

D R A F T

FOR APPROVAL

BUSINESS ORGANIZATIONS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

AMERICAN BAR ASSOCIATION

BUSINESS ORGANIZATIONS ACT

WITH PREFATORY NOTE AND COMMENTS

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Jointly By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and

AMERICAN BAR ASSOCIATION

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June 3, 2009

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BUSINESS ORGANIZATIONS ACT

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BUSINESS ORGANIZATIONS ACT

PREFATORY NOTE

A. HISTORY OF THIS ACT IN THE CONFERENCE

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

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

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

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

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

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

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

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

other an ABA Drafting Committee chaired by William H. Clark, Jr.

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

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

B. COVERAGE OF THE ACT

1. Overview of Act’s Coverage.

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

The Act consists of seven Parts, as follows:

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

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

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

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

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

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

3. What the Act will accomplish.

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

1 **BUSINESS ORGANIZATIONS ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **[PART] 1**

5 **GENERAL PROVISIONS**

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

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

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

9 **SECTION 1-102. DEFINITIONS.** In this [act], except as otherwise provided in

10 definitions of the same terms in other articles of this [act]:

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

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

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

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

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

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

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

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

23 (7) “Entity”:

- 1 (A) means:
- 2 (i) a business corporation;
- 3 (ii) a nonprofit corporation;
- 4 (iii) a general partnership;
- 5 (iv) a limited partnership;
- 6 (v) a limited liability company;
- 7 [(vi) a general cooperative association;]
- 8 (vii) a limited cooperative association;
- 9 (viii) an unincorporated nonprofit association;
- 10 (ix) a statutory trust, business trust, or common-law business trust; or
- 11 (x) any other person that has a legal existence separate from any interest
- 12 holder of that person or that has the power to acquire an interest in real property in its own name;

13 and

- 14 (B) does not include:
- 15 (i) an individual;
- 16 (ii) a testamentary, inter vivos, or charitable trust, except a statutory trust,
- 17 business trust, or common-law business trust;
- 18 (iii) an association or relationship that is not a partnership solely by reason
- 19 of [Section 202(c) of the Revised Uniform Partnership Act] [Section 7 of the Uniform
- 20 Partnership Act] or a similar provision of the law of another jurisdiction;
- 21 (iv) a decedent's estate; [or]
- 22 (v) a government or a governmental subdivision, agency, or
- 23 instrumentality [; or] [.]

1 [(vi) an entity excluded under Section 1-106.]

2 (8) “Entity filing” means a record delivered for filing to the [Secretary of State] pursuant
3 to this [act].

4 (9) “Filed record” means a record filed by the [Secretary of State] pursuant to this
5 [article].

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

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

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

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

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

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

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

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

20 (15) “Governor” means:

21 (A) a director of a business corporation;

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

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

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

11 (16) "Interest" means:

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

- 1 (17) “Interest holder” means:
- 2 (A) a shareholder of a business corporation;
 - 3 (B) a member of a nonprofit corporation;
 - 4 (C) a general partner of a general partnership;
 - 5 (D) a general partner of a limited partnership;
 - 6 (E) a limited partner of a limited partnership;
 - 7 (F) a member of a limited liability company;
 - 8 [(G) a shareholder of a general cooperative association;]
 - 9 (H) a member of a limited cooperative association;
 - 10 (I) a member of an unincorporated nonprofit association;
 - 11 (J) a beneficiary of a statutory trust, business trust, or common-law business trust;

12 or

- 13 (K) any other direct holder of an interest.

14 (18) “Jurisdiction”, used to refer to a political entity, means the United States, a state, a
15 foreign country, or a political subdivision of a foreign country.

16 (19) “Jurisdiction of formation” of an entity means the jurisdiction whose law includes
17 the organic law of the entity.

18 (20) “Limited cooperative association” means a domestic limited cooperative association
19 formed under or subject to [Article] 8 or a foreign limited cooperative association.

20 (21) “Limited liability company” means a domestic limited liability company formed
21 under or subject to [Article] 7 or a foreign limited liability company.

22 (22) “Limited liability limited partnership” means a domestic limited liability limited
23 partnership formed under or subject to [Article] 6 or a foreign limited liability limited

1 partnership.

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

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

7 (25) “Noncommercial registered agent” means a person that is not a commercial
8 registered agent and is:

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

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

13 (26) “Nonfiling entity” means an entity that is formed other than by filing a public
14 organic record.

15 (27) “Nonprofit corporation” means a domestic nonprofit corporation incorporated under
16 or subject to [Article] 4 or a foreign nonprofit corporation.

17 (28) “Organic law” means the law of an entity’s jurisdiction of formation that governs the
18 internal affairs of the entity.

19 (29) “Organic rules” means the public organic record and private organic rules of an
20 entity.

21 (30) “Person” means an individual, corporation, partnership, limited partnership, limited
22 liability company, [general cooperative association,] limited cooperative association,
23 unincorporated nonprofit trust association, statutory trust, business trust, or common-law

1 business trust, estate, trust, association, joint venture, public corporation, government or
2 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

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

8 (A) the bylaws of a business corporation;

9 (B) the bylaws of a nonprofit corporation;

10 (C) the partnership agreement of a general partnership;

11 (D) the partnership agreement of a limited partnership;

12 (E) the operating agreement of a limited liability company;

13 [(F) the bylaws of a general cooperative association;]

14 (G) the bylaws of a limited cooperative association;

15 (H) the governing principles of an unincorporated nonprofit association; and

16 (I) the governing instrument of a statutory trust, business trust, or common-law

17 business trust.

18 (33) “Proceeding” includes a civil action, arbitration, mediation, administrative
19 proceeding, criminal prosecution, and investigatory action.

20 (34) “Property” means all property, real, personal, or mixed, or tangible or intangible, or
21 any interest therein.

22 (35) “Public organic record” means the record the public filing of which forms an entity
23 and any amendment or restatement of that record. The term includes:

- 1 (A) the articles of incorporation of a business corporation;
- 2 (B) the articles of incorporation of a nonprofit corporation;
- 3 (C) the certificate of limited partnership of a limited partnership;
- 4 (D) the certificate of organization of a limited liability company;
- 5 [(E) the articles of incorporation of a general cooperative association;]
- 6 (F) the articles of organization of a limited cooperative association; and
- 7 (G) the certificate of trust of a statutory trust, business trust, or common-law
- 8 business trust.

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

11 (37) “Receipt” means actual receipt. “Receive” has a corresponding meaning.

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

14 (39) “Registered agent” means an agent of an entity which is authorized to receive
15 service of any process, notice, or demand required or permitted by law to be served on the entity.
16 The term includes a commercial registered agent and a noncommercial registered agent.

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

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

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

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

1 (42) “Statutory trust” means a domestic statutory trust formed under or subject to
2 [Article] 10 or a foreign statutory trust.”

3 (43) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and
4 encumbrance.

5 (44) “Transferable interest” means the right under an unincorporated entity’s organic law
6 to receive distributions from the entity.

7 (45) “Type of entity” means a generic form of entity:

8 (A) recognized at common law; or

9 (B) formed under an organic law, whether or not some entities formed under that
10 organic law are subject to provisions of that law that create different categories of the form of
11 entity.

12 (46) “Unincorporated nonprofit association” means a domestic unincorporated nonprofit
13 association formed under or subject to [Article] 9 or a foreign unincorporated nonprofit
14 association.

15 **Legislative Note:** *If this state uses a term for the public organic record of a particular entity*
16 *different from that set forth in paragraph (35), it should substitute its own term. Some states, for*
17 *example, use the term “articles of organization” for the public organic document of a limited*
18 *liability company and should substitute that term for “certificate of organization” in paragraph*
19 *(35)(D), and, if the state adopts Section 1-212, Alternative A, in Section 1-212(b)(14).*

20 21 **Comment**

22
23 **In general.** The definitions in this section apply generally throughout the act unless a
24 particular term is defined differently in another article.

25
26 Many of the definitions in this section were developed for use in the Model Entity
27 Transactions Act (META). Definitions that are common to this Act and META are:

- 28
29 “domestic” (corresponding to the META term “domestic entity”)
30 “entity”
31 “filing entity”
32 “foreign” (corresponding to the META term “foreign entity”)

1 “governance interest”
2 “governor”
3 “interest”
4 “interest holder”
5 “jurisdiction of formation” (corresponding to the META term “jurisdiction of
6 organization”)
7 “organic law”
8 “organic rules”
9 “person”
10 “private organic rules”
11 “public organic record”
12 “qualified foreign entity”
13 “record”
14 “sign”
15 “transferable interest”
16 “type of entity” (corresponding to the META term “type”)
17

18 The comments below with respect to defined terms taken from META are substantively
19 the same as the corresponding comments in META.
20

21 Other definitions in this Act were developed for use in the Model Registered Agents Act
22 (MARRA). Part 4 of this Act is derived from MARRA and contains definitions of the following
23 MARRA terms:
24

25 “appointment of agent”
26 “nonqualified foreign entity”
27 “nonresident limited liability partnership statement”
28 “registered agent filing”
29

30 “Commercial registered agent” and “noncommercial registered agent” are defined in this Section
31 in part by reference to Part 4.
32

33 **“Commercial registered agent.” [(3)]** – A commercial registered agent is an individual
34 or entity that is in the business of serving as a registered agent in the state and that files a listing
35 statement under Section 1-404. Being listed as a commercial registered agent is voluntary and
36 persons serving as registered agents are not required to be listed under Section 1-405. The
37 benefits to the registered agent of being listed under Section 1-405, however, are substantial and
38 most registered agents will elect to be so listed. Although this definition and Section 1-405 do
39 not expressly require that a foreign entity that is listed as a commercial registered agent be
40 qualified to do business in the state, the activity of serving as a registered agent is one that
41 requires such registration.
42

43 **“Domestic.” [(5)]** – The term “domestic”, with respect to an entity, means in this Act an
44 entity whose internal affairs are governed by the organic laws of the adopting state. Except in
45 the case of general partnerships and unincorporated nonprofit associations, this will mean an
46 entity that is formed, organized, or incorporated under domestic law. In the case of a general

1 partnership organized under the Uniform Partnership Act (1997) (RUPA), it will mean a general
2 partnership whose governing law under RUPA § 106 is the law of the adopting state. Under
3 RUPA § 106 the governing law is determined by the location of the partnership’s chief executive
4 office, except for limited liability partnerships where the governing law is the state where the
5 statement of qualification is filed. It is a factual question whether the activities and organization
6 of an unincorporated nonprofit association make it a domestic or foreign entity.
7

8 This definition is patterned after Model Entity Transactions Act § 102(8) (“domestic
9 entity”), a term which is also defined in Model Registered Agents Act § 2(3).
10

11 **“Entity.” [(7)]** – This definition determines the overall scope of the Act.
12

13 This definition is intended to include all forms of private organizations, regardless of
14 whether organized for profit, and artificial legal persons other than those excluded by paragraphs
15 (B)(i)-(vi). Thus, this definition is broader than the definition of “business entity” in, e.g., Code
16 of Ala. § 10-15-2(2) which does not include nonprofit entities. This definition does not exclude
17 regulated entities such as public utilities, banks and insurance companies.
18

19 Inter vivos and testamentary trusts are treated in many states as having a separate legal
20 existence, but they have been excluded from the definition of “entity.” Trusts that carry on a
21 business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust,
22 or other common law or statutory business trusts are “entities.”
23

24 Section 6 of the Uniform Unincorporated Nonprofit Association Act (2008) gives an
25 unincorporated nonprofit association the power to acquire an estate in real property and thus an
26 unincorporated nonprofit association organized in a state that has adopted that act will be an
27 “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did
28 not have the power to acquire real property. Most states that have not adopted the Uniform Act
29 have nonetheless modified the common law rule, but states that have not adopted the Uniform
30 Act should analyze whether they should modify the definition of “entity” to add an express
31 reference to unincorporated nonprofit associations.
32

33 There is some question as to whether a partnership subject to the Uniform Partnership
34 Act (1914) (UPA) is an entity or merely an aggregation of its partners. That question has been
35 resolved by Section 201 of the Uniform Partnership Act (1997) (RUPA), which makes clear that
36 a general partnership is an entity with its own separate legal existence. Section 8 of UPA gives
37 partnerships subject to it the power to acquire estates in real property and thus such a partnership
38 will be an “entity.” As a result, all general partnerships will be “entities” regardless of whether
39 the state in which they are organized has adopted RUPA.
40

41 Paragraph (B) (i) of this definition excludes a sole proprietorship from the concept of
42 “entity.”
43

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

1
2 In determining whether a partnership is formed, the following rules apply:

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

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

9
10 A virtually identical provision appears in UPA § 7(3)-(4).

11
12 Limited liability partnerships and limited liability limited partnerships are “entities”
13 because they are general partnerships and limited partnerships, respectively, that have made the
14 additional required election claiming LLP or LLLP status. A limited liability partnership is not,
15 therefore, a separate type of entity from the underlying general or limited partnership that has
16 elected limited liability partnership status.

17
18 **“Filing entity.” [(10)]** – Whether an entity is a filing entity is determined by reference to
19 whether its legal existence is attributable to the filing of a record with the state filing officer.
20 While the statute refers to an entity that is “formed,” it is intended to encompass corporations
21 which are “incorporated” and limited liability companies which are “organized” as well as
22 entities such as limited partnerships which are “formed” by a filing required by the organic law
23 governing the entity. Business trusts (sometimes referred to as “statutory trusts”) present a
24 special problem. In some states a business trust is a filing entity, while in other states business
25 trusts are recognized only by common law. Under section 201(a) of the 2007 NCCUSL Annual
26 Meeting Draft of the proposed Uniform Statutory Trust Entity Act, a statutory trust entity formed
27 under that act would be formed by delivery of a certificate of trust to the appropriate filing
28 officer, and would be a filing entity.

29
30 The term does not include a limited liability partnership because an election filed by a
31 general partnership claiming that status (*e.g.*, a statement of qualification under Uniform
32 Partnership Act (1997), § 1001) does not create the entity. A limited liability limited partnership,
33 on the other hand, is a filing entity because the underlying limited partnership is created by filing
34 a certificate of limited partnership.

35
36 This definition is patterned after Model Entity Transactions Act § 102(13) (“filing
37 entity”). A similar definition appears in Model Registered Agents Act § 2(5). See also Model
38 Business Corporation Act § 1.40(9B) (“filing entity”).

39
40 **“Foreign.” [(11)]** – The term “foreign,” with respect to an entity, includes any non-
41 domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by
42 the laws of the state of filing. A nonfiling foreign entity is governed by the laws of the state
43 governing its internal affairs. It is a factual question whether a general partnership whose
44 internal affairs are governed by the Uniform Partnership Act (1914) (UPA) is a domestic or
45 foreign partnership. A UPA partnership will likely be deemed to be a domestic entity where the
46 greatest nexus of contacts are found. Similar issues arise with respect to determining the

1 domestic or foreign status of unincorporated nonprofit associations. The domestic or foreign
2 characterization of partnerships under the Uniform Partnership Act (1997) (RUPA) that have not
3 registered as limited liability partnerships will be governed by RUPA § 106(a) (“state where the
4 partnership’s chief executive office is located”).

5
6 This definition is patterned after Model Entity Transactions Act § 102(14) (“foreign
7 entity”). The same definition is found in Model Registered Agents Act § 2(6).

8
9 **“Governance interest.” [(14)]** – A governance interest is typically only part of the
10 interest that a person will hold in an entity and is usually coupled with a transferable interest (or
11 economic rights). However, memberships in some nonprofit corporations and unincorporated
12 nonprofit associations consist solely of governance interests and memberships in other nonprofit
13 entities may not include either governance interests or transferable interests. In some
14 unincorporated business entities, there is a more limited right to transfer governance interests
15 than there is to transfer transferable interests. An interest holder in such an unincorporated
16 business entity who transfers only a transferable interest and retains the governance interest will
17 also retain the status of an interest holder. Whether a transferee who acquires only a transferable
18 interest will acquire the status of an interest holder is determined by the definition of “interest
19 holder.”

20
21 Shares in a business corporation that are nonvoting nonetheless have a governance
22 interest because they entitle the holder to certain rights of access to information and to certain
23 statutory voting rights on amendments of the articles of incorporation.

24
25 Governors of an entity have the kinds of rights listed in the definition of “governance
26 interest” by reason of their position with the entity. For a governor to have a “governance
27 interest,” however, requires that the governor also have those rights for a reason other than the
28 governor’s status as such. A manager who is not a member in a limited liability company, for
29 example, will not have a governance interest, but a manager who is a member will have a
30 governance interest arising from the ownership of a membership interest.

31
32 This definition is patterned after Model Entity Transactions Act § 102(15) and Model
33 Registered Agents Act § 2(8) (“governance interest”).

34
35 **“Governor.” [(15)]** – This term has been chosen to provide a way of referring to a
36 person who has the authority under an entity’s organic law to make management decisions
37 regarding the entity that is different from any of the existing terms used in connection with
38 particular types of entities. *Compare* Colo. § 7-90-102(35.7) which uses the term “manager” to
39 refer to this concept, even though “manager” is also a term of art in connection with limited
40 liability companies. Depending on the type of entity or its organic rules, the governors of an
41 entity may have the power to act on their own authority, or they may be organized as a board or
42 similar group and only have the power to act collectively, and then only through a designated
43 agent. In other words, a person having only the power to bind the organization pursuant to the
44 instruction of the governors is not a governor. Under the organic rules, particularly those of
45 unincorporated entities, most or all of the management decisions may be reserved to the
46 members or partners. Thus, if a manager of a limited liability company were limited to having

1 authority to execute management decisions made by the members and did not have any authority
2 to make independent management decisions, the manager would not be a governor under this
3 definition.

4
5 Except as described above, the term “governor” includes:

- 6 • Director of a business corporation.
- 7 • Director or trustee of a nonprofit corporation.
- 8 • General partner of a general partnership.
- 9 • General partner of a limited partnership.
- 10 • Manager of a limited liability company.
- 11 • Member of a member-managed limited liability company.
- 12 • [Director of a general cooperative association.]
- 13 • Director of a limited cooperative association
- 14 • Trustee of a statutory trust entity or other statutory or common-law business trust.

15
16 This definition is patterned after Model Entity Transactions Act § 102(16) and Model
17 Registered Agents Act § 2(9) (“governor”).

18
19 **“Interest.” [(16)]** – In the usual case, the interest held by an interest holder will include
20 both a governance interest and a transferable interest (or economic rights). Members in many
21 nonprofit corporations or unincorporated nonprofit associations do not have a transferable
22 interest because they do not receive distributions, but they nonetheless may hold a governance
23 interest in which case they would have the status of interest holders under the Act. An interest
24 holder in an unincorporated business entity may transfer all or part of the interest holder’s
25 transferable interest without the transferee acquiring the governance interest of the transferor. In
26 that case, whether the transferor will retain the status of an interest holder will be determined by
27 the applicable organic law and the transferee will have the status of an interest holder under
28 paragraph (B) of this definition. That paragraph will also apply to subsequent transferees from
29 the original transferee.

30
31 The term “interest” includes:

- 32 • Shares in a business corporation
- 33 • Membership in a nonprofit corporation.
- 34 • Partnership interest in a general partnership
- 35 • Partnership interest in a limited partnership
- 36 • Membership interest in a limited liability company
- 37 • Membership in an unincorporated nonprofit association.
- 38 • [Shares in a general cooperative association.]
- 39 • Membership in a limited cooperative association.
- 40 • Interest in a statutory trust entity or other statutory or common-law trust.
- 41 • Governance interest or transferable interest in any other type of unincorporated
42 entity.

43
44 This definition is patterned after Model Entity Transactions Act § 102(17) and Model
45 Registered Agents Act § 2(10) (“interest”).

1
2 **“Interest holder.” [(17)]** – This Act does not refer to “equity” interests or “equity”
3 owners or holders because the term “equity” could be confusing in the case of a nonprofit entity
4 whose members do not have an interest in the assets or results of operations of the entity but only
5 have a right to vote on its internal affairs. *Compare* Code of Ala. § 10-15-2(4) (“equity owner”).
6

7 The term “interest holder” includes:

- 8 • Shareholder of a business corporation.
- 9 • Member of a nonprofit corporation.
- 10 • General partner of a general partnership.
- 11 • General partner of a limited partnership.
- 12 • Limited partner of a limited partnership.
- 13 • Member of a limited liability company.
- 14 • Member of an unincorporated nonprofit association.
- 15 • [Shareholder of a general cooperative association.]
- 16 • Member of a limited cooperative association
- 17 • Beneficiary of a statutory trust entity or other statutory or common-law business
18 trust.

19
20 This definition is patterned after Model Entity Transactions Act § 102(19) (“interest
21 holder”). See also Model Business Corporation Act § 1.40(13B) (“interest holder”).
22

23 **“Jurisdiction of formation.” [(19)]** – The term “jurisdiction of formation” refers to the
24 jurisdiction whose laws include the organic law of the entity.
25

26 This definition is patterned after Model Entity Transactions Act § 102(21) and Model
27 Registered Agents Act § 2(12) (“jurisdiction of organization”).
28

29 **“Noncommercial registered agent.” [(25)]** – A noncommercial registered agent is a
30 person that serves as an agent for service of process but that is not listed under Section 1-405.
31 All agents for service of process that are not commercial registered agents are noncommercial
32 registered agents.
33

34 This definition is patterned after Model Registered Agents Act § 2(13) (“noncommercial
35 registered agent”).
36

37 **“Organic law.” [(28)]** – Organic law means statutes other than this Act that govern the
38 internal affairs of an entity. Organic law includes the entity specific articles of this Act, but does
39 not include Article 2 based on the Model Business Entity Transaction Act. Entity laws in a few
40 states purport to require that some of their internal governance rules applicable to a domestic
41 entity also apply to a foreign entity with significant ties to the state. *See, e.g.*, Cal. Gen. Corp.
42 Law § 2115, N.Y. N-PCL §§ 1318-1321, 15 Pa.C.S. § 6145. Such a “sticky fingers” law is
43 included within the definition of “organic law” for purposes of the Act.
44

45 This definition is patterned after Model Entity Transactions Act § 102(27) and Model
46 Registered Agents Act § 2(16) (“organic law”). See also Model Business Corporation Act §

1 1.40(15B) (“organic law”).

2
3 **“Organic rules.” [(29)]** – The term “organic rules” means an entity’s public organic
4 document and its private organic rules.

5
6 This definition is patterned after Model Entity Transactions Act § 102(28) and Model
7 Registered Agents Act § 2(17) (“organic rules”).

8
9 **“Person.” [(30)]** – The term “person” has the standard meaning of that term in uniform
10 acts.

11
12 **“Private organic rules.” [(32)]** – The term private “organic rules” is intended to include
13 all governing rules of an entity that are binding on all of its interest holders, whether or not in
14 written form, except for the provisions of the entity’s public organic document, if any. The term
15 is intended to include agreements in “record” form as well as oral partnership agreements and
16 oral operating agreements among LLC members. Where private organic rules have been
17 amended or restated, the term means the private organic rules as last amended or restated.

18
19 The term “private organic rules” includes:

- 20 • Bylaws of a business corporation.
- 21 • Bylaws of a business trust.
- 22 • Bylaws of a statutory trust entity.
- 23 • Bylaws of a nonprofit corporation.
- 24 • Constitution and bylaws of an unincorporated nonprofit association.
- 25 • Operating agreement of a limited liability company.
- 26 • Partnership agreement of a general partnership.
- 27 • Partnership agreement of a limited partnership.

28
29 This definition is patterned after Model Entity Transactions Act § 102(31) and Model
30 Registered Agents Act § 2(19) (“private organic rules”). Compare Model Business Corporation
31 Act § 1.40(17A) (“private organic document”).

32
33 **“Public organic record”. ” [(35)]** – A “public organic record” is a record that is filed
34 publicly to form, organize, incorporate, or otherwise create an entity. The term does not include
35 a statement of partnership authority filed under Section 303 of the Uniform Partnership Act
36 (1997) or any of the other statements that may be filed under that act since those statements do
37 not create a new entity. A limited liability partnership is the same entity as the partnership that
38 files the statement. For the same reason, the term also does not include a statement of
39 qualification filed under Section 1001 of that act to become a limited liability partnership.
40 Similarly, the term does not include a statement of authority filed under Section 5 of the Uniform
41 Unincorporated Nonprofit Association Act or a statement appointing an agent filed under Section
42 10 of that act. Where a public organic record has been amended or restated, the term means the
43 public organic record as last amended or restated.

44
45 The term “public organic record” includes:

- 46 • Articles of incorporation of a business corporation.

- Articles of incorporation of a nonprofit corporation.
- Certificate of limited partnership.
- Certificate of organization of a limited liability company.
- [Articles of incorporation of a general cooperative association.]
- Articles of organization of a limited cooperative association.
- Certificate of trust of a statutory trust entity.

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

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

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

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

“Receipt.” [37] – Section 15 of the Uniform Electronic Transactions Act, which provides rules as to when an electronic record is sent and received, applies to electronic records under this Act.

“Record.” [(38)] – The term “record” has the standard meaning of that term in uniform acts.

“Registered agent.” [(39)] – This term is used in the Act to refer to agents for service of process in contexts where it is not necessary to differentiate between commercial registered agents and noncommercial registered agents.

The definition is patterned after Model Registered Agents Act § 2(23).

“Sign.” [(40)] – The term “sign” has the standard meaning of that term in uniform acts.

“Transferable interest.” [(44)] – The term “transferable interest” is taken from Section 102(22) of the Uniform Limited Partnership Act (2001).

This definition is patterned after Model Entity Transactions Act § 102(38) (“transferable interest”).

“Type of entity.” [(45)] – The term “type of entity” has been developed in an attempt to distinguish different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a different form of entity or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of entity from a

1 general partnership, while a limited liability partnership is not a different type of entity from a
2 general partnership. In some states cooperative corporations are categories of business
3 corporations or nonprofit corporations, while in other states cooperatives are a separate type of
4 entity.

5
6 This definition is patterned after Model Entity Transactions Act § 102(39) (“type”).

7
8 **SECTION 1-103. APPLICABILITY OF ARTICLE.** This [article] applies to an entity
9 formed under or subject to this [act].

10 **SECTION 1-104. DELIVERY OF RECORD.**

11 (a) Except as otherwise provided in this [act], permissible means of delivery of a record
12 include delivery by hand, mail by the United States Postal Service, commercial delivery, and
13 electronic transmission.

14 (b) Delivery to the [Secretary of State] is effective only when the record is received by
15 the [Secretary of State].

16 **Comment**

17 The first sentence of this section is derived from the definition of “deliver” in section
18 1.40(5) of the Revised Model Business Corporation Act. Delivery to the Secretary of State is
19 effective only upon actual receipt. The effectiveness of records delivered other than to the
20 Secretary of State will be controlled by provisions in other articles of this [act] and may vary
21 depending on the type of entity to which the records relate and manner in which the records are
22 delivered.

23
24 **SECTION 1-105. RULES AND PROCEDURES.** The [Secretary of State] may adopt
25 rules in accordance with [this state’s administrative procedure act] and may prescribe procedures
26 that are reasonably necessary to perform the duties required of the [Secretary of State] under this
27 [act].

28 **[SECTION 1-106. ENTITIES EXCLUDED.** This [act] does not apply to the
29 following entities:

30 (1) _____;

1 (2)_____;

2 (3)_____.]

3 *Legislative Note: List any specific types of entities excluded from this act.*

4 **[PART] 2**

5 **FILING**

6 **SECTION 1-201. ENTITY FILING REQUIREMENTS.**

7 (a) To be filed by the [Secretary of State] pursuant to this [article], an entity filing must
8 be received by the office of the [Secretary of State] and must comply with this [act] and satisfy
9 the following requirements:

10 (1) The entity filing must be required or permitted by this [act].

11 (2) The entity filing must be physically delivered in written form unless the
12 [Secretary of State] adopts rules permitting electronic delivery of records in other than written
13 form.

14 (3) The words in the entity filing must be in English, and numbers must be in
15 Arabic or Roman numerals, but the name of the entity need not be in English if written in
16 English letters or Arabic or Roman numerals.

17 (4) The entity filing must be signed by an individual authorized to sign the filing
18 under this [act].

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

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

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

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

7 **Comment**

8 The records filed under this Act are referred to as “entity filings” in order to encompass
9 filings under corporation laws, which are typically referred to as “articles,” and filings under
10 limited partnership and other unincorporated entity laws, which are typically referred to as
11 “certificates.”

12 **1. Form of records.**

13 Section 1-104 provides that delivery of an entity filing to the Secretary of State is
14 effective only upon receipt by the Secretary of State.
15

16 An entity filing must be in typewritten or printed form unless the Secretary of State
17 permits delivery by electronic transmission. The types of electronic transmission that may be
18 used will be determined by the Secretary of State and is intended to include the evolving
19 methods of electronic delivery, including facsimile transmissions, electronic transmissions
20 between computers via modems and filings through delivery of magnetic tapes or computer
21 diskettes. The text of an entity filing must be in the English language (except to the limited
22 extent permitted by subsection (a)(3)).
23

24 The Secretary of State is not authorized to prescribe forms (except to the extent permitted
25 by Section 1-202) and as a result may not reject entity filings on the basis of form (see Section 1-
26 206) if they contain the information called for by the specific statutory requirement and meet the
27 minimal formal requirements of this section.
28

29 **2. Signature.**

30 To be filed a record must be signed by the appropriate person. No specific officer is
31 designated as the appropriate person to sign in the case of a corporation. Similarly, an
32 unincorporated entity is given the authority to designate the person to sign on its behalf. See
33 Section 1-102 for a description of the manner in which a record may be “signed.”
34

35 The requirement in some state statutes that entity filings must be acknowledged or
36 verified as a condition for filing has been eliminated. These requirements serve little purpose in
37
38
39

1 connection with entity filings filed under organic laws. On the other hand, many organizations,
2 like lenders or title companies, may desire that specific records include acknowledgements,
3 verifications, or seals; subsection (a)(4) does not prohibit the addition of these forms of
4 execution and their use is not intended to affect the eligibility of the record for filing.
5

6 **3. Contents.**

7

8 A record must be filed by the Secretary of State if it contains the information required by
9 this Act.- In view of the very limited discretion granted to Secretaries of State under this section
10 and, Section 1-206(a) which defines the Secretary of State’s role as “ministerial,” Section 1-
11 206(d)(3) provides that no inference or presumption arises from the fact that the Secretary of
12 State accepted a document for filing. See the Comments to Sections 1-206 and 1-208.
13

14 **SECTION 1-202. FORMS.**

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

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

20 **Comment**

21 As described in the Comments to Section 1-201, records are entitled to filing if they meet
22 the substantive and formal requirements of this Act. In these circumstances it is not appropriate
23 to vest the Secretary of State with general authority to establish mandatory forms for use under
24 the Act. This section authorizes (but does not require) the Secretary of State to prepare forms
25 suitable for filing under the Act. However, the use of these forms is permissive and cannot be
26 required by the Secretary of State. The Secretary of State is authorized to prescribe forms for
27 [annual] [biennial] reports, however, and for cover sheets for entity filings.
28

29 **SECTION 1-203. EFFECTIVE TIME AND DATE.** Except as otherwise provided in
30 Section 1-204 and subject to Section 1-205(c), an entity filing is effective:

31 (1) on the date and at the time of its filing by the [Secretary of State];

32 (2) on the date of filing and at the time specified in the entity filing as its effective time, if
33 later than the time under paragraph (1);

34 (3) if permitted by this [act], at a specified delayed effective time and date, which may

1 not be more than 90 days after the date of filing; or

2 (4) if a delayed effective date as permitted by this [act] is specified, but no time is
3 specified, at 12:01 a.m. on the date specified.

4 **Comment**

5 Records accepted for filing become effective at the date and time of filing, or at another
6 specified time on that date, unless a delayed effective date is selected.

7
8 Section 1-206(b) requires Secretaries of State to maintain some means of recording the
9 date and time of delivery of an entity filing, and that the recording of that date and time
10 constitutes filing. That provision gives express statutory authority to the common practice of
11 most Secretaries of State of ignoring processing time and treating a record as filed as of the date
12 and time it is delivered for filing even though it may not be reviewed and accepted for filing until
13 several days after delivery. That section contemplates that time of delivery, as well as the date,
14 will be routinely recorded.

15
16 Under paragraph (1) of this section, in the absence of provision for a delayed effective
17 date, an entity filing becomes effective on the date and time of filing by the Secretary of State.
18 Since under 1-206(b), the date and time of filing is the recorded date and time of delivery of the
19 entity filing, together these provisions eliminate any doubt about situations involving same-day
20 transactions in which a record, for example, a statement of merger, if delivered for filing on the
21 morning of the day the merger is to become effective.

22
23 Paragraph (3) does not authorize or contemplate the retroactive establishment of an
24 effective date before the date of filing.

25
26 **SECTION 1-204. WITHDRAWAL OF FILED RECORD BEFORE**
27 **EFFECTIVENESS.**

28 (a) The parties to a filed record may withdraw the record before it takes effect.

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

31 (c) A statement of withdrawal must:

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

34 (2) identify the filed record to be withdrawn, the date of its filing, and the parties

1 to it; and

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

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

6 **Comment**

7
8 This provision is considerably broader in scope than section 11.08 of the Revised Model
9 Business Corporation Act (“Abandonment of Merger or Share Exchange”), on which it is
10 patterned.

11

12

13 **SECTION 1-205. CORRECTING FILED RECORD.**

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

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

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

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

20 (b) To correct a filed record, the parties to the record must deliver to the [Secretary of
21 State] a statement of correction.

22 (c) A statement of correction must:

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

24 (2) identify the filed record to be corrected or have attached a copy and state the
25 date of its filing;

26 (3) specify the inaccuracy or defect to be corrected; and

27 (4) correct the inaccuracy or defect.

1 (d) A statement of correction is effective as of the effective date of the filed record that it
2 corrects except as to persons relying on the uncorrected filed record and adversely affected by
3 the correction. As to those persons, the statement of correction is effective when filed.

4 **Comment**
5

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

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

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

28 **SECTION 1-206. DUTY OF [SECRETARY OF STATE] TO FILE; APPEAL OF**
29 **REFUSAL TO FILE.**

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

33 (b) When the [Secretary of State] files an entity filing, the [Secretary of State] shall
34 record it as filed on the date and time of its delivery. After filing an entity filing, the [Secretary
35 of State] shall deliver to the domestic or foreign entity or its representative a copy of the filing

1 with an acknowledgement of the date and time of filing.

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

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

8 (1) The appeal is commenced by petitioning the court to compel filing of the
9 filing and by attaching to the petition the filing and the explanation of the [Secretary of State] of
10 the refusal to file.

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

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

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

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

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

17 (3) create a presumption that the filing is valid or invalid or that information

18 contained in the filing is correct or incorrect.

19 **Comment**

20 **1. Filing duty in general.**

21 Under this section the Secretary of State is required to file a entity filing if it “satisfies the
22 requirements of Section 1-201.” The purpose of this language is to limit the discretion of the
23 Secretary of State to a ministerial role in reviewing the contents of entity filings. If the entity
24 filing submitted is in the form prescribed and contains the information required by Section 1-201
25 and the applicable provision of this Act, the Secretary of State must file it. Consistently with this
26 approach, subsection (a) states explicitly that the filing duty of the Secretary of State is

1 ministerial and subsection (d) provides that the filing of an entity filing by the Secretary of State
2 does not affect the validity or invalidity of any provision contained in the filing and does not
3 create any presumption with respect to any provision. Persons adversely affected by provisions
4 in an entity filing may test their validity in a proceeding appropriate for that purpose. Similarly,
5 the attorney general of the state may also question the validity of provisions of entity filings filed
6 with the Secretary of State in an independent suit brought for that purpose; in neither case should
7 any presumption or interference be drawn about the validity of the provision from the fact that
8 the Secretary of State accepted the entity filing for filing.
9

10 **2. Mechanics of filing.**

11
12 Subsection (b) provides that when the Secretary of State files an entity filing, the
13 Secretary of State records it as filed on the date and time of delivery to the Secretary of State,
14 retains the original record for the state's records, and delivers a copy of the record to the entity or
15 its representative with an acknowledgement of the date and time of filing. In the case of a record
16 transmitted electronically, delivery may be made by electronic transmission. The copy returned
17 will be the exact or conformed copy if one has been required by the Secretary of State, or will be
18 a copy made by the Secretary of State if an exact or conformed copy was not required. Of course,
19 a person desiring a certified copy of any filed record may obtain it from the office of the
20 Secretary of State by paying the fee prescribed in Section 1-209(b).
21

22 **3. Elimination of certificates and similar records.**

23
24 Subsection (b) provides that acceptance of a filing is evidenced merely by the Secretary
25 of State's delivery of a copy of the entity filing with an acknowledgment of the date and time of
26 filing. The Act does not provide for the Secretary of State to issue a formal certificate of filing.
27 A copy of the filed record together with an acknowledgment of the date and time of filing should
28 sufficiently indicate that the entity filing has been accepted for filing.
29

30 **4. Rejection of document by Secretary of State.**

31
32 Because of the simplification of formal filing requirements and the limited discretion
33 granted to the Secretary of State by this Act, it is probable that rejection of entity filings will
34 occur only rarely. Subsection (c) provides that if the Secretary of State does reject an entity
35 filing, the Secretary of State must return it to the entity or its representative within five days
36 together with a brief written explanation of the reason for rejection. In the case of an entity filing
37 delivered by electronic transmission, rejection of the filing may be made electronically by the
38 Secretary of State or by a mailing to the entity.
39

40 **SECTION 1-207. EVIDENTIARY EFFECT OF COPY OF FILED RECORD. A**

41 certification from the [Secretary of State] accompanying a copy of a filed record is conclusive
42 evidence that the copy is an accurate representation of the original record on file with the
43 [Secretary of State].

1 **Comment**

2 This section is patterned on Revised Model Business Corporation Act section 1.27.
3

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

5 (a) On request of any person, the [Secretary of State] shall issue a certificate of good
6 standing for a domestic filing entity or a certificate of registration for a qualified foreign entity.

7 (b) A certificate under subsection (a) must set forth:

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

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

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

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

16 (B) nonpayment affects the good standing or registration of the domestic
17 or foreign entity;

18 (4) that the entity's most recent [annual] [biennial] report required by Section 1-
19 211 has been delivered for filing to the [Secretary of State];

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

21 (6) other facts of record pertaining to the entity in the office of the [Secretary of
22 State] that the person requesting the certificate may reasonably request.

23 (c) Subject to any qualification stated in the certificate, a certificate issued by the
24 [Secretary of State] under subsection (a) may be relied upon as conclusive evidence that the

1 domestic filing entity is in existence or the qualified foreign entity is registered to do business in
2 this state.

3 **Comment**

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

9
10 **SECTION 1-209. SIGNING CONSTITUTES AFFIRMATION.** Signing an entity

11 filing is an affirmation under the penalties of perjury that the facts stated in the filing are true in
12 all material respects.

13 **Comment**

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

18
19 **SECTION 1-210. DELIVERY BY [SECRETARY OF STATE].** Except as otherwise

20 provided by Section 1-602 or by law other than this [act], the [Secretary of State] may deliver
21 any record to a person by delivering it to the person that submitted it, to the address of the
22 person’s registered agent, to the principal office address of the person, or to another address the
23 person provides to the [Secretary of State] for delivery.

24 **Comment**

25 This section recognizes the various methods by which the Secretary of State may deliver
26 a record.
27

1 copy of any filed record:

2 (1) \$ [] per page for copying; and

3 (2) \$ [] for the certification.

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

6 (1) Statement of merger, \$ [].

7 (2) Statement of withdrawal of merger, \$ [].

8 (3) Statement of interest exchange, \$ [].

9 (4) Statement of withdrawal of interest exchange, \$ [].

10 (5) Statement of conversion, \$ [].

11 (6) Statement of withdrawal of conversion, \$ [].

12 (7) Statement of domestication, \$ [].

13 (8) Statement of withdrawal of domestication, \$ [].

14 (9) [Annual] [Biennial] report, \$ [].

15 (10) Articles of incorporation of a business corporation, \$ [].

16 (11) Articles of incorporation of a nonprofit corporation, \$ [].

17 (12) Statement of qualification of a limited liability partnership, \$ [].

18 (13) Certificate of limited partnership of a limited partnership, \$ [].

19 (14) Certificate of organization of a limited liability company, \$ [].

20 [(15) Articles of incorporation of a general cooperative association, \$ [].]

21 (16) Articles of organization of a limited cooperative association, \$ [].

22 (17) Certificate of trust of a statutory trust, \$ [].

23 (18) Other public organic document, \$ [].

- 1 (19) Commercial-registered-agent listing statement, \$ [].
- 2 (20) Commercial-registered-agent termination statement, \$ [].
- 3 (21) Registered agent statement of change, \$ [].
- 4 (22) Registered agent statement of resignation, no fee
- 5 (23) Statement appointing an agent for service of process, \$ [].
- 6 (24) Foreign entity registration statement, \$ [].
- 7 (25) Amendment of foreign entity registration statement, \$ [].
- 8 (26) Notice of cancellation of foreign entity registration statement, \$ [].
- 9 [(27) Other entity filings, \$ [].]

10 (c) The withdrawal under Section 1-204 of a filed record before it is effective or the
11 correction of a filed record under Section 1-205 does not entitle the person on whose behalf the
12 record was filed to a refund of the filing fee.

13 **Alternative B**

14 (a) The [Secretary of State] shall adopt rules in accordance with [this state’s
15 administrative procedure act] setting fees for entity filings authorized to be delivered to the
16 [Secretary of State] for filing under this [act] and for copying and certifying a copy of any entity
17 filing under this [act].

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

19 (c) The withdrawal under Section 1-204 of a filed record before it is effective or the
20 correction of a filed record under Section 1-205 does not entitle the person on whose behalf the
21 record was filed to a refund of the filing fee.]

22 **End of Alternatives**

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

1 *Alternative B.*

2
3 **Comment**

4
5 This section establishes the filing fees for all documents that may be filed under the Act.
6 The dollar amounts for each document should be inserted by each state as it adopts the Act.
7

8 Subsection (b) establishes standard fees for copying filed documents and certifying that
9 the copies are true copies. The dollar amounts for these services should be conformed to the fees
10 charged for similar services under other provisions of law.
11

12 **[PART] 3**

13 **NAME OF ENTITY**

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

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

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

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

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

23 (4) name that is registered under Section 1-304; or

24 (5) assumed name registered under [this state's assumed name statute].

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

29 (a).

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

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

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

15 *Legislative Note: In subsection (e), add specific words that this state does not permit an entity to*
16 *use as part of its name, such as “bank”, “banking”, “credit union”, “insurance”, or words of*
17 *similar import, without approval by the appropriate state agency.*

18 **Comment**

19
20
21 This section adopts the “distinguishable on the records” test for availability of an entity
22 name and rejects the “deceptively similar” test widely used in the past.. The section is patterned
23 on Revised Model Business Corporation Act section 4.01.

24 **SECTION 1-302. NAME REQUIREMENTS FOR CERTAIN TYPES OF** 25 26 **ENTITIES.**

27 (a) The name of a business corporation must contain the word "corporation",
28 "incorporated", “company”, or “limited”, or the abbreviation “Corp.”, “Inc.”, “Co.”, or “Ltd.”, or

1 words or abbreviations of similar import in another language.

2 (b) The name of a limited partnership may contain the name of any partner. If the limited
3 partnership is not a limited liability limited partnership, the name must contain the phrase
4 “limited partnership” or the abbreviation “L.P.” or “LP” and may not contain the phrase “limited
5 liability limited partnership” or “registered limited liability partnership” or the abbreviation
6 “L.L.L.P.” or “LLLP”. If the limited partnership is a limited liability limited partnership, the
7 name must contain the phrase “limited liability limited partnership” or the abbreviation
8 “L.L.L.P.” or “LLLP” and may not contain the abbreviation “L.P.” or “LP”.

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

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

15 (e) The name of a limited cooperative association must contain the words “limited
16 cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA”.
17 “Limited” may be abbreviated as “Ltd.”. “Cooperative” may be abbreviated as “Co-op.”,
18 “Coop.”, “Co-op”, or “Coop”. “Association” may be abbreviated as “Assoc.”, “Assoc”, “Assn.”,
19 or “Assn”.

20 (f) The name of a statutory trust may contain the words “company”, “association”,
21 “club”, “foundation”, “fund”, “institute”, “society”, “union”, “syndicate”, “limited”, or “trust”,
22 or words of similar import, and may contain the name of a beneficial owner, a trustee, or any
23 other person.

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

3 **Comment**

4 **1. Corporations.**

5
6 Subsection (a) is drawn from Model Business Corporation Act, section 4.01(a). The
7 Model Nonprofit Corporation Act does not require the name of a nonprofit corporation to include
8 a corporate designator.

9 10 **2. Limited Partnerships.**

11
12 Subsection (b)(1)) is drawn from Uniform Limited Partnership Act (2001), section
13 108(a)-(c). Predecessor law, Revised Uniform Limited Partnership Act (RULPA) (1985)
14 Section 102, prohibited the use of a limited partner’s name in the name of a limited partnership
15 except in unusual circumstances. That approach derived from the 1916 Uniform Limited
16 Partnership Act and has become antiquated. In 1916, most business organizations were either
17 unshielded (*e.g.*, general partnerships) or partially shielded (*e.g.*, limited partnerships), and it was
18 reasonable for third parties to believe that an individual whose own name appeared in the name
19 of a business would “stand behind” the business. Today most businesses have a full shield (*e.g.*,
20 corporations, limited liability companies, most limited liability partnerships), and corporate, LLC
21 and LLP statutes generally pose no barrier to the use of an owner’s name in the name of the
22 entity. This Code eliminates the restriction of RULPA(1985) restriction and puts limited
23 partnerships on equal footing with these other “shielded” entities.

24 25 **3. Limited Liability Partnerships.**

26
27 This section is drawn from Uniform Partnership Act (1997) (RUPA), section 1002.

28 29 **4. Limited Liability Companies.**

30
31 Subsection (c) is drawn from Revised Uniform Limited Liability Company Act (2006),
32 section 108(a).

33 34 **5. Limited Cooperative Associations.**

35
36 This section is drawn from section 109(b) of the 2007 Final Draft of the Uniform Limited
37 Cooperative Association Act.

38 39 **6. Statutory Trusts.**

40
41 This section is drawn from the 2008 Draft of the Uniform Statutory Trust Act, section
42 207(b). The drafting committee comments indicate that it considered, but opted not to require, a
43 traditional limited liability appellation. Such a requirement would be inconsistent with current

1 practice under the Delaware Act. For example, the names of mutual funds typically do not
2 contain a limited liability appellation, though Section 35(d) of the Investment Company Act of
3 1940, which is applicable to a statutory trust that is a registered investment company, prohibits
4 “materially deceptive or misleading” names. 15 U.S.C. §80a-34(d). See also Rule 35d-1, 17
5 C.F.R. §270.35d-1 (listing types of names that have been deemed “materially deceptive or
6 misleading”).

7
8 **SECTION 1-303. RESERVATION OF NAME.**

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

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

17 **Comment**

18 This section is patterned on Model Business Corporation Act section 4.02. It should be
19 noted that the Texas Business Organizations Code, section 5.105, unlike the Model Business
20 Corporation Act provision, allows renewal of reservation of names for successive 120 day
21 periods, by filing an application for renewal during the 30 day period preceding expiration of the
22 reservation.
23

24 **SECTION 1-304. REGISTRATION OF NAME.**

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

29 (b) To register its name or an alternate name required by Section 1-506, a foreign filing

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

5 (c) The registration of a name under this section is effective for [one year] after the date
6 of filing.

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

12 (e) A foreign filing entity or foreign limited liability partnership whose name registration
13 is effective may register as a foreign filing entity or foreign limited liability partnership under the
14 registered name or consent in a signed record to the use of that name by:

15 (1) a domestic filing entity formed under this [act];

16 (2) a limited liability partnership subject to this [act]; or

17 (3) another foreign filing entity or foreign limited liability partnership authorized
18 to do business in this state.

19 **Comment**

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

21

1 [PART] 4

2 REGISTERED AGENT

3 SECTION 1-401. DEFINITIONS. In this [part]:

4 (1) "Appointment of agent" means a statement appointing an agent for service of process
5 filed by a nonqualified foreign entity or domestic nonfiling entity under Section 1-411.

6 (2) "Nonqualified foreign entity" means a foreign entity that is not a qualified foreign
7 entity.

8 (3) "Nonresident limited liability partnership statement" means:

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

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

13 (4) "Registered agent filing" means:

14 (A) the public organic record of a domestic filing entity;

15 (B) a nonresident limited liability partnership statement;

16 (C) a registration statement filed pursuant to Section 1-503; or

17 (D) an appointment of a registered agent.

18 (5) "Represented entity" means:

19 (A) a domestic filing entity;

20 (B) a domestic or qualified foreign limited liability partnership that does not have
21 an office in this state;

22 (C) a qualified foreign entity;

23 (D) a domestic or foreign unincorporated nonprofit association for which an

1 appointment of an agent has been filed;

2 (E) a domestic nonfiling entity for which an appointment of an agent has been
3 filed; or

4 (F) a nonqualified foreign entity for which an appointment of an agent has been
5 filed.

6 **Comment**

7
8 **“Appointment of agent.” [(1)]** – An appointment of agent is an optional filing that may
9 be made by an entity that does not otherwise make a public filing in the state naming an agent for
10 service of process. If a state has not enacted the Uniform Unincorporated Nonprofit Association
11 Act, paragraph (A) of this definition should be omitted.

12
13 **“Nonqualified foreign entity.” [(2)]** – A nonqualified foreign entity is a foreign entity
14 which has not registered with the [Secretary of State] to do business in this state.

15
16 This definition is patterned after Model Entity Transactions Act § 102(26) “nonqualified
17 foreign entity”). See also Model Registered Agents Act § 2(14) (“nonqualified foreign entity”).

18
19 **“Nonresident limited liability partnership statement.” [(3)]** – A nonresident limited
20 liability partnership statement is the filing that is made by a limited liability partnership under
21 Section 1001 of the Uniform Partnership Act (1997).

22
23 This definition is patterned after Model Registered Agents Act § 2(15) (“nonresident
24 limited liability partnership statement”).

25
26 **“Registered agent filing.” [(4)]**– Some states require that filings in addition to those
27 listed in this definition, such as articles of amendment or articles of merger, state the registered
28 agent information of the entity making the filing. In states where that is the case, this definition
29 should be amended to add the following additional provision:

30
31 “(E) any other filing with the [Secretary of State] under an entity’s organic law that
32 must include the information required by Section 1-404(a).”

33
34 **“Represented entity.” [(5)]**– This definition lists the various classes of entities for which
35 registered agents act as agents for service of process.

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

37
38 **REGISTERED AGENT.** The following shall designate and continuously maintain a registered
39 agent in this state:

- 1 (1) a domestic filing entity;
- 2 (2) a qualified foreign entity; and
- 3 (3) a domestic or foreign limited liability partnership that does not maintain a place of
- 4 business in this state.

5 **Comment**

6

7 This section is derived from Texas Business Organizations Code Section 5.201(a). A

8 similar provision appears in the Draft Alabama Business and Nonprofit Entity Code as Section

9 10A-1-5.31. The Model Registered Agents Act, from which this [Part] of this Act is largely

10 drawn, does not contain a provision mandating which entities must designate a registered agent,

11 leaving that to the specific entity statutes. The Texas statute and the Alabama Draft attempt to

12 do that in the “Hub”. This would ultimately entail deletions in the respective entity statutes.

13

14 Like the Texas statute, this section covers domestic and qualified foreign filing entities.

15 It also covers, as does the Alabama Draft, registered limited liability partnerships in the

16 circumstances in which RLLPs are required to maintain an agent for service of process under

17 Uniform Partnership Act (2001) Section 1001 (c)(3) (domestic RLLP) or Section 1102(a)(3)

18 (foreign RLLP), even though those sections do not use the term “registered agent.”

19

20 Notice that the Model Registered Agent does provide for elective designation of a

21 registered agent by domestic nonfiling entities and by nonqualified foreign entities. Model

22 Registered Agent Act Section. 12. Those provisions have been imported into this Act as Section

23 1-410, below.

24

25 **SECTION 1-403. ADDRESSES IN FILINGS.** If a provision of this [part] other than

26 Section 1-410(a)(4) requires that a record state an address, the record must state:

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

29 **Comment**

30 When this Act requires that a filing state an address, the address used must always be a

31 geographic location. Where a person uses a post office box as its mailing address, paragraph (2)

32 requires that the post office box address also be stated.

33

34 This section, and the accompanying Comment, is derived from Model Registered Agent

35 Act Section 4.

36

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

2 (a) A registered agent filing must state:

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

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

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

6 or

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

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

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

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

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

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

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

21
22 **Comment**

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

1 404.

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

8
9 The addresses required by subsection (a) to be stated in a registered agent filing must
10 satisfy the requirements in Section 1-402.

11
12 Subsection (b) avoids the need to include with a registered agent filing a consent of the
13 registered agent to serve as such.

14
15 Subsection (c) creates a procedure that will permit registered agents to determine if they
16 have been named in filings of which they were not aware by periodically consulting the list
17 prepared by the Secretary of State. Subsection (c) requires the registered agents to be listed in
18 alphabetical order to facilitate the use of the list by registered agents and also to indicate the type
19 of filing (e.g., articles of incorporation, certificates of limited partnership, appointments of agents
20 under Section 1-410 of this Act, etc.) in which each registered agent is named. Subsection (c)
21 will not be necessary under the circumstances described in the Legislative Note because
22 registered agents may consult the regular database maintained by the Secretary of State to verify
23 when they have been named as a registered agent.

24
25 Subsection (a) is a generalization of Section 5.01 of the Model Business Corporation Act,
26 Section 114 of the Uniform Limited Partnership Act, and Section 108 of the Uniform Limited
27 Liability Company Act.

28
29 This section and the accompanying Comment is derived from Section 5 of the Model
30 Registered Agents Act.

31
32 **SECTION 1-405. LISTING OF COMMERCIAL REGISTERED AGENT.**

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

36 (1) the name of the individual or the name of the entity, type of entity, and
37 jurisdiction of formation of the entity;

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

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

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

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

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

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

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

20
21 *“(e) The commercial registered agent listing statement must be accompanied by a list in*
22 *alphabetical order of the entities represented by the person. The [Secretary of State] shall note*
23 *the filing of the commercial-registered-agent listing statement in the index of filings maintained*
24 *by the [Secretary of State] for each listed entity. The statement has the effect of deleting the*
25 *address of the registered agent from the registered agent filing of each of those entities.”*

26 27 **Comment**

28
29 This section is a substantial simplification of practice because it removes the need to
30 amend the filed record of every entity represented by a commercial registered agent when the

1 agent changes its address.
2

3 Subsection (a)(3) only permits a commercial registered agent to list one address where
4 service of process and other notices may be sent to entities represented by the agent. This may
5 require a change in practice for registered agents who have previously maintained more than one
6 address in a state and have permitted represented entities to choose which address they would
7 use in their registered agent filings. A corporation, for example, located in one part of a state
8 might include in its articles of incorporation an address for its registered agent which is the
9 address of an office of the agent located close to the corporation and which is different than the
10 address used by a corporation in another part of the state which has the same registered agent but
11 uses a different office of the agent. In the example given, the registered agent will need to pick
12 just one address in the state where all service of process will be sent to it. If a commercial
13 registered agent wishes to maintain more than one office in a state where service of process will
14 be received by it, it can accomplish that result by organizing separate entities to conduct its
15 business in the state and filing separate statements for each entity under this section.
16

17 The address required by subsection (a)(3) to be stated in a commercial registered agent
18 listing statement must satisfy the requirements in Section 1-402 above. .
19

20 Subsection (e) is a transitional provision that deals with the effect on the entities
21 represented by a registered agent at the time the agent is first listed under this section. The effect
22 is to amend the registered agent filing of each such entity to delete the address of the registered
23 agent consistent with Section 1-403(a)(1).
24

25 This section is drawn from Section 6 of the Model Registered Agents Act, which in turn
26 is patterned generally after 15 Pa. Consol. Stat. § 109.
27

28 This section provides a procedure for a commercial registered agent to withdraw from the
29 business of providing registered agent services. Use of the procedure in this section will
30 terminate the status of the registered agent as the agent for service of process of all the entities
31 represented by the agent. Thus, the procedure in this section differs from the procedure in
32 Section 1-409, which permits a registered agent to resign with respect to just a single represented
33 entity instead of resigning generally with respect to all of its represented entities.
34

35 This section and its accompanying comment is derived from Section 7 of the Model
36 Registered Agents Act.
37

38 **SECTION 1-406. TERMINATION OF LISTING OF COMMERCIAL**
39 **REGISTERED AGENT.**

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

1 (1) the name of the agent as listed under Section 1-405; and
2 (2) that the agent is no longer in the business of serving as a commercial
3 registered agent in this state.

4 (b) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the
5 31st day after the day on which it is filed.

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

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

15 **Comment**

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

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

26
27 **SECTION 1-407. CHANGE OF REGISTERED AGENT BY ENTITY.**

28 (a) A represented entity may change the information on file under Section 1-404(a) by
29 delivering to the [Secretary of State] for filing a statement of change signed on behalf of the

1 entity which states:

2 (1) the name of the entity; and

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

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

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

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

9 (c) A statement of change under this section appointing a new registered agent is an
10 affirmation by the represented entity that the agent has consented to serve.

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

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

16 **Comment**

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

24
25 Subsection (c) avoids the need to file with a statement of change a consent of the new
26 registered agent being designated.

27
28 Subsection (e) makes clear that the procedures in this section are not exclusive. A
29 common way in which an entity changes its registered agent or registered office is to include the
30 change in an amendment of its public organic document.
31

1 Subsection (a) is a generalization of Section 5.02(a) of the Model Business Corporation
2 Act, Section 115 of the Uniform Limited Partnership Act, and Section 109 of the Uniform
3 Limited Liability Company Act. As to subsection (c), compare Section 5.02(a)(5) of the Model
4 Business Corporation Act. Subsection (d) is patterned after Section 115(b) of the Uniform
5 Limited Partnership Act.

6
7 This section, and the accompanying comment, is derived from Section 8 of the Model
8 Registered Agents Act.

9
10 **SECTION 1-408. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL**
11 **REGISTERED AGENT.**

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

16 (1) the name of the entity;

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

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

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

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

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

24 **Comment**

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

1
2 An address included in a statement of change must satisfy the requirements in Section 1-
3 402.

4
5 This section is derived from Model Registered Agent Act section 9, which in turn is
6 patterned after 15 Pa. Consol. Stat. § 108.
7

8 **SECTION 1-409. CHANGE OF NAME, ADDRESS, TYPE OF ENTITY, OR**
9 **JURISDICTION OF FORMATION BY COMMERCIAL REGISTERED AGENT.**

10 (a) If a commercial registered agent changes its name, its address as listed under Section
11 1-405(a), its type of entity, or its jurisdiction of formation, the agent shall deliver to the
12 [Secretary of State] for filing a statement of change signed by or on behalf of the agent which
13 states:

14 (1) the name of the agent as listed under Section 1-405(a);

15 (2) if the name of the agent has changed, the new name;

16 (3) if the address of the agent has changed, the new address;

17 (4) if the type of entity has changed, the new type of entity; and

18 (5) if the jurisdiction of formation of the entity has changed, the new jurisdiction
19 of formation.

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

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

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

1 agent and the changes made by the filing.

2 (e) If a commercial registered agent changes its address without filing a statement of
3 change as required by this section, the [Secretary of State] may cancel the listing of the agent
4 under Section 1-405. A cancellation under this subsection has the same effect as a termination
5 under Section 1-406. Promptly after canceling the listing of an agent, the [Secretary of State]
6 shall serve notice in a record in the manner provided in Section 1-412(b) or (c) on:

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

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

12 **Comment**

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

15
16 An address included in a statement of change must satisfy the requirements in Section 1-
17 402.

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

29
30 This section is derived from section 10 of the Model Registered Agents Act, which in
31 turn is patterned after 15 Pa.Consol. Stat. § 109(b).

32

1 against its registered agent for a wrongful termination. Even if a resignation were to violate such
2 a contract, the resignation would still be effective if the provisions of this section are followed.

3
4 Resignation under this section relates only to the entity named in the statement of
5 resignation. Thus, the procedure in this section differs from the procedure in Section 1-405
6 which terminates the status of the agent as agent for all of the entities represented by it.

7
8 The requirements of Section 1-402 with respect to addresses do not apply to subsection
9 (a)(4) because the registered agent may not have all the required information available.

10
11 Subsection (b) delays the effectiveness of a statement of resignation for 31 days to allow
12 the notice of the resignation that must be sent under subsection (c) to reach the represented entity
13 and to allow the represented entity to arrange for a substitute registered agent.

14
15 Subsection (e) makes clear that a registered agent may resign with respect to an entity
16 that is not in good standing and supersedes the contrary administrative practice in some states of
17 refusing to accept any filings with respect to an entity that is not in good standing until the
18 problem with the entity's standing is cured.

19
20 Subsection (a) is a generalization of Section 5.03(a) of the Model Business Corporation
21 Act, Section 116(a) of the Uniform Limited Partnership Act, and Section 110(a) of the Uniform
22 Limited Liability Company Act. Subsection (b) is a generalization of Section 5.03(c) of the
23 Model Business Corporation Act, Section 116(c) of the Uniform Limited Partnership Act, and
24 Section 110(c) of the Uniform Limited Liability Company Act. Subsection (c) is derived from
25 Section 5.03(b) of the Model Business Corporation Act, Section 116(b) of the Uniform Limited
26 Partnership Act, and Section 110(b) of the Uniform Limited Liability Company Act, except that
27 notice under this Act is to be given by the resigning registered agent rather than the Secretary of
28 State.

29
30 This section and the accompanying comment are derived from section 11 of the Model
31 Registered Agents Act.

32
33 **SECTION 1-411. APPOINTMENT OF REGISTERED AGENT BY**
34 **NONQUALIFIED FOREIGN ENTITY OR NONFILING DOMESTIC ENTITY.**

35 (a) A nonqualified foreign entity or a domestic nonfiling entity may deliver to the
36 [Secretary of State] for filing a statement appointing a registered agent signed on behalf of the
37 entity which states:

- 38 (1) the name, type of entity, and jurisdiction of formation of the entity; and
39 (2) the information required by Section 1-404(a).

1 (b) A statement appointing a registered agent takes effect on filing by the [Secretary of
2 State] and is effective for five years after the date of filing unless canceled or terminated earlier.

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

6 (d) A statement appointing a registered agent may not be rejected for filing because the
7 name of the entity filing the statement is not distinguishable on the records of the [Secretary of
8 State] from the name of another entity appearing in those records. The filing of such a statement
9 does not make the name of the entity filing the statement unavailable for use by another entity.

10 (e) An entity that files a statement under subsection (a) appointing a registered agent may
11 cancel the statement by delivering to the [Secretary of State] for filing a statement of cancellation
12 that states the name of the entity and that the entity is canceling its appointment of an agent for
13 service of process in this state. The statement takes effect on filing by the [Secretary of State].

14 (f) A statement appointing a registered agent for a nonqualified foreign entity terminates
15 on the date the entity becomes a qualified foreign entity.

16 **Comment**

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

19
20 This section and the accompanying comment are drawn from Section 12 of the Model
21 Registered Agents Act. Subsection (a), in turn, is patterned after Section 10 of the Uniform
22 Unincorporated Nonprofit Association Act.

23 24 **SECTION 1-412. SERVICE OF PROCESS ON ENTITY.**

25 (a) A represented entity may be served with any process, notice, or demand required or
26 permitted by law by serving its registered agent.

27 (b) If an entity that filed a registered-agent filing with the [Secretary of State] no longer

1 has a registered agent, or if its registered agent cannot with reasonable diligence be served, the
2 entity may be served by registered or certified mail, return receipt requested, or by similar
3 commercial delivery service, addressed to the governors of the entity by name at its principal
4 office in accordance with any applicable judicial rules and procedures. The names of the
5 governors and the address of the principal office may be as shown in the most recent [annual]
6 [biennial] report filed with the [Secretary of State]. Service is effected under this subsection on
7 the earliest of:

8 (1) the date the entity receives the mail or delivery by a similar commercial
9 delivery service;

10 (2) the date shown on the return receipt, if signed on behalf of the entity; or

11 (3) five days after its deposit with the United States Postal Service, or similar
12 commercial delivery service, if correctly addressed and with sufficient postage or payment.

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

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

20 (e) Service of process, notice, or demand may be made by other means under law other
21 than this [act].

22 **Comment**

23
24 This section is derived from Section 13 of the Model Registered Agents Act, without
25 substantive change.

1
2 Subsection (c) provides a means for serving process on an entity that cannot be served
3 under subsection (a) or (b). Some entity organic laws require that service of process in that
4 circumstance be made on the Secretary of State, but that leaves unanswered the question of what
5 the Secretary of State should do with the process. Subsection (c) is patterned after Pa.
6 R.Civ.Proc. 423(3) and 424(2). A similar approach is taken by Fed. R.Civ.Proc. 4(h)(1).
7

8 Subsections (a) and (d) are a generalization of Section 5.04(a) and (c) of the Model
9 Business Corporation Act, Section 117(a) and (f) of the Uniform Limited Partnership Act, and
10 Section 111(a) and (e) of the Uniform Limited Liability Company Act.
11

12 Subsection (b) is a generalization of Section 5.04(b) of the Model Business Corporation
13 Act. Subsection (b) offers three alternative methods for establishing the date service is effected,
14 a date important for determining the time frame in which an entity must respond to the process,
15 notice, or demand served. Under subsection (b)(1), service is effected on the date or receipt by
16 the entity of the mail or commercial delivery. Under subsection (b)(2), service is effected on the
17 date shown on the return receipt, if signed on behalf of the entity. Under subsection (b)(3),
18 service is effected five days after it is deposited with the Postal Service or with a similar
19 commercial delivery service, if correctly addressed and with correct postage or payment. Under
20 the statute service is effective at the earliest of the three listed circumstances. But for the party
21 effecting service there are difficulties of proof under the first two circumstances. Under
22 subsection (b)(1) the exact date of the receipt by the entity of mail or commercial delivery is
23 peculiarly within the knowledge of the entity. Under subsection (b)(2) the return receipt must
24 be signed on behalf of the entity. That requirement is designed to assure that the service is
25 actually received by the entity. The problem is that the signature on the return receipt may not
26 always show unambiguously that the signer was acting for the entity and was authorized to do
27 so. As a practical matter, therefore, parties effecting service under subsection (b) may find it
28 most convenient to rely on subsection (3) and to maintain their own records so that the date of
29 deposit in the mails or with a commercial delivery service can easily be established.
30

31 **SECTION 1-413. DUTIES OF REGISTERED AGENT.** The duties of a registered

32 agent are:

33 (1) to forward to the represented entity at the address most recently supplied to the agent
34 by the entity any process, notice, or demand that is served on the agent;

35 (2) to provide the notices required by this [act] to the entity at the address most recently
36 supplied to the agent by the entity;

37 (3) if the agent is a noncommercial registered agent, to keep current the information
38 required by Section 1-404(a) in the most recent registered agent filing for the entity; and

1 (4) if the agent is a commercial registered agent, to keep current the information listed for
2 it under Section 1-405(a).

3 **Comment**
4

5 This section is limited to prescribing the duties of a registered agent under this Act. An
6 agent may undertake other responsibilities to a represented entity, such as by contract or course
7 of dealing, but those duties will be determined under other law.
8

9 The Delaware General Corporation Law has been amended to add a new Section
10 132(b)(1), 8 Del. Code § 132(b)(1), requiring a registered agent to be generally available in the
11 state to accept service of process. It was not considered necessary to include that provision in the
12 Act because Section 341 provides alternative means of serving process if a registered agent
13 cannot with reasonable diligence be served.
14

15 The Delaware General Corporation has also been amended to require a represented
16 corporation to notify its registered agent when the corporation changes its business address and
17 to permit a registered agent to resign if it is not supplied with current contact information. 8 Del.
18 Code § 132(d). Section 339 of the Act provides registered agents with a broader right to resign
19 than is available under the Delaware amendment.
20

21 This section is derived from Section 14 of the Model Registered Agents Act.
22

23 **SECTION 1-414. JURISDICTION AND VENUE.** The appointment or maintenance
24 in this state of a registered agent does not by itself create the basis for personal jurisdiction over
25 the represented entity in this state. The address of the agent does not determine venue in an
26 action or proceeding involving the entity.

27 **Comment**
28

29 As discussed in the Introduction to the Act, one of the purposes of the Act is to eliminate
30 the registered office address as a means of determining where venue is to be laid in an action
31 involving a represented entity. Consistent with that purpose, this section makes clear that the
32 address of a registered agent does not determine venue. This section may be inconsistent with
33 other law or procedural rules in a state, and thus existing law on venue should be reviewed when
34 this Act is considered for adoption in a state. *Compare Cooper v. Chevron U.S.A., Inc.*, 132
35 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New Mexico statute permitting venue “in the
36 county where the statutory agent designated by the foreign corporation resides”).
37

38 This section is drawn from Section 15 of the Model Registered Agents Act.
39

1 [PART] 5

2 FOREIGN ENTITIES

3 SECTION 1-501. GOVERNING LAW.

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

5 (1) the internal affairs of the entity;

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

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

9 (4) the liability of a series of a statutory trust.

10 (b) A foreign entity is not precluded from registering to do business in this state because
11 of any difference between the laws of the entity's jurisdiction of formation and the laws of this
12 state.

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

16 Comment

17 This section is a generalized version of Uniform Limited Partnership Act (2001) Section
18 901, Revised Uniform Limited Liability Company Act Section 801, Uniform Limited
19 Cooperative Association Act (2007 Draft), Section 1301, and Uniform Statutory Trust Act
20 (2006 Draft), Section 701. The Model Business Corporation Act and the Model NonProfit
21 Corporation Act do not contain an explicit parallel provision.

22
23 SECTION 1-502. REGISTRATION TO DO BUSINESS IN THIS STATE.

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

26 (b) A foreign filing entity or foreign limited liability partnership doing business in this

1 state may not maintain an action or proceeding in this state unless it has registered to do business
2 in this state.

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

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

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

13 **Comment**

14 This section is a generalized version of Uniform Limited Liability Company Act Section
15 808 and parallel provisions of other entity statutes.

16 **SECTION 1-503. FOREIGN REGISTRATION STATEMENT.** To register to do
17 business in this state, a foreign filing entity or foreign limited liability partnership must deliver a
18 foreign registration statement to the [Secretary of State] for filing. The statement must set forth:
19

20 (1) the name of the foreign filing entity or foreign limited liability partnership and, if the
21 name does not comply with Section 1-301, an alternate name adopted pursuant to Section 1-
22 506(a);

23 (2) the type of entity and, if it is a limited partnership, whether it is a limited liability
24 limited partnership;

25 (3) its jurisdiction of formation;

1 (4) the street and mailing address of the principal office of the foreign filing entity or
2 foreign limited liability partnership and, if the laws of its jurisdiction of formation require it to
3 maintain an office in that jurisdiction, the street and mailing address of the office; and

4 (5) the information required by Section 1-404(a).

5 **Comment**

6
7 This section is a generalized version of Uniform Limited Liability Company Act, Section
8 802. Similar provisions are found in Uniform Limited Partnership Act (2001), Section 902, and
9 in Section 702 of the Statutory Trust Entity Act Draft and Section 1302 of the Limited
10 Cooperative Association Draft. Similar requirements are imposed on corporations under Revised
11 Model Business Corporation Act Section 15.03 and Model Nonprofit Corporation Act Section
12 15.03. In all instances other than the Uniform Limited Liability Company Act provision and the
13 Statutory Trust Entity Act Draft, the governors of the entity also be listed, e.g., the general
14 partners of a limited partnership, and the current directors or officers of a corporation, business
15 or nonprofit. This Draft has followed the lead of the Uniform Limited Liability Company Act
16 and the Statutory Trust Entity Draft in omitting this requirement.

17
18 **SECTION 1-504. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.**

19 (a) A foreign entity registered to do business in this state shall deliver to the [Secretary of
20 State] for filing an amendment to its foreign registration statement if there is a change in:

21 (1) the name of the entity;

22 (2) the type of entity, including, if it is a limited partnership, whether the entity
23 became or ceased to be a limited liability limited partnership;

24 (3) the jurisdiction of formation;

25 (4) the address or addresses required by Section 1-503(4); or

26 (5) the information required by Section 1-404(a).

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

29 **Comment**

30 This section is a generalized version of Model Business Corporation Act section 15.04,

1 but with provision for registration rather than obtaining a certificate of authority.

2
3 **SECTION 1-505. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.**

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

6 (1) maintaining, defending, mediating, arbitrating, or settling an action or
7 proceeding;

8 (2) carrying on any activity concerning its internal affairs, including holding
9 meetings of its interest holders or governors;

10 (3) maintaining accounts in financial institutions;

11 (4) maintaining offices or agencies for the transfer, exchange, and registration of
12 interests in the entity or maintaining trustees or depositories with respect to those interests;

13 (5) selling through independent contractors;

14 (6) soliciting or obtaining orders by any means if the orders require acceptance
15 outside this state before they become contracts;

16 (7) creating or acquiring indebtedness, mortgages, or security interests in
17 property;

18 (8) securing or collecting debts or enforcing mortgages or other security interests
19 in property securing the debts and holding, protecting, or maintaining property;

20 (9) conducting an isolated transaction that is not in the course of similar
21 transactions; and

22 (10) doing business in interstate commerce.

23 (b) This section does not apply in determining the contacts or activities that may subject a
24 foreign filing entity or foreign limited liability partnership to service of process, taxation, or

1 regulation under law of this state other than this [act].

2 **Comment**

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

8
9 **SECTION 1-506. NONCOMPLYING NAME OF FOREIGN ENTITY.**

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

17 (1) the alternate name;

18 (2) its entity name, with the addition of its jurisdiction of formation clearly
19 identified; or

20 (3) an assumed or fictitious name the entity is authorized to use under [this state’s
21 fictitious or assumed name statute].

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

26 **Comment**

27

1 This section is a generalized version of Uniform Limited Liability Company Act Section
2 805, and of the parallel provisions of other entity statutes.

3
4 **SECTION 1-507. WITHDRAWAL OF REGISTRATION OF REGISTERED**
5 **FOREIGN ENTITY.**

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

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

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

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

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

17 (5) an address to which service of process may be made under subsection (b).

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

21 **Comment**

22
23 This section is based on Revised Model Business Corporation Act section 15.20.

24
25 **SECTION 1-508. WITHDRAWAL DEEMED ON CONVERSION TO**
26 **DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.**

27 A qualified foreign entity registered to do business in this state that converts to any type of

1 domestic filing entity or to a domestic registered limited liability partnership is deemed to have
2 withdrawn its registration on the effective date of the conversion.

3 **Comment**

4
5 This section is based on Revised Model Business Corporation Act section 15.21.

6
7 **SECTION 1-509. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO**
8 **NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.**

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

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

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

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

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

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

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

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

25 (b) After the withdrawal under this section of a foreign filing entity that has converted to

1 a foreign nonfiling entity is effective, service of process in any proceeding based on a cause of
2 action arising during the time it was registered to do business in this state may be made pursuant
3 to Section 1-412.

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

8 **Comment**

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

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

11 (a) A foreign filing entity or foreign limited liability partnership registered to do business
12 in this state that merges with or converts to a foreign entity required to register with the
13 [Secretary of State] to do business in this state shall deliver to the [Secretary of State] for filing
14 an application for transfer of registration. The application must set forth:

15 (1) the name of the applicant entity;

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

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

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

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

1 (A) the street and mailing address of the principal office of the entity and,
2 if the law of that entity’s jurisdiction or formation requires it to maintain an office in that
3 jurisdiction, the street and mailing address of that office; and

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

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

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

11 **Comment**

12 This section is patterned after RMBCA section 15.23.

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

14
15
16 (a) The registration of a foreign filing entity or foreign limited liability partnership to do
17 business in this state may be terminated by the [Secretary of State] in the manner provided in
18 subsections (b) and (c) if the entity does not:

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

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

23 (3) have a registered agent as required by Section 1-402.

24 (b) The [Secretary of State] may terminate the registration of a foreign filing entity or
25 foreign limited liability partnership, by filing a notice of termination or noting the termination in

1 the records of the [Secretary of State] and by delivering a copy of the notice or the information in
2 the notation to the entity’s registered agent in this state, or if the entity does not have a registered
3 agent in this state, to the entity’s principal office as designated in Section 1-503(4). The notice
4 must state or the information in the notation must include:

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

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

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

12 **Comment**

13 This section is a generalized version of Uniform Limited Liability Company Act Section
14 806 and parallel provisions of other entity statutes.

15 **[SECTION 1-512. ACTION BY [ATTORNEY GENERAL].** The [Attorney General]
16 may maintain an action to enjoin a foreign filing entity or foreign limited liability partnership
17 from doing business in this state in violation of this [act].]

18 **Comment**

19 This section is a generalized version of Uniform Limited Liability Company Act Section
20 809, and parallel provisions of other entity statutes.

21 **[PART] 6**

22 **ADMINISTRATIVE DISSOLUTION**

23 **SECTION 1-601. GROUNDS.** The [Secretary of State] may commence a proceeding
24 under Section 1-602 to dissolve a domestic filing entity administratively if the entity:
25
26
27
28

1 (1) does not pay any fee, tax, or penalty required to be paid to the [Secretary of State] not
2 later than [six months] after it is due;

3 (2) does not deliver [an annual] [a biennial] report to the [Secretary of State] not later
4 than [six months] after it is due; or

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

6 **Comment**
7

8 This section is modeled on Model Business Corporation Act section 14.20. Note that
9 limited liability partnerships are not filing entities and thus this Part does not apply to them.

10 **SECTION 1-602. PROCEDURE AND EFFECT.**
11

12 (a) If the [Secretary of State] determines that one or more grounds exist under Section 1-
13 601 for dissolving a domestic filing entity, the [Secretary of State] shall serve the entity pursuant
14 to Section 1-412 with notice in a record of the [Secretary of State's] determination.

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

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

26 (d) The administrative dissolution of a domestic filing entity does not terminate the

1 authority of its registered agent.

2 **Comment**

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

4 **SECTION 1-603. REINSTATEMENT.**

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

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

9 (2) the address of the principal office of the entity and the name and address of the
10 registered agent;

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

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

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

17 (c) If the [Secretary of State] determines that the application contains the information
18 required by subsection (a), is satisfied that the information is correct, and determines that all
19 payments required to be made to the [Secretary of State] by subsection (b) have been made, the
20 [Secretary of State] shall cancel the statement of dissolution and prepare a statement of
21 reinstatement that states the [Secretary of State's] determination and the effective date of
22 reinstatement, file the original of the statement, and serve a copy on the entity pursuant to
23 Section 1-412.

1 (d) When reinstatement under this section is effective, it relates back to and takes effect
2 as of the effective date of the administrative dissolution, and the domestic filing entity resumes
3 carrying on its business as if the administrative dissolution had never occurred, except for the
4 rights of a person arising out of an act or omission in reliance on the dissolution before the
5 person knew or had reason to know of the reinstatement.

6 **Comment**

7
8 This section is modeled on Model Business Corporation Act section 14.22.

9
10 **SECTION 1-604. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.**

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

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

16 **Comment**

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

18
19 **[PART] 7**

20 **MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

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	[ARTICLE] 2
	ENTITY TRANSACTIONS
	[ARTICLE] 3
	BUSINESS CORPORATIONS
	[ARTICLE] 4
	NONPROFIT CORPORATIONS
	[ARTICLE] 5
	GENERAL PARTNERSHIPS
	[ARTICLE] 6
	LIMITED PARTNERSHIPS
	[ARTICLE] 7
	LIMITED LIABILITY COMPANIES
	[ARTICLE] 8
	LIMITED COOPERATIVE ASSOCIATIONS
	[ARTICLE] 9
	UNINCORPORATED NONPROFIT ASSOCIATIONS
	[ARTICLE] 10
	STATUTORY TRUST ENTITIES