writing that all members, managers, or professional employees are duly licensed or otherwise legally authorized to render the appropriate service and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, or professional employees are no longer members, managers, or professional employees of the limited liability company.

**Source** Laws 1994, LB 884, § 40; Laws 1996, LB 681, § 189; Laws 2006, LB 647, § 14.

**21-2631.02 Registration certificate; expiration; filing; not transferable or assignable.**

Each registration certificate issued to a limited liability company pursuant to section 21-2631.01 shall expire by its own terms one year from the date of issuance and may not be renewed. Each limited liability company shall annually apply (1) to its regulatory body for a registration certificate in the manner provided in subsection (1) of section 21-2631.01 or (2) to the Secretary of State pursuant to subsection (2) of section 21-2631.01 if the records of the regulating body are electronically accessible to the Secretary of State. A certificate or application shall be filed annually with the Secretary of State within thirty days before the expiration date of the last certificate or application on file in the office of the Secretary of State or the limited liability company shall be suspended. Registration certificates shall not be transferable or assignable.

**Source** Laws 1994, LB 884, § 41; Laws 1996, LB 681, § 190.

**21-2631.03 Registration certificate; suspension or revocation; procedures.**

A regulatory body may, upon a form prescribed by it, suspend or revoke any registration certificate issued to any limited liability company pursuant to subsection (1) of section 21-2631.01 upon the suspension or revocation of the license or other authorization to perform professional service of any member, manager, or professional employee of a holder of a certificate. Notice of such revocation shall be provided the limited liability company affected by sending by certified or registered mail a certified copy of such revocation to the limited liability company at its principal place of business set forth in the registration certificate so revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

**Source** Laws 1994, LB 884, § 42; Laws 1996, LB 681, § 191.

**21-2632 Professional service; regulation of practice.**

Nothing in the Limited Liability Company Act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such individuals rendering a professional service or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, employee, or agent of a limited liability company and rendering a professional service or engaging in the practice of the profession through a limited liability company.

**Source** Laws 1993, LB 121, § 32; Laws 1994, LB 884, § 43; Laws 2006, LB 647, § 15.

**21-2632.01 Limited liability company; professional service; limitation of services.**

A limited liability company which provides a professional service shall render only one type of professional service and such services as may be ancillary thereto and shall not engage in any other profession. No limited liability company organized under the Limited Liability Company Act may render a professional service except through its members, managers, and professional employees who are duly licensed or otherwise legally authorized to render such professional service within this state. This section shall not be interpreted to include in the term professional employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

**Source** Laws 2006, LB 647, § 12; Laws 2008, LB379, § 25. July 18, 2008

### **21-2633 Taxation.**

A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

**Source** Laws 1993, LB 121, § 33; Laws 1997, LB 631, § 18.

#### **Cross Reference**

**Taxation of members**, credit, see section 77-2734.01.

### **21-2634 Fees.**

The filing fee for all filings pursuant to the Limited Liability Company Act, including amendments, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization and for filing an application for a certificate of authority as a foreign limited liability company shall be one hundred dollars plus such recording fees and ten dollars for a certificate. There shall be no recording fee collected for the filing of a biennial report or any corrections or amendments thereto. A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

**Source** Laws 1993, LB 121, § 34; Laws 1994, LB 884, § 44; Laws 2006, LB 647, § 16.

### **21-2635 Unauthorized assumption of powers.**

All persons who assume to act as a limited liability company without authority to do so shall be jointly and severally liable for all debts and liabilities of the company.

**Source** Laws 1993, LB 121, § 35.

### **21-2636 Legislative intent; recognition outside the state.**

It is the intent of the Legislature that the legal existence of limited liability companies organized under the Limited Liability Company Act be recognized outside the boundaries of this state and that, subject to any reasonable requirement of registration, a domestic limited liability company transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

**Source** Laws 1993, LB 121, § 36.

**21-2637 Foreign limited liability company; law governing; rights.**

The law of the state or other jurisdiction under which a foreign limited liability company is formed shall govern its formation and internal affairs and the liability of its members and managers. A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between those laws and the laws of this state. A foreign limited liability company holding a valid certificate of authority in this state shall have no greater rights and privileges than a domestic limited liability company. The certificate of authority shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

**Source** Laws 1993, LB 121, § 37.

**21-2638 Foreign limited liability company; certificate of authority; application.**

Before doing business in this state, a foreign limited liability company shall obtain a certificate of authority from the Secretary of State. In order to obtain a certificate of authority, a foreign limited liability company shall submit to the Secretary of State, together with payment of the fee required by the Limited Liability Company Act, an original executed by a member or manager, together with a duplicate original, of an application for a certificate of authority as a foreign limited liability company, setting forth:

- (1) The name of the foreign limited liability company;
- (2) The state or other jurisdiction or country where organized, the date of its organization, and a statement issued by an appropriate authority in that jurisdiction that the foreign limited liability company exists in good standing under the laws of the jurisdiction of its organization;
- (3) The nature of the business or purposes to be conducted or promoted in this state;
- (4) The address of the registered office and the name and street address of the current resident agent for service of process required to be maintained by the act. A post office box number may be provided in addition to the street address; and
- (5) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such foreign limited liability company is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and taxes prescribed by the laws of this state.

**Source** Laws 1993, LB 121, § 38; Laws 2008, LB379, § 26. July 18, 2008

**21-2639 Foreign limited liability company; filing of certificate of authority and current registration certificate.**

The original and a duplicate original of the application of a foreign limited liability company for a certificate of authority shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the foreign limited liability company is organized to render a professional service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such application and fees. If the Secretary of State finds that the application conforms to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

- (1) Endorse on each of such documents the word filed and the month, day, and year of the filing thereof;
- (2) File in his or her office the original of the application and any registration certificate, if applicable; and

(3) Issue a certificate of authority to transact business in this state to which he or she shall affix the duplicate original of the application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the Secretary of State, shall be returned to the principal office of the foreign limited liability company or its representative.

**Source** Laws 1993, LB 121, § 39; Laws 2004, LB 16, § 5; Laws 2006, LB 647, § 17.

**21-2640 Foreign limited liability company; name.**

No certificate of authority shall be issued to a foreign limited liability company unless the name of such company satisfies the requirements of subsection (1) of section 21-2604. If the name under which a foreign limited liability company is registered in the jurisdiction of its formation does not satisfy the requirements of such subsection, to obtain or maintain a certificate of authority the foreign limited liability company may use a designated name that is available and which satisfies the requirements of such subsection.

**Source** Laws 1993, LB 121, § 40; Laws 1997, LB 631, § 19.

**21-2641 Foreign limited liability company; application for certificate of authority; amendments.**

(1) The application for a certificate of authority of a foreign limited liability company shall be amended by filing articles of amendment with the Secretary of State signed by a person with authority to do so under the laws of this state or other jurisdiction of its organization. The articles of amendment shall set forth:

- (a) The name of the foreign limited liability company;
- (b) The date the original application for a certificate of authority was filed; and
- (c) The amendment to the application for a certificate of authority.

(2) The application for a certificate of authority may be amended in any way, except that the application for a certificate of authority as amended may contain only provisions that may be lawfully contained in an application for registration at the time of making the amendment.

**Source** Laws 1993, LB 121, § 41.

**21-2642 Foreign limited liability company; withdrawal.**

The original and a duplicate original of an application for withdrawal of a foreign limited liability company shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of the Limited Liability Company Act, he or she shall, when all fees and taxes have been paid:

- (1) Endorse on the original and the duplicate original the word filed and the month, day, and year of the filing thereof;
- (2) File the original in his or her office; and
- (3) Issue a certificate of withdrawal to which he or she shall affix the duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the foreign limited liability company or its representative. Upon the issuance of such certificate of withdrawal, the authority of the foreign limited liability company to transact business in this state shall cease.

**Source** Laws 1993, LB 121, § 42.

**21-2643 Foreign limited liability company; transaction of business without certificate of authority; effect.**

No foreign limited liability company transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such limited liability company has obtained a certificate of authority. No action, suit, or proceeding shall be maintained in any court of this state by any successor or assignee of such limited liability company on any right, claim, or demand arising out of the transaction of business by such limited liability company in this state until a certificate of authority has been obtained by the foreign limited liability company which has acquired all or substantially all of its assets. A foreign limited liability company shall not be barred solely for the reason that it is or has been carrying on one or more of the activities enumerated in section 21-2644.

The failure of a foreign limited liability company to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such limited liability company and shall not prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

A foreign limited liability company which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and taxes which would have been imposed by the laws of this state upon the foreign limited liability company had it duly applied for and received a certificate of authority to transact business in this state as required by the Limited Liability Company Act plus all penalties imposed by the laws of this state for failure to pay such fees and taxes. The Attorney General shall bring proceedings to recover all amounts due this state under this section.

**Source** Laws 1993, LB 121, § 43.

**21-2644 Foreign limited liability company; activities not considered transacting business in this state.**

(1) Without excluding activities which do not constitute transacting business in this state, a foreign limited liability company shall not be considered to be transacting business in this state, for the purpose of being required to secure a certificate of authority pursuant to section 21-2638, by reason of carrying on in this state any one or more of the following activities:

- (a) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;
- (b) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;
- (e) Effecting sales through independent contractors;
- (f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, when such orders require acceptance without this state before becoming binding contracts;
- (g) Creating, as a borrower or lender, or acquiring indebtedness, mortgages, or other security interests in real or personal property;
- (h) Securing, collecting, or servicing debts or enforcing any rights in property securing the same;
- (i) Transacting any business in interstate commerce; or

(j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(2) A foreign limited liability company shall not be considered to be transacting business solely because it:

(a) Owns a controlling interest in a corporation or a foreign corporation that transacts business;

(b) Is a limited partner of a limited partnership or foreign limited partnership that is transacting business; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business.

(3) The specification of activities which do not constitute transacting business for purposes of the Limited Liability Company Act shall establish a standard for those activities in determining whether a foreign limited liability company is exercising its franchise or doing business in this state in a business capacity except for activities which may subject a limited liability company to service of process or to property taxes assessed against any property or interest therein.

**Source** Laws 1993, LB 121, § 44.

#### **21-2645 Action by Attorney General.**

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of the Limited Liability Company Act.

**Source** Laws 1993, LB 121, § 45.

#### **21-2646 Act; applicability to attorneys at law.**

The provisions of the Limited Liability Company Act shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Nebraska Supreme Court determines to be necessary and appropriate. Articles of organization of limited liability companies organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

**Source** Laws 1994, LB 884, § 45.

#### **21-2647 Merger or consolidation; authorized.**

Any one or more limited liability companies may merge or consolidate with or into any one or more limited liability companies, general partnerships, limited partnerships, or corporations, and any one or more general partnerships, limited partnerships, or corporations may merge or consolidate with or into any one or more limited liability companies.

**Source** Laws 1994, LB 884, § 46; Laws 1997, LB 631, § 20.

#### **21-2648 Merger or consolidation; written plan; contents.**

(1) Each constituent entity shall enter into a written plan of merger or consolidation which shall be approved in accordance with section 21-2649.

(2) The plan of merger or consolidation shall set forth:

(a) The name of each limited liability company, corporation, general partnership, or limited partnership which is a constituent entity in the merger or consolidation and the name of the surviving entity into which each other constituent entity proposes to merge or the new entity into which each constituent entity proposes to consolidate;

(b) The terms and conditions of the proposed merger or consolidation;

- (c) The manner and basis of converting the interests in each limited liability company, the shares of stock or other interests in each corporation, and the interests in each general partnership or limited partnership that is a constituent entity in the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving entity or the new entity, or of any other limited liability company, corporation, general partnership, limited partnership, or other entity, or, in whole or in part, into cash or other property;
- (d) In the case of a merger, such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation, or certificate of limited partnership of a limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired;
- (e) In the case of a consolidation, all of the statements required to be set forth in articles of organization of any new entity that is a limited liability company, articles or certificate of incorporation of any new entity that is a corporation, or certificate of limited partnership of any new entity that is a limited partnership, as the case may be; and
- (f) Such other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable.

**Source** Laws 1994, LB 884, § 47; Laws 1997, LB 631, § 21.

**21-2649 Merger or consolidation; approval; abandonment.**

- (1)(a) A proposed plan of merger or consolidation complying with the requirements of section 21-2648 shall be approved in the manner provided by this section.
  - (b) A limited liability company which is a party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved by a majority in interest, or such greater interest as otherwise provided in the articles of organization, of the members of such limited liability company.
  - (c) A corporation which is a party to a proposed merger or consolidation shall have the plan of merger or consolidation authorized and approved in the manner and by the vote required by the laws of this state.
  - (d) A partnership which is a party to a proposed merger or consolidation shall have the plan of merger authorized and approved in the manner and by the vote required by its partnership agreement and in accordance with the partnership laws of this state.
- (2) After a merger or consolidation is authorized, unless the plan of merger or consolidation provides otherwise, and at any time before articles of merger or consolidation are filed, the plan of merger or consolidation may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or consolidation or, if none is set forth, as follows:
- (a) By a majority in interest, or such greater interest as otherwise provided in the articles of organization, of the members of each limited liability company that is a constituent entity;
  - (b) By the vote of the board of directors of any corporation that is a constituent entity; and
  - (c) By the partners of any partnership that is a constituent entity in accordance with its partnership agreement and applicable partnership law.

**Source** Laws 1994, LB 884, § 48; Laws 1996, LB 681, § 192; Laws 1997, LB 631, § 22.

**21-2650 Merger or consolidation; filings required; when effective.**

- (1) After a plan of merger or consolidation is approved as provided in section 21-2649, the surviving entity or the new entity shall deliver to the Secretary of State for filing articles of merger or consolidation duly executed by each constituent entity setting forth:
  - (a) The name of each constituent entity;
  - (b) The plan of merger or consolidation;
  - (c) The effective date of the merger or consolidation if later than the date of filing of the articles of merger or consolidation;
  - (d) The name of the surviving entity or the new entity; and
  - (e) A statement that the plan of merger or consolidation was duly authorized and approved by each constituent entity in accordance with section 21-2649.
- (2) A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the plan of merger or consolidation.
- (3) Duplicate originals of the articles of merger or consolidation shall be delivered to the Secretary of State who, after determining that such documents appear in all respects to conform to the requirements of sections 21-2647 to 21-2652, shall file one of the duplicate originals and endorse on each duplicate original the word filed with the month, day, and year of the filing thereof and return one duplicate original to the surviving entity or the new entity or its representative.

**Source** Laws 1994, LB 884, § 49.

#### **21-2651 Merger or consolidation; effect.**

Consummation of a merger or consolidation shall have the effects provided in this section:

- (1) The constituent entities which are a party to the plan of merger or consolidation shall be a single entity, which in the case of a merger shall be the entity designated in the plan of merger as the surviving entity and in the case of a consolidation shall be the new entity provided for in the plan of consolidation;
- (2) The separate existence of each constituent entity party to the plan of merger or consolidation, except the surviving entity or the new entity, shall cease;
- (3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities, powers, and franchises, of a public as well as a private nature, of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the form of existence of the surviving entity or the new entity;
- (4) All property, real, personal, and mixed, all debts due on whatever account, including promises to make contributions to stated capital and subscriptions, all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed;
- (5) The title to all real estate and any interest therein vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;
- (6) The surviving entity or the new entity shall be responsible and liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place or the surviving entity or the new entity may be substituted in the action;

- (7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation;
- (8) In the case of a merger, if the surviving entity or the new entity is a limited liability company, a corporation, or a limited partnership, the articles of organization of the limited liability company, articles or certificate of incorporation of the corporation, or certificate of limited partnership of the limited partnership, as the case may be, shall be amended to the extent provided in the articles of merger;
- (9) In the case of a consolidation in which the new entity is a limited liability company, corporation, or limited partnership, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organization, articles or certificate of incorporation, or certificate of limited partnership, as the case may be, of the new entity, shall be deemed to be the original articles of organization, articles or certificate of incorporation, or certificate of limited partnership of the new entity;
- (10) The membership or other interests in a limited liability company, shares or other interests in a corporation, or partnership or other interests in a limited partnership that is a constituent entity, as the case may be, that are to be converted or exchanged into interests, shares or other securities, cash, obligations, or other property under the terms of the articles of merger or consolidation shall be so converted, and the former holders thereof shall be entitled only to the rights provided in the articles of merger or consolidation or the rights otherwise provided by law; and
- (11) Nothing in sections 21-2647 to 21-2652 shall abridge or impair any dissenter's or appraisal rights that may otherwise be available to the members or shareholders or other holders of an interest in any constituent entity.

**Source** Laws 1994, LB 884, § 50; Laws 1997, LB 631, § 23.

**21-2652 Merger or consolidation; domestic and foreign entities; conditions; effect.**

- (1) Any one or more domestic limited liability companies may merge or consolidate with or into one or more foreign limited liability companies, foreign corporations, foreign general partnerships, or foreign limited partnerships or any one or more foreign limited liability companies, foreign corporations, foreign general partnerships, or foreign limited partnerships may merge or consolidate with or into any one or more limited liability companies of this state if:
- (a) The merger or consolidation is permitted by the law of the state or jurisdiction under whose laws each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger or consolidation;
- (b) The foreign constituent entity complies with section 21-2650 if it is the surviving entity or the new entity; and
- (c) Each domestic constituent entity complies with the applicable provisions of sections 21-2647 to 21-2649 and, if it is the surviving entity or the new entity, with section 21-2650.
- (2) Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity or the new entity is to be governed by the laws of any state other than this state or by the laws of the District of Columbia or of any foreign country, then the surviving entity or the new entity shall agree:
- (a) That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity party to the merger or consolidation that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving entity or the new entity arising from the merger or consolidation; and

(b) To irrevocably appoint the Secretary of State as its agent for service of process in any such proceeding, and the surviving entity or the new entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.

(3) The effect of such merger or consolidation shall be as provided in section 21-2651 if the surviving entity or the new entity is to be governed by the laws of this state. If the surviving entity or the new entity is to be governed by the laws of any jurisdiction other than this state, the effect of such merger or consolidation shall be the same as provided in such section except insofar as the laws of such other jurisdiction provide otherwise.

**Source** Laws 1994, LB 884, § 51; Laws 1997, LB 631, § 24.

### **21-2653 Notices; publication; filing.**

Notice of organization, amendment, merger, consolidation, or statement of intent to dissolve must be published three successive weeks in some legal newspaper of general circulation near the registered office of the limited liability company. A notice of organization must show (1) the name of the limited liability company, (2) the address of the registered office, (3) the general nature of the business to be transacted, (4) the time of commencement and termination, if any, of the limited liability company, and (5) by what members or managers the affairs of the limited liability company are to be conducted. A brief resume of any amendment, merger, or consolidation of the limited liability company shall be published in the same manner and for the same period of time as notice of organization is required to be published. Whenever any limited liability company is voluntarily dissolved, notice of the dissolution thereof and the terms and conditions of such dissolution and the names of the persons who are to manage the company affairs and distribute its assets and their official titles, with a statement of assets and liabilities of the limited liability company, shall be published three successive weeks in some legal newspaper of general circulation within the county in which the registered office of the limited liability company is located. Proof of publication of any of the notices shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of the limited liability company prior to, as well as after, such publication shall be valid.

**Source** Laws 1994, LB 884, § 52; Laws 1997, LB 631, § 25.

### **21-2654 Charging order; authorized; procedure; effect.**

(1) On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may charge the transferable interest of the judgment debtor in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of the transferee to receive any distribution to which the judgment debtor would otherwise have been entitled with respect to the interest of the judgment debtor in the limited liability company.

(2) A charging order entered pursuant to this section constitutes a lien on the judgment debtor's transferable interest in the limited liability company.

(3) This section does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's interest in the limited liability company.

(4) The entry of a charging order pursuant to this section is the exclusive remedy by which a judgment creditor of a member or transferee may satisfy a judgment out of the judgment debtor's interest in the limited liability company.

(5) No creditor of a member of a limited liability company shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(6) A third party shall not be liable to a judgment creditor for distributions made by such third party directly to the judgment debtor that were made in good faith at the direction of the limited liability company.

(7) This section applies to all limited liability companies authorized under the Limited Liability Company Act.

**Source** [Laws 2009, LB35, § 1](#). August 30, 2009