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The 2019 Florida Statutes

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BUSINESS
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FLORIDA REVISED LIMITED LIABILITY COMPANY
ACT

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TITLE XXXVI

BUSINESS ORGANIZATIONS

CHAPTER 605

FLORIDA REVISED LIMITED LIABILITY COMPANY ACT

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605.0101 Short title.—Sections 605.0101-605.1108 may be cited as the “Florida Revised Limited Liability Company Act.”

History.—s. 2, ch. 2013-180.

605.0102 Definitions.—As used in this chapter, the term:

- (1) “Acquired entity” means the entity that has all of one or more of its classes or series of interests acquired in an interest exchange.
- (2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.
- (3) “Articles of conversion” means the articles of conversion required under s. 605.1045. The term includes the articles of conversion as amended or restated.
- (4) “Articles of domestication” means the articles of domestication required under s. 605.1055. The term includes the articles of domestication as amended or restated.
- (5) “Articles of interest exchange” means the articles of interest exchange required under s. 605.1035. The term includes the articles of interest exchange as amended or restated.
- (6) “Articles of merger” means the articles of merger required under s. 605.1025. The term includes the articles of merger as amended or restated.
- (7) “Articles of organization” means the articles of organization required under s. 605.0201. The term includes the articles of organization as amended or restated.
- (8) “Authorized representative” means:
 - (a) In the case of the formation of a limited liability company, a person authorized by a prospective member of the limited liability company to form the company by executing and filing its articles of

organization with the department.

(b) In the case of an existing limited liability company, with respect to the execution and filing of a record with the department or taking any other action required or authorized under this chapter:

1. A manager of a manager-managed limited liability company who is authorized to do so;
2. A member of a member-managed limited liability company who is authorized to do so; or
3. An agent or officer of the limited liability company who is granted the authority to do so by such a manager or such a member, pursuant to the operating agreement of the limited liability company or pursuant to s. 605.0709.

(c) In the case of a foreign limited liability company or another entity, with respect to the execution and filing of a record with the department or taking any other action required or authorized under this chapter, a person who is authorized to file the record or take the action on behalf of the foreign limited liability company or other entity.

(9) "Business day" means Monday through Friday, excluding any day that a national banking association is not open for normal business transactions.

(10) "Contribution," except in the phrase "right of contribution," means property or a benefit described in s. 605.0402 which is provided by a person to a limited liability company to become a member or which is provided in the person's capacity as a member.

(11) "Conversion" means a transaction authorized under ss. 605.1041-605.1046.

(12) "Converted entity" means the converting entity as it continues in existence after a conversion.

(13) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to s. 605.1043 or the foreign entity that approves a conversion pursuant to the organic law of its jurisdiction of formation.

(14) "Day" means a calendar day.

(15) "Debtor in bankruptcy" means a person who is the subject of:

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

(b) A comparable order under federal, state, or foreign law governing insolvency.

(16) "Department" means the Department of State.

(17) "Distribution" means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person's capacity as a member.

(a) The term includes:

1. A redemption or other purchase by a limited liability company of a transferable interest.
2. A transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or a relinquishment of a right to have access to records or other information concerning the company's activities and affairs.

(b) The term does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(18) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(19) "Domestic," with respect to an entity, means an entity whose jurisdiction of formation is this state.

(20) "Domesticated limited liability company" means the domesticating entity as it continues in existence after a domestication.

(21) "Domesticating entity" means a non-United States entity that approves a domestication pursuant to the law of its jurisdiction of formation.

(22) "Domestication" means a transaction authorized under ss. 605.1051-605.1056.

(23)(a) "Entity" means:

1. A business corporation;

2. A nonprofit corporation;
 3. A general partnership, including a limited liability partnership;
 4. A limited partnership, including a limited liability limited partnership;
 5. A limited liability company;
 6. A real estate investment trust; or
 7. Any other domestic or foreign entity that is organized under an organic law.
- (b) "Entity" does not include:
1. An individual;
 2. A trust with a predominantly donative purpose or a charitable trust;
 3. An association or relationship that is not a partnership solely by reason of s. 620.8202(2) or a similar provision of the law of another jurisdiction;
 4. A decedent's estate; or
 5. A government or a governmental subdivision, agency, or instrumentality.
- (24) "Filing entity" means an entity whose formation requires the filing of a public organic record.
- (25) "Foreign," with respect to an entity, means an entity whose jurisdiction of formation is a jurisdiction other than this state.
- (26) "Foreign limited liability company" means an unincorporated entity that was formed in a jurisdiction other than this state and is denominated by that law as a limited liability company.
- (27) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:
- (a) Receive or demand access to information concerning an entity or its books and records;
 - (b) Vote for or consent to the election of the governors of the entity; or
 - (c) Receive notice of, vote on, or consent to an issue involving the internal affairs of the entity.
- (28) "Governor" means:
- (a) A director of a business corporation;
 - (b) A director or trustee of a nonprofit corporation;
 - (c) A general partner of a general partnership;
 - (d) A general partner of a limited partnership;
 - (e) A manager of a manager-managed limited liability company;
 - (f) A member of a member-managed limited liability company;
 - (g) A director or a trustee of a real estate investment trust; or
 - (h) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
- (29) "Interest" means:
- (a) A share in a business corporation;
 - (b) A membership in a nonprofit corporation;
 - (c) A partnership interest in a general partnership;
 - (d) A partnership interest in a limited partnership;
 - (e) A membership interest in a limited liability company;
 - (f) A share or beneficial interest in a real estate investment trust;
 - (g) A member's interest in a limited cooperative association;
 - (h) A beneficial interest in a statutory trust, business trust, or common law business trust; or
 - (i) A governance interest or distributional interest in another entity.
- (30) "Interest exchange" means a transaction authorized under ss. 605.1031-605.1036.
- (31) "Interest holder" means:
- (a) A shareholder of a business corporation;
 - (b) A member of a nonprofit corporation;

- (c) A general partner of a general partnership;
 - (d) A general partner of a limited partnership;
 - (e) A limited partner of a limited partnership;
 - (f) A member of a limited liability company;
 - (g) A shareholder or beneficial owner of a real estate investment trust;
 - (h) A beneficiary or beneficial owner of a statutory trust, business trust, or common law business trust; or
 - (i) Another direct holder of an interest.
- (32) “Interest holder liability” means:
- (a) Personal liability for a liability of an entity which is imposed on a person:
 - 1. Solely by reason of the status of the person as an interest holder; or
 - 2. By the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.
 - (b) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.
- (33) “Jurisdiction,” if used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.
- (34) “Jurisdiction of formation” means, with respect to an entity:
- (a) The jurisdiction under whose organic law the entity is formed, incorporated, or created or otherwise comes into being; however, for these purposes, if an entity exists under the law of a jurisdiction different from the jurisdiction under which the entity originally was formed, incorporated, or created or otherwise came into being, then the jurisdiction under which the entity then exists is treated as the jurisdiction of formation; or
 - (b) In the case of a limited liability partnership or foreign limited liability partnership, the jurisdiction in which the partnership’s statement of qualification or equivalent document is filed.
- (35) “Legal representative” means, with respect to a natural person, the personal representative, executor, guardian, or conservator or any other person who is empowered by applicable law with the authority to act on behalf of the natural person, and, with respect to a person other than a natural person, a person who is empowered by applicable law with the authority to act on behalf of the person.
- (36) “Limited liability company” or “company,” except in the phrase “foreign limited liability company,” means an entity formed or existing under this chapter or an entity that becomes subject to this chapter pursuant to ss. 605.1001-605.1072.
- (37) “Majority-in-interest” means those members who hold more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company owned by all of its members; however, as used in ss. 605.1001-605.1072, the term means:
- (a) In the case of a limited liability company with only one class or series of members, the holders of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of its members who have the right to approve the merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company; and
 - (b) In the case of a limited liability company having more than one class or series of members, the holders in each class or series of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of the members of that class or series who have the right to approve the merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company, unless the company’s organic rules provide for the approval of the transaction in a different manner.
- (38) “Manager” means a person who, under the operating agreement of a manager-managed limited liability company, is responsible, alone or in concert with others, for performing the management functions stated in ss. 605.0407(3) and 605.04073(2).
- (39) “Manager-managed limited liability company” means a limited liability company that is manager-managed by virtue of the operation of s. 605.0407(1).

- (40) “Member” means a person who:
- (a) Is a member of a limited liability company under s. 605.0401 or was a member in a company when the company became subject to this chapter; and
 - (b) Has not dissociated from the company under s. 605.0602.
- (41) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.
- (42) “Merger” means a transaction authorized under ss. 605.1021-605.1026.
- (43) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.
- (44) “Non-United States entity” means a foreign entity other than an entity with a jurisdiction of formation that is not a state.
- (45) “Operating agreement” means an agreement, whether referred to as an operating agreement or not, which may be oral, implied, in a record, or in any combination thereof, of the members of a limited liability company, including a sole member, concerning the matters described in s. 605.0105(1). The term includes the operating agreement as amended or restated.
- (46) “Organic law” means the law of the jurisdiction in which an entity was formed.
- (47) “Organic rules” means the public organic record and private organic rules of an entity.
- (48) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.
- (49) “Plan” means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication, as appropriate in the particular context.
- (50) “Plan of conversion” means a plan under s. 605.1042 and includes the plan of conversion as amended or restated.
- (51) “Plan of domestication” means a plan under s. 605.1052 and includes the plan of domestication as amended or restated.
- (52) “Plan of interest exchange” means a plan under s. 605.1032 and includes the plan of interest exchange as amended or restated.
- (53) “Plan of merger” means a plan under s. 605.1022 and includes the plan of merger as amended or restated.
- (54) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, regardless of whether the office is located in this state.
- (55) “Private organic rules” means the rules, whether or not in a record, which govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated. The term includes:
- (a) The bylaws of a business corporation.
 - (b) The bylaws of a nonprofit corporation.
 - (c) The partnership agreement of a general partnership.
 - (d) The partnership agreement of a limited partnership.
 - (e) The operating agreement, limited liability company agreement, or similar agreement of a limited liability company.
 - (f) The bylaws, trust instrument, or similar rules of a real estate investment trust.
 - (g) The trust instrument of a statutory trust or similar rules of a business trust or common law business trust.

(56) "Property" means all property, whether real, personal, mixed, tangible, or intangible, or a right or interest therein.

(57) "Protected agreement" means:

- (a) A record evidencing indebtedness and any related agreement in effect on January 1, 2014;
- (b) An agreement that is binding on an entity on January 1, 2014;
- (c) The organic rules of an entity in effect on January 1, 2014; or
- (d) An agreement that is binding on any of the governors or interest holders of an entity on January 1, 2014.

(58) "Public organic record" means a record, the filing of which by a governmental body is required to form an entity, and an amendment to or restatement of that record. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated. The term includes the following:

- (a) The articles of incorporation of a business corporation.
- (b) The articles of incorporation of a nonprofit corporation.
- (c) The certificate of limited partnership of a limited partnership.
- (d) The articles of organization of a limited liability company.
- (e) The articles of incorporation of a general cooperative association or a limited cooperative association.
- (f) The certificate of trust of a statutory trust or similar record of a business trust.
- (g) The articles of incorporation of a real estate investment trust.

(59) "Record," if used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(60) "Registered foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a record filed with the department.

(61) "Registered foreign limited liability company" means a foreign limited liability company that has a certificate of authority to transact business in this state pursuant to a record filed with the department.

(62) "Sign" means, with present intent to authenticate or adopt a record:

- (a) To execute or adopt a tangible symbol; or
- (b) To attach or logically associate an electronic symbol, sound, or process to or with a record, and includes a manual, facsimile, conformed, or electronic signature.

The terms "signed" and "signature" have the corresponding meanings.

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

(64) "Surviving entity" means the entity that continues in existence after or is created by a merger.

(65) "Transfer" includes:

- (a) An assignment.
- (b) A conveyance.
- (c) A sale.
- (d) A lease.
- (e) An encumbrance, including a mortgage or security interest.
- (f) A gift.
- (g) A transfer by operation of law.

(66) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether the person remains a member or continues to own a part of the right. The term applies to any fraction of the interest, by whomever owned.

(67) "Transferee" means a person to which all or part of a transferable interest is transferred, whether or not the transferor is a member. The term includes a person who owns a transferable interest under s. 605.0603(1)(c).

(68) “Type of entity” means a generic form of entity that is:

(a) Recognized at common law; or

(b) Formed under an organic law, whether or not some of the entities formed under that organic law are subject to provisions of that law which create different categories of the form of entity.

(69) “Writing” means printing, typewriting, electronic communication, or other intentional communication that is reducible to a tangible form. The term “written” has the corresponding meaning.

History.—s. 2, ch. 2013-180; s. 20, ch. 2015-148; s. 234, ch. 2019-90.

605.0103 Knowledge; notice.—

(1) A person knows a fact if the person:

(a) Has actual knowledge of the fact; or

(b) Is deemed to know the fact under paragraph (4)(b), or a law other than this chapter.

(2) A person has notice of a fact when the person:

(a) Has reason to know the fact from all of the facts known to the person at the time in question; or

(b) Is deemed to have notice of the fact under paragraph (4)(b).

(3) Subject to s. 605.0210(8), a person notifies another person of a fact by taking steps reasonably required to inform the other person in the ordinary course of events, regardless of whether those steps actually cause the other person to know of the fact.

(4) A person who is not a member is deemed to:

(a) Know of a limitation on authority to transfer real property as provided in s. 605.0302(7); and

(b) Have notice of a limited liability company’s:

1. Dissolution, 90 days after the articles of dissolution filed under s. 605.0707 become effective;

2. Termination, 90 days after a statement of termination filed under s. 605.0709(7) becomes effective;

3. Participation in a merger, interest exchange, conversion, or domestication, 90 days after the articles of merger, articles of interest exchange, articles of conversion, or articles of domestication under s. 605.1025, s. 605.1035, s. 605.1045, or s. 605.1055, respectively, become effective;

4. Declaration in its articles of organization that it is manager-managed in accordance with s. 605.0201(3) (a); however, if such a declaration has been added or changed by an amendment or amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement; and

5. Grant of authority to or limitation imposed on the authority of a person holding a position or having a specified status in a company, or grant of authority to or limitation imposed on the authority of a specific person, if the grant of authority or limitation imposed on the authority is described in the articles of organization in accordance with s. 605.0201(3)(d); however, if that description has been added or changed by an amendment or an amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement. A provision of the articles of organization that limits the authority of a person to transfer real property held in the name of the limited liability company is not notice of such limitation to a person who is not a member or manager of the company, unless such limitation appears in an affidavit, certificate, or other instrument that bears the name of the limited liability company and is recorded in the office for recording transfers of such real property.

History.—s. 2, ch. 2013-180; s. 1, ch. 2015-148.

605.0104 Governing law.—The law of this state governs:

(1) The internal affairs of a limited liability company.

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

History.—s. 2, ch. 2013-180.

605.0105 Operating agreement; scope, function, and limitations.—

(1) Except as otherwise provided in subsections (3) and (4), the operating agreement governs the following:

(a) Relations among the members as members and between the members and the limited liability company.

(b) The rights and duties under this chapter of a person in the capacity of manager.

(c) The activities and affairs of the company and the conduct of those activities and affairs.

(d) The means and conditions for amending the operating agreement.

(2) To the extent the operating agreement does not otherwise provide for a matter described in subsection (1), this chapter governs the matter.

(3) An operating agreement may not do any of the following:

(a) Vary a limited liability company's capacity under s. 605.0109 to sue and be sued in its own name.

(b) Vary the law applicable under s. 605.0104.

(c) Vary the requirement, procedure, or other provision of this chapter pertaining to:

1. Registered agents; or

2. The department, including provisions pertaining to records authorized or required to be delivered to the department for filing under this chapter.

(d) Vary the provisions of s. 605.0204.

(e) Eliminate the duty of loyalty or the duty of care under s. 605.04091, except as otherwise provided in subsection (4).

(f) Eliminate the obligation of good faith and fair dealing under s. 605.04091, but the operating agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.

(g) Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or a knowing violation of law.

(h) Unreasonably restrict the duties and rights stated in s. 605.0410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of a reasonable restriction on use.

(i) Vary the grounds for dissolution specified in s. 605.0702. A deadlock resolution mechanism does not vary the grounds for dissolution for the purposes of this paragraph.

(j) Vary the requirement to wind up the company's business, activities, and affairs as specified in s. 605.0709(1), (2)(a), and (5).

(k) Unreasonably restrict the right of a member to maintain an action under ss. 605.0801-605.0806.

(l) Vary the provisions of s. 605.0804, but the operating agreement may provide that the company may not appoint a special litigation committee. However, the operating agreement may not prevent a court from appointing a special litigation committee.

(m) Vary the right of a member to approve a merger, interest exchange, or conversion under s. 605.1023(1)(b), s. 605.1033(1)(b), or s. 605.1043(1)(b), respectively.

(n) Vary the required contents of plan of merger under s. 605.1022, a plan of interest exchange under s. 605.1032, a plan of conversion under s. 605.1042, or a plan of domestication under s. 605.1052.

(o) Except as otherwise provided in ss. 605.0106 and 605.0107(2), restrict the rights under this chapter of a person other than a member or manager.

(p) Provide for indemnification for a member or manager under s. 605.0408 for any of the following:

1. Conduct involving bad faith, willful or intentional misconduct, or a knowing violation of law.

2. A transaction from which the member or manager derived an improper personal benefit.

3. A circumstance under which the liability provisions of s. 605.0406 are applicable.

4. A breach of duties or obligations under s. 605.04091, taking into account a restriction, an expansion, or an elimination of such duties and obligations provided for in the operating agreement to the extent allowed by subsection (4).

(4) Subject to paragraph (3)(g), without limiting other terms that may be included in an operating agreement, the following rules apply:

(a) The operating agreement may:

1. Specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; or

2. Alter the prohibition stated in s. 605.0405(1)(b) so that the prohibition requires solely that the company's total assets not be less than the sum of its total liabilities.

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

(c) If not manifestly unreasonable, the operating agreement may:

1. Alter or eliminate the aspects of the duty of loyalty under s. 605.04091(2);

2. Identify specific types or categories of activities that do not violate the duty of loyalty;

3. Alter the duty of care, but may not authorize willful or intentional misconduct or a knowing violation of law; and

4. Alter or eliminate any other fiduciary duty.

(5) The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under paragraph (3)(f) or paragraph (4)(c). The court:

(a) Shall make its determination as of the time the challenged term became part of the operating agreement and shall consider only circumstances existing at that time; and

(b) May invalidate the term only if, in light of the purposes, activities, and affairs of the limited liability company, it is readily apparent that:

1. The objective of the term is unreasonable; or

2. The term is an unreasonable means to achieve the provision's objective.

(6) An operating agreement may provide for specific penalties or specified consequences, including those described in s. 605.0403(5), if a member or transferee fails to comply with the terms and conditions of the operating agreement or if other events specified in the operating agreement occur.

History.—s. 2, ch. 2013-180; s. 2, ch. 2015-148; s. 235, ch. 2019-90.

605.0106 Operating agreement; effect on limited liability company and person becoming member; preformation agreement; other matters involving operating agreement.—

(1) A limited liability company is bound by and may enforce the operating agreement, regardless of whether the company has itself manifested assent to the operating agreement.

(2) A person who becomes a member of a limited liability company is deemed to assent to, is bound by, and may enforce the operating agreement, regardless of whether the member executes the operating agreement.

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

(4) A manager of a limited liability company or a transferee is bound by the operating agreement, regardless of whether the manager or transferee has agreed to the operating agreement.

(5) An operating agreement of a limited liability company that has only one member is not unenforceable simply because there is only one person who is a party to the operating agreement.

(6) Except as provided in s. 605.0403(1), an operating agreement is not subject to a statute of frauds.

(7) An operating agreement may provide rights to a person, including a person who is not a party to the operating agreement, to the extent provided in the operating agreement.

(8) A written operating agreement or other record:

(a) May provide that a person be admitted as a member of a limited liability company, become a transferee of a limited liability company interest, or have other rights or powers of a member to the extent assigned:

1. If the person or a representative authorized by that person orally, in writing, or by other action such as payment for a limited liability company interest, executes the operating agreement or another record evidencing the intent of the person to become a member or transferee; or

2. Without the execution of the operating agreement, if the person or a representative authorized by the person orally, in writing, or by other action such as payment for a limited liability company interest complies with the conditions for becoming a member or transferee as provided in the operating agreement or another record; and

(b) Is not unenforceable by reason of its not being signed by a person being admitted as a member or becoming a transferee as provided in paragraph (a), or by reason of its being signed by a representative as provided in this chapter.

History.—s. 2, ch. 2013-180.

605.0107 Operating agreement; effect on third parties and relationship to records effective on behalf of limited liability company.—

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

(2) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. An amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(a) Is effective with regard to a debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

(b) Is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member.

(3) If a record delivered to the department for filing becomes effective under this chapter and contains a provision that would be ineffective under s. 605.0105(3) or (4)(c) if contained in the operating agreement, the provision is ineffective in the record.

(4) Subject to subsection (3), if a record delivered to the department for filing which has become effective under this chapter but conflicts with a provision of the operating agreement:

(a) The operating agreement prevails as to members, dissociated members, transferees, and managers; and

(b) The record prevails as to other persons to the extent the other persons reasonably rely on the record.

History.—s. 2, ch. 2013-180.

605.0108 Nature, purpose, and duration of limited liability company.—

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

(2) A limited liability company may have any lawful purpose, regardless of whether the company is a for-profit company.

(3) A limited liability company has an indefinite duration.

History.—s. 2, ch. 2013-180.

605.0109 Powers.—A limited liability company has the powers, rights, and privileges granted by this chapter, by any other law, or by its operating agreement to do all things necessary or convenient to carry out its activities and affairs, including the power to do all of the following:

- (1) Sue, be sued, and defend in its name.
- (2) Purchase, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located.
- (3) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or a part of its property.
- (4) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of another entity.
- (5) Make contracts or guarantees or incur liabilities; borrow money; issue notes, bonds, or other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company; or make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the purposes, activities, and affairs of the limited liability company.
- (6) Lend money, invest or reinvest its funds, and receive and hold real or personal property as security for repayment.
- (7) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.
- (8) Select managers and appoint officers, directors, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.
- (9) Make donations for the public welfare or for charitable, scientific, or educational purposes.
- (10) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former managers, members, officers, agents, and employees.
- (11) Be a promoter, incorporator, shareholder, partner, member, associate, or manager of a corporation, partnership, joint venture, trust, or other entity.
- (12) Make payments or donations or conduct any other act not inconsistent with applicable law which furthers the business of the limited liability company.
- (13) Enter into interest rate, basis, currency, hedge or other swap agreements, or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or similar agreements.
- (14) Grant, hold, or exercise a power of attorney, including an irrevocable power of attorney.

History.—s. 2, ch. 2013-180; s. 132, ch. 2014-17.

605.0110 Limited liability company property.—

- (1) All property originally contributed to the limited liability company or subsequently acquired by a limited liability company by purchase or other method is limited liability company property.
- (2) Property acquired with limited liability company funds is limited liability company property.
- (3) Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company are valid and binding upon the limited liability company if they are executed in accordance with this chapter.
- (4) A member of a limited liability company has no interest in any specific limited liability company property.

History.—s. 2, ch. 2013-180.

605.0111 Rules of construction and supplemental principles of law.—

- (1) It is the intent of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements, including the purposes of ss. 605.0105-605.0107.
- (2) To the extent that, at law or in equity, a member, manager, or other person has duties, including fiduciary duties, to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by an operating agreement, the duties of the member, manager, or other person may be restricted, expanded, or eliminated, including in the determination of applicable duties and obligations under this chapter, by the operating agreement, to the extent allowed by s. 605.0105.

(3) Unless displaced by particular provisions of this chapter, the principles of law and equity, including the common law principles relating to the fiduciary duties of loyalty and care, supplement this chapter.

History.—s. 2, ch. 2013-180; s. 3, ch. 2015-148.

605.0112 Name.—

(1) The name of a limited liability company:

(a) Must contain the words “limited liability company” or the abbreviation “L.L.C.” or “LLC” as will clearly indicate that it is a limited liability company instead of a natural person, partnership, corporation, or other business entity.

(b) Must be distinguishable in the records of the department from the names of all other entities or filings that are on file with the department, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state; however, a limited liability company may register under a name that is not otherwise distinguishable on the records of the department with the written consent of the other entity if the consent is filed with the department at the time of registration of such name and if such name is not identical to the name of the other entity. A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable:

1. A suffix.
2. A definite or indefinite article.
3. The word “and” and the symbol “&.”
4. The singular, plural, or possessive form of a word.
5. A punctuation mark or a symbol.

(c) May not contain language stating or implying that the limited liability company is organized for a purpose other than a purpose authorized in this chapter and its articles of organization.

(d) May not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

(2) Subject to s. 605.0905, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

(3) In the case of a limited liability company in existence before July 1, 2007, and registered with the department, the requirement in this section that the name of a limited liability company be distinguishable from the names of other entities and filings applies only if the limited liability company files documents on or after July 1, 2007, which would otherwise have affected its name.

(4) A limited liability company in existence before January 1, 2014, which was registered with the department and is using an abbreviation or designation in its name authorized under previous law, may continue using the abbreviation or designation in its name until it dissolves or amends its name in the records of the department.

(5) The name of the limited liability company must be filed with the department for public notice only, and the act of filing alone does not create any presumption of ownership beyond that which is created under the common law.

(6) A limited liability company in existence before January 1, 2020, that has a name that does not clearly indicate that it is a limited liability company instead of a natural person, partnership, corporation, or other business entity may continue using such name until the limited liability company dissolves or amends its name in the records of the department.

History.—s. 2, ch. 2013-180; s. 1, ch. 2014-209; s. 236, ch. 2019-90.

605.01125 Reserved name.—

(1) A person may reserve the exclusive use of the name of a limited liability company, including an alternate name for a foreign limited liability company whose name is not available, by delivering an application to the department for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the department finds that the name of the limited liability company applied for is available, it must reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved name of a limited liability company may transfer the reservation to another person by delivering to the department a signed notice of the transfer that states the name and address of the transferee.

(3) The department may revoke any reservation if, after a hearing, it finds that the application therefor or any transfer thereof was not made in good faith.

History.—s. 237, ch. 2019-90.

605.0113 Registered agent.—

(1) Each limited liability company and each foreign limited liability company that has a certificate of authority under s. 605.0902 shall designate and continuously maintain in this state:

- (a) A registered office, which may be the same as its place of business in this state; and
- (b) A registered agent, who must be:

1. An individual who resides in this state and whose business address is identical to the address of the registered office;

2. Another domestic entity that is an authorized entity and whose business address is identical to the address of the registered office; or

3. A foreign entity authorized to transact business in this state that is an authorized entity and whose business address is identical to the address of the registered office.

(2) Each initial registered agent, and each successor registered agent that is appointed, shall file a statement in writing with the department, in the form and manner prescribed by the department, accepting the appointment as registered agent while simultaneously being designated as the registered agent. The statement of acceptance must provide that the registered agent is familiar with and accepts the obligations of that position.

(3) The duties of a registered agent are as follows:

(a) To forward to the limited liability company or registered foreign limited liability company, at the address most recently supplied to the agent by the company or foreign limited liability company, a process, notice, or demand pertaining to the company or foreign limited liability company which is served on or received by the agent.

(b) If the registered agent resigns, to provide the notice required under s. 605.0115(2) to the company or foreign limited liability company at the address most recently supplied to the agent by the company or foreign limited liability company.

(4) The department shall maintain an accurate record of the registered agent and registered office for service of process and shall promptly furnish information disclosed thereby upon request and payment of the required fee.

(5) A limited liability company and each foreign limited liability company that has a certificate of authority under s. 605.0902 may not prosecute or maintain an action in a court in this state until the limited liability company complies with this section, pays to the department any amounts required under this chapter, and, to the extent ordered by a court of competent jurisdiction, pays to the department a penalty of \$5 for each day it has failed to comply or \$500, whichever is less, and pays any other amounts required under this chapter.

(6) For the purposes of this section, “authorized entity” means:

- (a) A corporation for profit.
- (b) A limited liability company.

- (c) A limited liability partnership.
- (d) A limited partnership, including a limited liability limited partnership.

History.—s. 2, ch. 2013-180; s. 238, ch. 2019-90.

605.0114 Change of registered agent or registered office.—

(1) In order to change its registered agent or registered office address, a limited liability company or a foreign limited liability company may deliver to the department for filing a statement of change containing the following:

- (a) The name of the limited liability company or foreign limited liability company.
- (b) The name of its current registered agent.
- (c) If the current registered agent is to be changed, the name of the new registered agent.
- (d) The street address of its current registered office for its current registered agent.
- (e) If the street address of the current registered office is to be changed, the new street address of the registered office in this state.

(2) If the registered agent is changed, the written acceptance of the successor registered agent described in s. 605.0113(2) must also be included in or attached to the statement of change.

(3) A statement of change is effective when filed by the department or when authorized under s. 605.0207.

(4) The changes described in this section may also be made on the limited liability company's or foreign limited liability company's annual report, in an application for reinstatement filed with the department under s. 605.0715(1), in an amendment to or restatement of a company's articles of organization in accordance with s. 605.0202, or in an amendment to a foreign limited liability company's certificate of authority in accordance with s. 605.0907.

History.—s. 2, ch. 2013-180; s. 239, ch. 2019-90.

605.0115 Resignation of registered agent.—

(1) A registered agent may resign as agent for a limited liability company or foreign limited liability company by delivering for filing to the department a signed statement of resignation containing the name of the limited liability company or foreign limited liability company.

(2) After delivering the statement of resignation to the department for filing, the registered agent must promptly mail a copy to the limited liability company's or foreign limited liability company's current mailing address.

(3) A registered agent is terminated upon the earlier of:

- (a) The 31st day after the department files the statement of resignation; or
- (b) When a statement of change or other record designating a new registered agent is filed by the department.

(4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for a matter thereafter tendered to it as agent for the limited liability company or foreign limited liability company. The resignation does not affect contractual rights that the company or foreign limited liability company has against the agent or that the agent has against the company or foreign limited liability company.

(5) A registered agent may resign from a limited liability company or foreign limited liability company regardless of whether the company or foreign limited liability company has active status.

History.—s. 2, ch. 2013-180; s. 240, ch. 2019-90.

605.0116 Change of name or address by registered agent.—

(1) If a registered agent changes his or her name or address, the agent may deliver to the department for filing a statement of change that provides the following:

- (a) The name of the limited liability company or foreign limited liability company represented by the registered agent.

(b) The name of the registered agent as currently shown in the records of the department for the limited liability company or foreign limited liability company.

(c) If the name of the registered agent has changed, its new name.

(d) If the address of the registered agent has changed, the new address.

(e) A statement that the registered agent has given the notice required under subsection (2).

(2) A registered agent shall promptly furnish notice of the statement of change and the changes made by the statement filed with the department to the represented limited liability company or foreign limited liability company.

History.—s. 2, ch. 2013-180; s. 241, ch. 2019-90.

605.0117 Service of process, notice, or demand.—

(1) A limited liability company or registered foreign limited liability company may be served with process required or authorized by law by serving on its registered agent.

(2) If a limited liability company or registered foreign limited liability company ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process required or permitted by law may instead be served:

(a) On a member of a member-managed limited liability company or registered foreign limited liability company; or

(b) On a manager of a manager-managed limited liability company or registered foreign limited liability company.

(3) If the process cannot be served on a limited liability company or registered foreign limited liability company pursuant to subsection (1) or subsection (2), the process may be served on the secretary of state as an agent of the company.

(4) Service of process on the secretary of state may be made by delivering to and leaving with the department duplicate copies of the process.

(5) Service is effectuated under subsection (3) on the date shown as received by the department.

(6) The department shall keep a record of each process served pursuant to this section and record the time of and the action taken regarding the service.

(7) Any notice or demand on a limited liability company or registered foreign limited liability company under this chapter may be given or made to any member of a member-managed limited liability company or registered foreign limited liability company or to any manager of a manager-managed limited liability company or registered foreign limited liability company; to the registered agent of the limited liability company or registered foreign limited liability company at the registered office of the limited liability company or registered foreign limited liability company in this state; or to any other address in this state that is in fact the principal office of the limited liability company or registered foreign limited liability company in this state.

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

History.—s. 2, ch. 2013-180; s. 242, ch. 2019-90.

605.0118 Delivery of record.—

(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission.

(2) Except as provided in subsection (3), delivery to the department is effective only when a record is received by the department.

(3) If a check is mailed to the department for payment of an annual report fee or the annual supplemental fee required under s. 607.193, the check shall be deemed to have been received by the department as of the postmark date appearing on the envelope or package transmitting the check if the envelope or package is received by the department.

History.—s. 2, ch. 2013-180; s. 243, ch. 2019-90.

605.0119 Waiver of notice.—If, pursuant to this chapter or the articles of organization or operating agreement of a limited liability company, notice is required to be given to a member of a limited liability company or to a manager of a limited liability company having a manager or managers, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

History.—s. 2, ch. 2013-180.

605.0201 Formation of limited liability company; articles of organization.—

(1) One or more persons may act as authorized representatives to form a limited liability company by signing and delivering articles of organization to the department for filing.

(2) The articles of organization must state the following:

(a) The name of the limited liability company, which must comply with s. 605.0112.

(b) The street and mailing addresses of the company's principal office.

(c) The name, street address in this state, and written acceptance of the company's initial registered agent.

(3) The articles of organization may contain statements on matters other than those required under subsection (2), but may not vary from or otherwise affect the provisions specified in s. 605.0105(3) in a manner inconsistent with that subsection. Additional statements may include one or more of the following:

(a) A declaration as to whether the limited liability company is manager-managed for purposes of s. 605.0407 and other relevant provisions of this chapter.

(b) For a manager-managed limited liability company, the names and addresses of one or more of the managers of the company.

(c) For a member-managed limited liability company, the names and addresses of one or more of the members of the company.

(d) A description of the authority or limitation on the authority of a specific person in the company or a person holding a position or having a specified status in the company.

(e) Any other relevant matters.

(4) A limited liability company is formed when the company's articles of organization become effective under s. 605.0207 and when at least one person becomes a member at the time the articles of organization become effective. By signing the articles of organization, the person who signs the articles of organization affirms that the company has or will have at least one member as of the time the articles of organization become effective.

History.—s. 2, ch. 2013-180.

605.0202 Amendment or restatement of articles of organization.—

(1) The articles of organization may be amended or restated at any time.

(2) To amend the articles of organization, a limited liability company must deliver to the department for filing an amendment, designated as such in its heading, which contains the following:

(a) The present name of the company.

(b) The date of filing of the company's articles of organization.

(c) The amendment to the articles of organization.

(d) The delayed effective date, as provided under s. 605.0207, if the amendment is not effective on the date the department files the amendment.

(3) To restate its articles of organization, a limited liability company must deliver to the department for filing an instrument, entitled "Restatement of Articles of Organization," which contains the following:

(a) The present name of the company.

(b) The date of the filing of its articles of organization.

(c) All of the provisions of its articles of organization in effect, as restated.

(d) The delayed effective date, as provided under s. 605.0207, if the restatement is not effective on the date the department files the restatement.

(4) A restatement of the articles of organization of a limited liability company may also contain one or more amendments to the articles of organization, in which case the instrument must be entitled “Amended and Restated Articles of Organization.”

(5) If a member of a member-managed limited liability company or a manager of a manager-managed limited liability company knew that information contained in filed articles of organization was inaccurate when the articles of organization were filed or became inaccurate due to changed circumstances, the member or manager shall promptly:

(a) Cause the articles of organization to be amended; or

(b) If appropriate, deliver to the department for filing a statement of change under s. 605.0114 or a statement of correction under s. 605.0209.

History.—s. 2, ch. 2013-180.

605.0203 Signing of records to be delivered for filing to department.—

(1) A record delivered to the department for filing pursuant to this chapter must be signed as follows:

(a) Except as otherwise provided in paragraphs (b) and (c), a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(b) A company’s initial articles of organization must be signed by at least one person acting as an authorized representative. The articles of organization must also include or have attached a statement signed by the company’s initial registered agent in the form described in s. 605.0113(2).

(c) A record delivered on behalf of a dissolved company that has no member must be signed by the person winding up the company’s activities and affairs under s. 605.0709(3) or a person appointed under s. 605.0709(4) or (5) to wind up the activities and affairs.

(d) A statement of denial by a person under s. 605.0303 must be signed by that person.

(e) A record changing the registered agent must also include or be accompanied by a statement signed by the successor registered agent in the form described in s. 605.0113(2).

(f) Any other record delivered on behalf of a person to the department must be signed by that person.

(2) A record may also be signed by an agent, legal representative, or attorney-in-fact, as applicable, if such person is duly appointed and authorized to sign the record and the record states that such person possesses that authority.

(3) A person who signs a record as an agent, legal representative, or attorney-in-fact affirms as a fact that the person is authorized to sign the record.

History.—s. 2, ch. 2013-180.

605.0204 Signing and filing pursuant to judicial order.—

(1) If a person who is required under this chapter to sign a record or deliver a record to the department for filing under this chapter does not do so, another person who is aggrieved may petition the circuit court to order:

(a) The person to sign the record;

(b) The person to deliver the record to the department for filing; or

(c) The department to file the record unsigned.

(2) If a petitioner under subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action. The petitioner may seek the remedies provided in subsection (1) in the same action, in combination or in the alternative.

(3) A record filed pursuant to paragraph (1)(c) is effective without being signed.

History.—s. 2, ch. 2013-180.

605.0205 Liability for inaccurate information in filed record.—

(1) If a record delivered to the department for filing under this chapter and filed by the department contains inaccurate information, a person who suffers a loss by reliance on such information may recover damages for the loss from:

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

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

1. The record was delivered for filing on behalf of the company; and
2. The member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

a. Effected an amendment pursuant to s. 605.0202;
b. Filed a petition pursuant to s. 605.0204; or
c. Delivered to the department for filing a statement of change pursuant to s. 605.0114 or a statement of correction under s. 605.0209.

(2) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the department for filing and imposes that responsibility on one or more other members, the liability stated in paragraph (1)(b) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

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

History.—s. 2, ch. 2013-180.

605.0206 Filing requirements.—

(1) A record authorized or required to be delivered to the department for filing under this chapter must be captioned to describe the record's purpose, be in a medium authorized by the department, and be delivered to the department. If all filing fees are paid, the department shall file the record unless the department determines that the record does not comply with the filing requirements.

(2) Upon request and payment of the applicable fee, the department shall send to the requester a certified copy of the requested record.

(3) If the department has prescribed a mandatory medium or form for the record being filed, the record must be in the prescribed medium or on the prescribed form.

(4) Except as otherwise provided by the department, a document to be filed with the department must be typewritten or printed, legible, and written in the English language. A limited liability company name does not need to be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of a foreign limited liability company does not need to be in English if accompanied by a reasonably authenticated English translation. The department may prescribe forms in electronic format which comply with this chapter. The department may also use electronic transmissions for the purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish e-mail addresses when presenting a document for filing.

History.—s. 2, ch. 2013-180.

605.0207 Effective date and time.—Except as otherwise provided in s. 605.0208, and subject to s. 605.0209(3), any document delivered to the department for filing under this chapter may specify an effective time and a delayed effective date. In the case of initial articles of organization, a prior effective date may be specified in the articles of organization if such date is within 5 business days before the date of filing. Subject to ss. 605.0114, 605.0115, 605.0208, and 605.0209, a record filed by the department is effective:

(1) If the record filed does not specify an effective time and does not specify a prior or a delayed effective date, on the date and at the time the record is accepted as evidenced by the department's endorsement of the date and time on the filing.

(2) If the record filed specifies an effective time, but not a prior or delayed effective date, on the date the record is filed at the time specified in the filing.

(3) If the record filed specifies a delayed effective date, but not an effective time, at 12:01 a.m. on the earlier of:

- (a) The specified date; or
- (b) The 90th day after the record is filed.

(4) If the record filed specifies a delayed effective date and an effective time, at the specified time on or the earlier of:

- (a) The specified date; or
- (b) The 90th day after the record is filed.

(5) If the record filed is the initial articles of organization and specifies an effective date before the date of the filing, but no effective time, at 12:01 a.m. on the later of:

- (a) The specified date; or
- (b) The 5th business day before the record is filed.

(6) If the record filed is the initial articles of organization and specifies an effective time and an effective date before the date of the filing, at the specified time on the later of:

- (a) The specified date; or
- (b) The 5th business day before the record is filed.

(7) If a filed document does not specify the time zone or place at which the date or time, or both, is to be determined, the date or time, or both, at which it becomes effective shall be those prevailing at the place of filing in this state.

History.—s. 2, ch. 2013-180; s. 244, ch. 2019-90.

605.0208 Withdrawal of filed record before effectiveness.—

(1) Except as otherwise provided in ss. 605.1001-605.1072, a record delivered to the department for filing may be withdrawn before it takes effect by delivering to the department for filing a withdrawal statement.

(2) A withdrawal statement must:

(a) Be signed by each person who signed the record being withdrawn, except as otherwise agreed by those persons;

(b) Identify the record to be withdrawn; and

(c) If not signed by all the persons who signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons who signed the record.

(3) On the filing by the department of a withdrawal statement, the action or transaction evidenced by the original record does not take effect.

History.—s. 2, ch. 2013-180.

605.0209 Correcting filed record.—

(1) A person on whose behalf a filed record was delivered to the department for filing may correct the record if:

(a) The record at the time of filing was inaccurate;

(b) The record was defectively signed;

(c) The electronic transmission of the record to the department was defective; or

(d) The record contains false, misleading, or fraudulent information.

(2) To correct a filed record, a person on whose behalf the record was delivered to the department must deliver to the department for filing a statement of correction.

(3) A statement of correction:

(a) May not state a delayed effective date;

(b) Must be signed by the person correcting the filed record;

(c) Must identify the filed record to be corrected, including such record's filing date, or attach a copy of the record to the statement of correction;

(d) Must specify the inaccuracy or defect to be corrected; and

(e) Must correct the inaccuracy or defect.

(4) A statement of correction is effective as of the effective date of the filed record that it corrects, except for purposes of s. 605.0103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

(5) A statement of correction that is filed to correct false, misleading, or fraudulent information is not subject to a fee of the department if the statement of correction is delivered to the department within 15 days after the notification of filing sent pursuant to s. 605.0210.

History.—s. 2, ch. 2013-180; s. 1, ch. 2018-58; s. 245, ch. 2019-90.

605.0210 Duty of department to file; review of refusal to file; transmission of information by department.—

(1) The department files a document by stamping or otherwise endorsing the document as “filed,” together with the department’s official title and the date and time of receipt.

(2) After filing a record, the department shall send notice of the filing to the electronic mail address on file for the company or foreign limited liability company or its authorized representative or shall send a copy of the document to the address of such company or authorized representative. If the record changes the electronic mail address for the company, the department must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address for the company, the department must send such notice to the new mailing address and to the most recent prior mailing address.

(3) If the department refuses to file a record, the department shall, within 15 days after the record is delivered:

- (a) Return the record or notify the person who submitted the record of the refusal; and
- (b) Provide a brief explanation in a record of the reason for the refusal.

(4) If the applicant returns the document with corrections in accordance with the rules of the department within 60 days after it was mailed to the applicant by the department and, if at the time of return, the applicant so requests in writing, the filing date of the document shall be the filing date that would have been applied had the original document not been deficient, except as to persons who relied on the record before correction and were adversely affected thereby.

(5) The department’s duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

- (a) Affect the validity or invalidity of the document in whole or part;
- (b) Relate to the correctness or incorrectness of information contained in the document; or
- (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(6) If not otherwise provided by law and this chapter, the department shall determine by rule the appropriate format for any document placed under its jurisdiction, and the number of copies, manner of execution, method of electronic transmission, and amount and method of payment of fees for such document.

(7) If the department refuses to file a record delivered to its office for filing, the person who submitted the record for filing may petition the Circuit Court of Leon County to compel filing of the record. The record and the explanation from the department of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding, and the court may summarily order the department to file the record or take other action the court considers appropriate. The court’s final decision may be appealed as in other civil proceedings.

(8) Except as otherwise provided under s. 605.0117 or by any law other than this chapter, the department may deliver a record to a person by delivering it:

- (a) In person to the person who submitted it;
- (b) To the address of the person's registered agent;
- (c) To the principal office of the person; or
- (d) To another address that the person provides to the department for delivery.

History.—s. 2, ch. 2013-180; s. 2, ch. 2018-58; s. 246, ch. 2019-90.

605.0211 Certificate of status.—

(1) The department, upon request and payment of the requisite fee, shall issue a certificate of status for a limited liability company if the records filed in the department show that the department has accepted and filed the company's articles of organization. A certificate of status must state the following:

- (a) The company's name.
- (b) That the company was organized under the laws of this state and the date of organization.
- (c) Whether all fees due to the department under this chapter have been paid.
- (d) If the company's most recent annual report required under s. 605.0212 has not been filed by the department.

(e) If the department has administratively dissolved the company or received a record notifying the department that the company has been dissolved by judicial action pursuant to s. 605.0705.

- (f) If the department has filed articles of dissolution for the company.
- (g) If the department has accepted and filed a statement of termination.

(2) The department, upon request and payment of the requisite fee, shall furnish a certificate of status for a foreign limited liability company if the records filed show that the department has filed a certificate of authority. A certificate of status for a foreign limited liability company must state the following:

- (a) The foreign limited liability company's name and any current alternate name adopted under s. 605.0906(1) for use in this state.
- (b) That the foreign limited liability company is authorized to transact business in this state.
- (c) Whether all fees and penalties due to the department under this chapter or other law have been paid.
- (d) If the foreign limited liability company's most recent annual report required under s. 605.0212 has not been filed by the department.
- (e) If the department has:
 - 1. Revoked the foreign limited liability company's certificate of authority; or
 - 2. Filed a notice of withdrawal of certificate of authority.
- (3) Subject to any qualification stated in the certificate of status, a certificate of status issued by the department is conclusive evidence that the domestic limited liability company is in existence and is of active status in this state or the foreign limited liability company is authorized to transact business in this state and is of active status in this state.

History.—s. 2, ch. 2013-180; s. 247, ch. 2019-90.

605.0212 Annual report for department.—

(1) A limited liability company or a registered foreign limited liability company shall deliver to the department for filing an annual report that states the following:

- (a) The name of the limited liability company or, if a foreign limited liability company, the name under which the foreign limited liability company is registered to transact business in this state.
- (b) The street address of its principal office and its mailing address.
- (c) The date of its organization and, if a foreign limited liability company, the jurisdiction of its formation and the date on which it became qualified to transact business in this state.
- (d) The company's federal employer identification number or, if none, whether one has been applied for.
- (e) The name, title or capacity, and address of at least one person who has the authority to manage the company.
- (f) Any additional information that is necessary or appropriate to enable the department to carry out this chapter.

(2) Information in the annual report must be current as of the date the report is delivered to the department for filing.

(3) The first annual report must be delivered to the department between January 1 and May 1 of the year following the calendar year in which the limited liability company's articles of organization became effective or the foreign limited liability company obtained a certificate of authority to transact business in this state. Subsequent annual reports must be delivered to the department between January 1 and May 1 of each calendar year thereafter. If one or more forms of annual report are submitted for a calendar year, the department shall file each of them and make the information contained in them part of the official record. The first form of annual report filed in a calendar year shall be considered the annual report for that calendar year, and each report filed after that one in the same calendar year shall be treated as an amended report for that calendar year.

(4) If an annual report does not contain the information required in this section, the department shall promptly notify the reporting limited liability company or registered foreign limited liability company. If the report is corrected to contain the information required in subsection (1) and delivered to the department within 30 days after the effective date of the notice, it is timely delivered.

(5) If an annual report contains the name or address of a registered agent which differs from the information shown in the records of the department immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under s. 605.0114.

(6) A limited liability company or foreign limited liability company that fails to file an annual report that complies with the requirements of this section may not maintain or defend any action in a court of this state until the report is filed and all fees and penalties due under this chapter are paid, and shall be subject to dissolution or cancellation of its certificate of authority to transact business as provided in this chapter.

(7) The department shall prescribe the forms, which may be in an electronic format, on which to make the annual report called for in this section and may substitute the uniform business report pursuant to s. 606.06 as a means of satisfying the requirement of this chapter.

(8) As a condition of a merger under s. 605.1021, each party to a merger which exists under the laws of this state, and each party to the merger which exists under the laws of another jurisdiction and has a certificate of authority to transact business or conduct its affairs in this state, must be active and current in filing its annual reports in the records of the department through December 31 of the calendar year in which the articles of merger are submitted to the department for filing.

(9) As a condition of a conversion of an entity to a limited liability company under s. 605.1041, the entity, if it exists under the laws of this state, or if it exists under the laws of another jurisdiction and has a certificate of authority to transact business or conduct its affairs in this state, must be active and current in filing its annual reports in the records of the department through December 31 of the calendar year in which the articles of conversion are submitted to the department for filing.

(10) As a condition of a conversion of a limited liability company to another type of entity under s. 605.1041, the limited liability company converting to the other type of entity must be active and current in filing its annual reports in the records of the department through December 31 of the calendar year in which the articles of conversion are submitted to the department for filing.

(11) As a condition of an interest exchange between a limited liability company and another entity under s. 605.1031, the limited liability company and each other entity that is a party to the interest exchange which exists under the laws of this state, and each party to the interest exchange which exists under the laws of another jurisdiction and has a certificate of authority to transact business or conduct its affairs in this state, must be active and current in filing its annual reports in the records of the department through December 31 of the calendar year in which the articles of interest exchange are submitted to the department for filing.

605.0213 Fees of the department.—The fees of the department under this chapter are as follows:

- (1) For furnishing a certified copy, \$30.
- (2) For filing original articles of organization or articles of revocation of dissolution, \$100.
- (3) For filing a foreign limited liability company's application for a certificate of authority to transact business, \$100.
- (4) For filing a certificate of merger of limited liability companies or other business entities, \$25 per constituent party to the merger, unless a specific fee is required for a party under other applicable law.
- (5) For filing an annual report, \$50.
- (6) For filing an application for reinstatement after an administrative or judicial dissolution or a revocation of authority to transact business, \$100.
- (7) For filing a certificate designating a registered agent or changing a registered agent, \$25.
- (8) For filing a registered agent's statement of resignation from an active limited liability company, \$85.
- (9) For filing a registered agent's statement of resignation from a dissolved limited liability company, \$25.
- (10) For filing a certificate of conversion of a limited liability company, \$25.
- (11) For filing any other limited liability company document, \$25.
- (12) For furnishing a certificate of status, \$5.

History.—s. 2, ch. 2013-180.

605.0214 Powers of department.—The department has the authority reasonably necessary to administer this chapter efficiently, to perform the duties imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter.

History.—s. 2, ch. 2013-180.

605.0215 Certificates to be received in evidence and evidentiary effect of copy of filed document.—All certificates issued by the department in accordance with this chapter shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated. A certificate from the department delivered with a copy of a document filed by the department bearing the signature of the secretary of state, which may be in facsimile, and the seal of this state is conclusive evidence that the original document is on file with the department.

History.—s. 2, ch. 2013-180; s. 248, ch. 2019-90.

605.0216 Statement of dissociation or resignation.—

- (1) A member of a limited liability company may file a statement of dissociation with the department containing the following:
 - (a) The name of the limited liability company.
 - (b) The name and signature of the dissociating member.
 - (c) The date the member withdrew or will withdraw.
 - (d) A statement that the company has been notified of the dissociation in writing.
- (2) A manager in a manager-managed limited liability company may file a statement of resignation with the department containing the following:
 - (a) The name of the limited liability company.
 - (b) The name and signature of the resigning manager.
 - (c) The date the resigning manager resigned or will resign.
 - (d) A statement that the limited liability company has been notified of the resignation in writing.

History.—s. 2, ch. 2013-180.

605.0301 Power to bind limited liability company.—A person does not have the power to bind a limited liability company, except to the extent the person:

- (1) Is an agent of the company by virtue of s. 605.04074;
- (2) Has the authority to do so under the articles of organization or operating agreement of the company;
- (3) Has the authority to do so by a statement of authority filed under s. 605.0302; or

(4) Has the status of an agent of the company or the authority or power to bind the company under a law other than this chapter.

History.—s. 2, ch. 2013-180.

605.0302 Statement of authority.—

(1) A limited liability company may file a statement of authority. The statement:

(a) Must include the name of the company as it appears on the records of the department, and the street and mailing addresses of its principal office;

(b) With respect to a specified status or position of a person in a company, whether as a member, transferee, manager, officer, or otherwise, may state the authority or limitations on the authority of all persons having such status or holding such position to:

1. Execute an instrument transferring real property held in the name of the company; or
2. Enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(c) May state the authority or limitations on the authority of a specific person to:

1. Execute an instrument transferring real property held in the name of the company; or
2. Enter into other transactions on behalf of, or otherwise act for or bind, the company.

(2) To amend or cancel a statement of authority filed by the department, a limited liability company must deliver to the department for filing an amendment or cancellation stating the following:

- (a) The name of the company as it appears on the records of the department.
 - (b) The street and mailing addresses of the limited liability company's principal office.
 - (c) The date the statement being affected became effective.
 - (d) The contents of the amendment or a declaration that the affected statement is canceled.
- (3) A statement of authority affects only the power of a person to bind a limited liability company to persons who are not members.

(4) Subject to subsection (3) and s. 605.0103(4) and except as otherwise provided in subsections (6)-(8), a limitation on the authority of a person or a status or position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation.

(5) Subject to subsection (3) and ss. 605.0407-605.04074, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person who gives value in reliance on the grant, except to the extent that when the person gives value:

- (a) The person has knowledge to the contrary;
- (b) The statement has been canceled or restrictively amended under subsection (2); or
- (c) A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(6) Subject to subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, a certified copy of which statement is recorded in the office for recording transfers of the real property, is conclusive in favor of a person who gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(a) The statement has been canceled or restrictively amended under subsection (2) and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

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

(7) Subject to subsection (3), if a certified copy of an effective statement of authority containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(8) Subject to subsection (9), effective articles of dissolution or termination effectuate a cancellation of a filed statement of authority for the purposes of subsection (6) and limit authority for the purposes of subsection (7).

(9) After a company's articles of dissolution become effective, a limited liability company may deliver to the department for filing and, if appropriate, may record a statement of authority in accordance with subsection (1) which is designated as a postdissolution statement of authority. The statement operates as provided in subsections (6) and (7).

(10) Unless earlier canceled, an effective statement of authority is canceled by operation of law 5 years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for a recording under subsection (6) or subsection (7). An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of paragraph (6)(a).

(11) A statement of dissociation or a statement of resignation filed pursuant to s. 605.0216 terminates the authority of the person who filed the statement.

History.—s. 2, ch. 2013-180.

605.0303 Statement of denial.—A person who is named in a filed statement of authority granting that person authority may deliver to the department for filing a statement of denial signed by that person which:

(1) Provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) Denies the grant of authority.

History.—s. 2, ch. 2013-180.

605.0304 Liability of members and managers.—

(1) A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the company.

(2) The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager of the company for a debt, obligation, or other liability of the company.

(3) The limitation of liability in this section is in addition to the limitations of liability provided for in s. 605.04093.

History.—s. 2, ch. 2013-180.

605.0401 Becoming a member.—

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

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

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

(a) As provided in the operating agreement;

(b) As the result of a merger, interest exchange, conversion, or domestication under ss. 605.1001-605.1072, as applicable;

(c) With the consent of all the members; or

(d) As provided in s. 605.0701(3).

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

History.—s. 2, ch. 2013-180; s. 21, ch. 2015-148.

605.0402 Form of contribution.—A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

History.—s. 2, ch. 2013-180.

605.0403 Liability for contributions.—

(1) A promise by a person to contribute to the limited liability company is not enforceable unless it is set out in a writing signed by the person.

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

(3) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution that has not been made. The foregoing option is in addition to and not in lieu of other rights, including the right to specific performance, that the limited liability company may have against the person under the articles of organization or operating agreement or applicable law.

(4) The obligation of a person to make a contribution may be compromised only by consent of all members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described in subsection (1) without notice of a compromise under this subsection, the creditor may enforce the obligation.

(5) An operating agreement may provide that the limited liability company interest of a member who fails to make a contribution that the member is obligated to make is subject to specified penalties for or specified consequences of the failure. The penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the defaulting member's limited liability company interest to that of nondefaulting members, a forced sale of that limited liability company interest, forfeiture of the defaulting member's limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of the defaulting member's limited liability company interest by appraisal or by formula and redemption or sale of the defaulting member's limited liability company interest at such value, or other penalty or consequence.

History.—s. 2, ch. 2013-180.

605.0404 Sharing of distributions before dissolution and profits and losses.—

(1) Distributions made by a limited liability company before its dissolution and winding up must be shared by the members and persons dissociated as members on the basis of the agreed value, as stated in the company's records, of the contributions made by each of the members and persons dissociated as members to the extent that the contributions have been received by the company, except to the extent necessary to comply with a transfer effective under s. 605.0502 or charging order in effect under s. 605.0503.

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

(3) A person does not have a right to demand or receive a distribution from a limited liability company in a form other than money. Except as otherwise provided in s. 605.0710(4), a limited liability company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

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

respect to the distribution.

(5) Profits and losses of a limited liability company must be allocated among the members and persons dissociated as members on the basis of the agreed value, as stated in the company's records, of the contributions made by each of the members and persons dissociated as members to the extent that the contributions have been received by the company.

History.—s. 2, ch. 2013-180.

605.0405 Limitations on distributions.—

(1) A limited liability company may not make a distribution, including a distribution under s. 605.0710, if after the distribution:

(a) The company would not be able to pay its debts as they become due in the ordinary course of the company's activities and affairs; or

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

(2) A limited liability company may base a determination that a distribution is not prohibited under subsection (1) on:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) A fair valuation or other method that is reasonable under the circumstances.

(3) Except as otherwise provided in subsection (5), the effect of a distribution under subsection (1) is measured:

(a) In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the earlier of the date on which:

1. Money or other property is transferred or the debt is incurred by the company; and

2. The person entitled to distribution ceases to own the interest or right being acquired by the company in return for the distribution.

(b) In the case of a distribution of indebtedness, as of the date on which the indebtedness is distributed.

(c) In all other cases, as of the date on which:

1. The distribution is authorized if the payment occurs within 120 days after that date; or

2. The payment is made if the payment occurs more than 120 days after the distribution is authorized.

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

(5) A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that a distribution could then be made under this section. If the indebtedness is issued as a distribution, and by its terms provides that the payments of principal and interest are made only to the extent a distribution could be made under this section, then each payment of principal or interest of that indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(6) In measuring the effect of a distribution under s. 605.0710, the liabilities of a dissolved limited liability company do not include a claim that is disposed of under ss. 605.0710-605.0713.

History.—s. 2, ch. 2013-180.

605.0406 Liability for improper distributions.—

(1) Except as otherwise provided in subsection (2), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of s. 605.0405 and, in consenting to the distribution, fails to comply with s. 605.04091, the member

or manager is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of s. 605.0405.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability in subsection (1) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(3) A person who receives a distribution knowing that the distribution violated s. 605.0405 is personally liable to the limited liability company, but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under s. 605.0405.

(4) A person against whom an action is commenced because that person is or may be liable under subsection (1) may:

(a) Implead another person who is or may be liable under subsection (1) and seek to enforce a right of contribution from the person; or

(b) Implead a person who received a distribution in violation of subsection (3) and seek to enforce a right of contribution from an impleaded person in the amount the person received in violation of subsection (3).

(5) An action under this section is barred unless commenced within 2 years after the distribution.

History.—s. 2, ch. 2013-180.

605.0407 Management of limited liability company.—

(1) A limited liability company is a member-managed limited liability company unless the operating agreement or articles of organization:

(a) Expressly provide that:

1. The company is or will be manager-managed;
2. The company is or will be managed by managers; or
3. Management of the company is or will be vested in managers; or

(b) Include words of similar import to those in subparagraphs (a)1.-3. except that, unless the context in which the expression is used otherwise requires, the terms “managing member” and “managing members” do not, in and of themselves, constitute words of similar import for this purpose.

(2) In a member-managed limited liability company, the management and conduct of the company are vested in the members, except as expressly provided in this chapter.

(3) In a manager-managed limited liability company, a matter relating to the activities and affairs of the company is decided exclusively by the manager, or if there is more than one manager, by the managers, except as expressly provided in this chapter.

(4) A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities and affairs of the company, in the absence of an agreement to the contrary.

(5) A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital the member agreed to contribute.

(6) The dissolution of a limited liability company does not affect the applicability of this section and ss. 605.04071-605.04074. However, a person who wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

History.—s. 2, ch. 2013-180.

605.04071 Delegation of rights and powers to manage.—A member or manager of a limited liability company has the power and authority to delegate to one or more other persons the member’s or manager’s, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including the power and authority to delegate to agents, boards of managers, members, or directors, officers and assistant officers, and employees of a member or manager of the limited liability company, and the power and authority to delegate by a management agreement or similar agreement with,

or otherwise to other persons. The delegation by a member or manager will not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company.

History.—s. 2, ch. 2013-180.

605.04072 Selection and terms of managers in a manager-managed limited liability company.—In a manager-managed limited liability company, the following rules apply:

(1) A manager may be chosen at any time by the consent of the member or members holding more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company owned by all of its members.

(2) A person need not be a member to be a manager.

(3) A person chosen as a manager continues as a manager until a successor is chosen, unless the manager at an earlier time resigns, is removed, or dies or, in the case of a manager that is not an individual, terminates.

(4) A manager may be removed at any time without notice or cause by the consent of the member or members holding more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company owned by all of its members.

(5) The dissociation of a member who is also a manager removes the person as a manager.

(6) If a person who is both a manager and a member ceases to be a manager, that cessation does not, by itself, dissociate the person as a member.

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

History.—s. 2, ch. 2013-180.

605.04073 Voting rights of members and managers.—

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

(a) Each member has the right to vote with respect to the management and conduct of the company's activities and affairs.

(b) Each member's vote is proportionate to that member's then-current percentage or other interest in the profits of the limited liability company owned by all members.

(c) Except as otherwise provided in this chapter, the affirmative vote or consent of a majority-in-interest of the members is required to undertake an act, whether within or outside the ordinary course of the company's activities and affairs, including a transaction under ss. 605.1001-605.1072.

(d) The operating agreement and articles of organization may be amended only with the affirmative vote or consent of all members.

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

(a) Each manager has equal rights in the management and conduct of the company's activities and affairs.

(b) Except as expressly provided in this chapter, a matter relating to the activities and affairs of the company shall be decided by the manager; if there is more than one manager, by the affirmative vote or consent of a majority of the managers; or if the action is taken without a meeting, by the managers' unanimous consent in a record.

(c) Each member's vote is proportionate to that member's then-current percentage or other interest in the profits of the limited liability company owned by all members.

(d) Except as otherwise provided in this chapter, the affirmative vote or consent of a majority-in-interest of the members is required to undertake an act outside the ordinary course of the company's activities and affairs, including a transaction under ss. 605.1001-605.1072.

(e) The operating agreement and articles of organization may be amended only with the affirmative vote or consent of all members.

(3) If a member has transferred all or a portion of the member's transferable interest in the limited liability company to a person who is not admitted as a member and if the transferring member has not been

dissociated in accordance with s. 605.0602(5)(b), the transferring member continues to be entitled to vote on an action reserved to the members, with the vote of the transferring member being proportionate to the then-current percentage or other interest in the profits of the limited liability company owned by all members that the transferring member would have if the transfer had not occurred.

(4) An action requiring the vote or consent of members under this chapter may be taken without a meeting if the action is approved in a record by members with at least the minimum number of votes that would be necessary to authorize or take the action at a meeting of the members. A member may appoint a proxy or other agent to vote or consent for the member by signing an appointing record, personally or by the member's agent. On an action taken by fewer than all of the members without a meeting, notice of the action must be given to those members who did not consent in writing to the action or who were not entitled to vote on the action within 10 days after the action was taken.

(5) An action requiring the vote or consent of managers under this chapter may be taken without a meeting if the action is unanimously approved by the managers in a record. A manager may appoint a proxy or other agent to vote or consent for the manager by signing an appointing record, personally or by the manager's agent.

(6) Meetings of members and meetings of managers may be held by a conference telephone call or other communications equipment if all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

History.—s. 2, ch. 2013-180; s. 4, ch. 2015-148.

605.04074 Agency rights of members and managers.—

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

(a) Except as provided in subsection (3), each member is an agent of the limited liability company for the purpose of its activities and affairs, and an act of a member, including signing an agreement or instrument of transfer in the name of the company for apparently carrying on in the ordinary course of the company's activities and affairs or activities and affairs of the kind carried on by the company, binds the company unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

(b) An act of a member which is not done for apparently carrying on in the ordinary course of the limited liability company's activities and affairs or activities and affairs of the kind carried on by the company, binds the company only if the act was authorized by appropriate vote of the members.

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

(a) A member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member.

(b) Except as provided in subsection (3), each manager is an agent of the limited liability company for the purpose of its activities and affairs, and an act of a manager, including signing an agreement or instrument of transfer in the name of the company, for apparently carrying on in the ordinary course of the company's activities and affairs or activities and affairs of the kind carried on by the company, binds the company unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(c) An act of a manager which is not apparently for carrying on in the ordinary course of the limited liability company's activities and affairs or activities and affairs of the kind carried on by the company, binds the company only if the act was authorized by appropriate vote of the members.

(3) Unless a certified statement of authority recorded in the applicable real estate records limits the authority of a member or a manager, a member of a member-managed company or a manager of a manager-managed company may sign and deliver an instrument transferring or affecting the limited liability company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

History.—s. 2, ch. 2013-180; s. 22, ch. 2015-148.

605.0408 Reimbursement, indemnification, advancement, and insurance.—

(1) A limited liability company may reimburse a member of a member-managed company or a manager of a manager-managed company for any payment made by the member or manager in the course of the member's or manager's activities on behalf of the company if the member or manager complied with ss. 605.0407-605.04074, this section, and s. 605.04091 in making the payment.

(2) A limited liability company may indemnify and hold harmless a person with respect to a claim or demand against the person and a debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a member or manager if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of s. 605.0405, s. 605.0407, s. 605.04071, s. 605.04072, s. 605.04073, s. 605.04074, or s. 605.04091.

(3) In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager if the person promises to repay the company in the event that the person ultimately is determined not to be entitled to be indemnified under subsection (2).

(4) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if:

(a) Under s. 605.0105(3)(g), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability; and

(b) Under s. 605.0105(3)(p), the operating agreement could not provide for indemnification for the conduct giving rise to the liability.

History.—s. 2, ch. 2013-180.

605.04091 Standards of conduct for members and managers.—

(1) Each manager of a manager-managed limited liability company and member of a member-managed limited liability company owes fiduciary duties of loyalty and care to the limited liability company and members of the limited liability company.

(2) The duty of loyalty includes:

(a) Accounting to the limited liability company and holding as trustee for it any property, profit, or benefit derived by the manager or member, as applicable:

1. In the conduct or winding up of the company's activities and affairs;
2. From the use by the member or manager of the company's property; or
3. From the appropriation of a company opportunity;

(b) Refraining from dealing with the company in the conduct or winding up of the company's activities and affairs as, or on behalf of, a person having an interest adverse to the company, except to the extent that a transaction satisfies the requirements of s. 605.04092; and

(c) Refraining from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

(3) The duty of care in the conduct or winding up of the company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

(4) A manager of a manager-managed limited liability company and a member of a member-managed limited liability company shall discharge their duties and obligations under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A manager of a manager-managed limited liability company or a member of a member-managed limited liability company does not violate a duty or obligation under this chapter or under the operating agreement solely because the manager's or member's conduct furthers the manager's or member's own interest.

(6) In discharging his, her, or its duties, a manager of a manager-managed limited liability company or a member of a member-managed limited liability company is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

(a) One or more members or employees of the limited liability company whom the manager or member reasonably believes to be reliable and competent in the matters presented.

(b) Legal counsel, public accountants, or other persons as to matters the manager or member reasonably believes are within the persons' professional or expert competence.

(c) A committee of managers or members of which the affected manager or member is not a participant, if the manager or member reasonably believes the committee merits confidence.

(7) A manager or member, as applicable, is not acting in good faith if the manager or member has knowledge concerning the matter in question which makes reliance otherwise authorized under subsection (6) unwarranted.

(8) In discharging his, her, or its duties, a manager of a manager-managed limited liability company or member of a member-managed limited liability company may consider factors that the manager or member deems relevant, including the long-term prospects and interests of the limited liability company and its members, and the social, economic, legal, or other effects of any action on the employees, suppliers, and customers of the limited liability company, the communities and society in which the limited liability company operates, and the economy of this state and the nation.

(9) This section applies to a person winding up the limited liability company activities and affairs as the legal representative of the last surviving member as if such person were subject to this section.

History.—s. 2, ch. 2013-180; ss. 5, 23, ch. 2015-148.

605.04092 Conflict of interest transactions.—

(1) As used in this section, the following terms and definitions apply:

(a) A member or manager is “indirectly” a party to a transaction if that member or manager has a material financial interest in or is a director, officer, member, manager, or partner of a person, other than the limited liability company, who is a party to the transaction.

(b) A member or manager has an “indirect material financial interest” if a family member has a material financial interest in the transaction, other than having an indirect interest as a member or manager of the limited liability company, or if the transaction is with an entity, other than the limited liability company, which has a material financial interest in the transaction and controls, or is controlled by, the member or manager or another person specified in this subsection.

(c) “Fair to the limited liability company” means that the transaction, as a whole, is beneficial to the limited liability company and its members, taking into appropriate account whether it is:

1. Fair in terms of the member's or manager's dealings with the limited liability company in connection with that transaction; and

2. Comparable to what might have been obtainable in an arm's length transaction.

(d) “Family member” includes any of the following:

1. The member's or manager's spouse.

2. A child, stepchild, parent, stepparent, grandparent, sibling, step sibling, or half sibling of the member or manager or the member's or manager's spouse.

(e) “Manager's conflict of interest transaction” means a transaction between a limited liability company and one or more of its managers, or another entity in which one or more of the limited liability company's managers is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the limited liability company, and has a direct or indirect material financial interest or other material interest.

(f) “Material financial interest” or “other material interest” means a financial or other interest in the transaction that would reasonably be expected to impair the objectivity of the judgment of the member or

manager when participating in the action on the authorization of the transaction.

(g) “Member’s conflict of interest transaction” means a transaction between a limited liability company and one or more of its members, or another entity in which one or more of the limited liability company’s members is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the limited liability company, and has a direct or indirect material financial interest or other material interest.

(2) If the requirements of this section have been satisfied, a member’s conflict of interest transaction or a manager’s conflict of interest transaction between a limited liability company and one or more of its members or managers, or another entity in which one or more of the limited liability company’s members or managers have a financial or other interest, is not void or voidable because of that relationship or interest; because the members or managers are present at the meeting of the members or managers at which the transaction was authorized, approved, effectuated, or ratified; or because the votes of the members or managers are counted for such purpose.

(3) If a member’s conflict of interest transaction or a manager’s conflict of interest transaction is fair to the limited liability company at the time it is authorized, approved, effectuated, or ratified, the fact that a member or manager of the limited liability company is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member or manager of the limited liability company, or has a direct or indirect material financial interest or other interest in the transaction, other than having an indirect interest as a result of being a member or manager of the limited liability company, is not grounds for equitable relief and does not give rise to an award of damages or other sanctions.

(4)(a) In a proceeding challenging the validity of a member’s conflict of interest transaction or a manager’s conflict of interest transaction or in a proceeding seeking equitable relief, award of damages, or other sanctions with respect to a member’s conflict of interest transaction or a manager’s conflict of interest transaction, the person challenging the validity or seeking equitable relief, award of damages, or other sanctions has the burden of proving the lack of fairness of the transaction if:

1. In a manager-managed limited liability company, the material facts of the transaction and the member’s or manager’s interest in the transaction were disclosed or known to the managers or a committee of managers who voted upon the transaction and the transaction was authorized, approved, or ratified by a majority of the disinterested managers even if the disinterested managers constitute less than a quorum; however, the transaction cannot be authorized, approved, or ratified under this subsection solely by a single manager; and

2. In a member-managed limited liability company, or a manager-managed limited liability company in which the managers have failed to or cannot act under subparagraph 1., the material facts of the transaction and the member’s or manager’s interest in the transaction were disclosed or known to the members who voted upon such transaction and the transaction was authorized, approved, or ratified by a majority-in-interest of the disinterested members even if the disinterested members constitute less than a quorum; however, the transaction cannot be authorized, approved, or ratified under this subsection solely by a single member; or

(b) If neither of the conditions provided in paragraph (a) has been satisfied, the person defending or asserting the validity of a member’s conflict of interest transaction or a manager’s conflict of interest transaction has the burden of proving its fairness in a proceeding challenging the validity of the transaction.

(5) The presence of or a vote cast by a manager or member with an interest in the transaction does not affect the validity of an action taken under paragraph (4)(a) if the transaction is otherwise authorized, approved, or ratified as provided in subsection (4), but the presence or vote of the manager or member may be counted for purposes of determining whether the transaction is approved under other sections of this chapter.

(6) In addition to other grounds for challenge, a party challenging the validity of the transaction is not precluded from asserting and proving that a particular member or manager was not disinterested on grounds

of financial or other interest for purposes of the vote on, consent to, or approval of the transaction.

History.—s. 2, ch. 2013-180; s. 133, ch. 2014-17; s. 249, ch. 2019-90.

605.04093 Limitation of liability of managers and members.—

(1) A manager in a manager-managed limited liability company or a member in a member-managed limited liability company is not personally liable for monetary damages to the limited liability company, its members, or any other person for any statement, vote, decision, or failure to act regarding management or policy decisions by a manager in a manager-managed limited liability company or a member in a member-managed limited liability company unless:

(a) The manager or member breached or failed to perform the duties as a manager in a manager-managed limited liability company or a member in a member-managed limited liability company; and

(b) The manager's or member's breach of, or failure to perform, those duties constitutes any of the following:

1. A violation of the criminal law unless the manager or member had a reasonable cause to believe his, her, or its conduct was lawful or had no reasonable cause to believe such conduct was unlawful. A judgment or other final adjudication against a manager or member in any criminal proceeding for a violation of the criminal law estops that manager or member from contesting the fact that such breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the manager or member from establishing that he, she, or it had reasonable cause to believe that his, her, or its conduct was lawful or had no reasonable cause to believe that such conduct was unlawful.

2. A transaction from which the manager or member derived an improper personal benefit, directly or indirectly.

3. A distribution in violation of s. 605.0406.

4. In a proceeding by or in the right of the limited liability company to procure a judgment in its favor or by or in the right of a member, conscious disregard of the best interest of the limited liability company, or willful misconduct.

5. In a proceeding by or in the right of someone other than the limited liability company or a member, recklessness or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) As used in this section, the term "recklessness" means acting or failing to act in conscious disregard of a risk known, or a risk so obvious that it should have been known, to the manager in a manager-managed limited liability company or the member in a member-managed limited liability company, and known to the manager or member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or failure to act.

(3) A manager in a manager-managed limited liability company or a member in a member-managed limited liability company is deemed not to have derived an improper personal benefit from any transaction if the transaction has been approved in the manner as is provided in s. 605.04092 or is fair to the limited liability company as defined in s. 605.04092(1)(c).

(4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the existence of other circumstances under which a manager in a manager-managed limited liability company or a member in a member-managed limited liability company will be deemed not to have derived an improper benefit.

History.—s. 2, ch. 2013-180.

605.0410 Records to be kept; rights of member, manager, and person dissociated to information.—

(1) A limited liability company shall keep at its principal office or another location the following records:

(a) A current list of the full names and last known business, residence, or mailing addresses of each member and manager.

(b) A copy of the then-effective operating agreement, if made in a record, and all amendments thereto if made in a record.

(c) A copy of the articles of organization, articles of merger, articles of interest exchange, articles of conversion, and articles of domestication, and other documents and all amendments thereto, concerning the limited liability company which were filed with the department, together with executed copies of any powers of attorney pursuant to which any articles of organization or such other documents were executed.

(d) Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the 3 most recent years.

(e) Copies of the financial statements of the limited liability company, if any, for the 3 most recent years.

(f) Unless contained in an operating agreement made in a record, a record stating the amount of cash and a description and statement of the agreed value of the property or other benefits contributed and agreed to be contributed by each member, and the times at which or occurrence of events upon which additional contributions agreed to be made by each member are to be made.

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

(a) Upon reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company:

1. The records described in subsection (1); and

2. Each other record maintained by the company regarding the company's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(b) The company shall furnish to each member:

1. Without demand, any information concerning the company's activities, affairs, financial condition, and other circumstances that is known to the company and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

2. On demand, other information concerning the company's activities, affairs, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) Within 10 days after receiving a demand pursuant to subparagraph (b)2., the company shall provide to the member who made the demand a record of:

1. The information that the company will provide in response to the demand and when and where the company will provide such information.

2. For any demanded information that the company is not providing, the reasons that the company will not provide the information.

(d) The duty to furnish information under this subsection also applies to each member to the extent the member knows any of the information described in this subsection.

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

(a) The informational rights stated in subsection (2) and the duty stated in paragraph (2)(d) apply to the managers and not to the members.

(b) During regular business hours and at a reasonable location specified by the company, a member may inspect and copy:

1. The records described in subsection (1); and

2. Full information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:

a. The member seeks the information for a purpose reasonably related to the member's interest as a member; or

b. The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information, and if the information sought is directly connected to the member's purpose.

(c) Within 10 days after receiving a demand pursuant to subparagraph (b)2., the company shall, in a record, inform the member who made the demand of:

1. The information that the company will provide in response to the demand and when and where the company will provide the information; and

2. The company's reasons for declining, if the company declines to provide any demanded information.

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

(4) Subject to subsection (10), on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to information to which the person was entitled while a member if:

(a) The information pertains to the period during which the person was a member;

(b) The person seeks the information in good faith; and

(c) The person satisfies the requirements imposed on a member by paragraph (3)(b).

(5) A limited liability company shall respond to a demand made pursuant to subsection (4) in the manner provided in paragraph (3)(c).

(6) A limited liability company may charge a person who makes a demand under this section the reasonable costs of copying, which costs are limited to the costs of labor and materials.

(7) A member or person dissociated as a member may exercise rights under this section through an agent or, in the case of an individual under legal disability or an entity that is dissolved or its existence terminated, through a legal representative. A restriction or condition imposed by the operating agreement or under subsection (10) applies both to the agent or legal representative and the member or person dissociated as a member.

(8) Subject to subsection (9), the rights under this section do not extend to a person as transferee.

(9) If a member dies, s. 605.0504 applies.

(10) In addition to a restriction or condition stated in the operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness. This subsection does not apply to the request by a member for the records described in subsection (1).

History.—s. 2, ch. 2013-180; s. 6, ch. 2015-148; s. 72, ch. 2016-10; s. 250, ch. 2019-90.

605.0411 Court-ordered inspection.—

(1) If a limited liability company does not allow a member, manager, or other person who complies with s. 605.0410(2)(a), (3)(a), (3)(b), or (4), as applicable, to inspect and copy any records required by that section to be available for inspection, the circuit court in the county where the limited liability company's principal office is or was last located, as shown by the records of the department or, if there is no principal office in this state, where its registered office is or was last located, may summarily order inspection and copying of the records demanded, at the limited liability company's expense, upon application of the member, manager, or other person.

(2) If the court orders inspection or copying of the records demanded, it shall also order the limited liability company to pay the costs, including reasonable attorney fees, reasonably incurred by the member, manager, or other person seeking the records to obtain the order and enforce its rights under this section unless the limited liability company proves that it refused inspection in good faith because the company had a reasonable basis for doubt about the right of the member, manager, or such other person to inspect or copy the records demanded.

(3) If the court orders inspection or copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the member, manager, or other person demanding such records.

History.—s. 2, ch. 2013-180.

605.0501 Nature of transferable interest.—A transferable interest is personal property.

History.—s. 2, ch. 2013-180.

605.0502 Transfer of transferable interest.—

(1) Subject to s. 605.0503, a transfer, in whole or in part, of a transferable interest:

(a) Is permissible;

(b) Does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities and affairs; and

(c) Does not entitle the transferee to:

1. Participate in the management or conduct of the company's activities and affairs; or

2. Except as otherwise provided in subsection (3), have access to records or other information concerning the company's activities and affairs.

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

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

(4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

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

(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person who has knowledge or notice of the restriction at the time of transfer.

(7) Except as otherwise provided in s. 605.0602(5)(b), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

(8) If a member transfers a transferable interest to a person who becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under ss. 605.0403 and 605.0406(3) which are known to the transferee at the time the transferee becomes a member.

History.—s. 2, ch. 2013-180.

605.0503 Charging order.—

(1) On application to a court of competent jurisdiction by a judgment creditor of a member or a transferee, the court may enter a charging order against the transferable interest of the member or transferee for payment of the unsatisfied amount of the judgment with interest. Except as provided in subsection (5), a charging order constitutes a lien upon a judgment debtor's transferable interest and requires the limited liability company to pay over to the judgment creditor a distribution that would otherwise be paid to the judgment debtor.

(2) This chapter does not deprive a member or transferee of the benefit of any exemption law applicable to the transferable interest of the member or transferee.

(3) Except as provided in subsections (4) and (5), a charging order is the sole and exclusive remedy by which a judgment creditor of a member or member's transferee may satisfy a judgment from the judgment debtor's interest in a limited liability company or rights to distributions from the limited liability company.

(4) In the case of a limited liability company that has only one member, if a judgment creditor of a member or member's transferee establishes to the satisfaction of a court of competent jurisdiction that

distributions under a charging order will not satisfy the judgment within a reasonable time, a charging order is not the sole and exclusive remedy by which the judgment creditor may satisfy the judgment against a judgment debtor who is the sole member of a limited liability company or the transferee of the sole member, and upon such showing, the court may order the sale of that interest in the limited liability company pursuant to a foreclosure sale. A judgment creditor may make a showing to the court that distributions under a charging order will not satisfy the judgment within a reasonable time at any time after the entry of the judgment and may do so at the same time that the judgment creditor applies for the entry of a charging order.

(5) If a limited liability company has only one member and the court orders a foreclosure sale of a judgment debtor's interest in the limited liability company or of a charging order lien against the sole member of the limited liability company pursuant to subsection (4):

(a) The purchaser at the court-ordered foreclosure sale obtains the member's entire limited liability company interest, not merely the rights of a transferee;

(b) The purchaser at the sale becomes the member of the limited liability company; and

(c) The person whose limited liability company interest is sold pursuant to the foreclosure sale or is the subject of the foreclosed charging order ceases to be a member of the limited liability company.

(6) In the case of a limited liability company that has more than one member, the remedy of foreclosure on a judgment debtor's interest in the limited liability company or against rights to distribution from the limited liability company is not available to a judgment creditor attempting to satisfy the judgment and may not be ordered by a court.

(7) This section does not limit any of the following:

(a) The rights of a creditor who has been granted a consensual security interest in a limited liability company interest to pursue the remedies available to the secured creditor under other law applicable to secured creditors.

(b) The principles of law and equity which affect fraudulent transfers.

(c) The availability of the equitable principles of alter ego, equitable lien, or constructive trust or other equitable principles not inconsistent with this section.

(d) The continuing jurisdiction of the court to enforce its charging order in a manner consistent with this section.

History.—s. 2, ch. 2013-180.

605.0504 Power of legal representative.—If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power the member had to give a transferee the right to become a member. If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative.

History.—s. 2, ch. 2013-180.

605.0601 Power to dissociate as member; wrongful dissociation.—

(1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under s. 605.0602(1).

(2) A person's dissociation as a member is wrongful only if the dissociation:

(a) Is in breach of an express provision of the operating agreement; or

(b) Occurs before completion of the winding up of the company, and:

1. The person withdraws as a member by express will;

2. The person is expelled as a member by judicial order under s. 605.0602(6);

3. The person is dissociated under s. 605.0602(8); or

4. In the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(3) A person who wrongfully dissociates as a member is liable to the limited liability company and, subject to s. 605.0801, to the other members for damages caused by the dissociation. The liability is in addition to each debt, obligation, or other liability of the member to the company or the other members.

(4) Notwithstanding anything to the contrary under applicable law, the articles of organization or operating agreement may provide that a limited liability company interest may not be assigned before the dissolution and winding up of the limited liability company.

History.—s. 2, ch. 2013-180.

605.0602 Events causing dissociation.—A person is dissociated as a member if any of the following occur:

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

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

(3) The person's entire interest is transferred in a foreclosure sale under s. 605.0503(5).

(4) The person is expelled as a member pursuant to the operating agreement.

(5) The person is expelled as a member by the unanimous consent of the other members if any of the following occur:

(a) It is unlawful to carry on the company's activities and affairs with the person as a member.

(b) There has been a transfer of the person's entire transferable interest in the company other than:

1. A transfer for security purposes; or

2. A charging order in effect under s. 605.0503 which has not been foreclosed.

(c) The person is a corporation and:

1. The company notifies the person that it will be expelled as a member because the person has filed articles or a certificate of dissolution or the equivalent, the person has been administratively dissolved, its charter or equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of its formation; and

2. Within 90 days after the notification, the articles or certificate of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated.

(d) The person is an unincorporated entity that has been dissolved and whose business is being wound up.

(6) On application by the company or a member in a direct action under s. 605.0801, the person is expelled as a member by judicial order because the person:

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

(b) Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under s. 605.04091; or

(c) Has engaged or is engaging in conduct relating to the company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member.

(7) In the case of an individual:

(a) The individual dies; or

(b) In a member-managed limited liability company:

1. A guardian or general conservator for the individual is appointed; or

2. There is a judicial order that the individual has otherwise become incapable of performing the individual's duties as a member under this chapter or the operating agreement.

(8) In a member-managed limited liability company, the person:

(a) Becomes a debtor in bankruptcy;

(b) Executes an assignment for the benefit of creditors; or

(c) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property.

(9) In the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the company is distributed.

(10) In the case of a person that is an estate or is acting as a member by virtue of being a legal representative of an estate, the estate's entire transferable interest in the company is distributed.

(11) In the case of a person that is not an individual, the existence of the person terminates.

(12) The company participates in a merger under ss. 605.1021-605.1026 and:

(a) The company is not the surviving entity; or

(b) Otherwise as a result of the merger, the person ceases to be a member.

(13) The company participates in an interest exchange under ss. 605.1031-605.1036, and the person ceases to be a member.

(14) The company participates in a conversion under ss. 605.1041-605.1046, and the person ceases to be a member.

(15) The company dissolves and completes winding up.

History.—s. 2, ch. 2013-180; s. 24, ch. 2015-148.

605.0603 Effect of dissociation.—

(1) If a person is dissociated as a member:

(a) The person's right to participate as a member in the management and conduct of the company's activities and affairs terminates;

(b) If the company is member-managed, the person's duties and obligations under s. 605.04091 as a member end with regard to matters arising and events occurring after the person's dissociation; and

(c) Subject to ss. 605.0504 and 605.1001-605.1072, a transferable interest owned by the person in the person's capacity immediately before dissociation as a member is owned by the person solely as a transferee.

(2) A person's dissociation as a member does not, of itself, discharge the person from a debt, obligation, or other liability to the company or the other members which the person incurred while a member.

History.—s. 2, ch. 2013-180.

605.0701 Events causing dissolution.—A limited liability company is dissolved and its activities and affairs must be wound up upon the occurrence of the following:

(1) An event or circumstance that the operating agreement states causes dissolution.

(2) The consent of all the members.

(3) The passage of 90 consecutive days during which the company has no members, unless:

(a) Consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(b) At least one person becomes a member in accordance with the consent.

(4) The entry of a decree of judicial dissolution in accordance with s. 605.0705.

(5) The filing of a statement of administrative dissolution by the department pursuant to s. 605.0714.

History.—s. 2, ch. 2013-180.

605.0702 Grounds for judicial dissolution.—

(1) A circuit court may dissolve a limited liability company:

(a) In a proceeding by the Department of Legal Affairs if it is established that:

1. The limited liability company obtained its articles of organization through fraud; or

2. The limited liability company has continued to exceed or abuse the authority conferred upon it by law.

The enumeration in subparagraphs 1. and 2. of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or a state official for the annulment or dissolution of a limited liability company for other causes as provided in another law of this state.

(b) In a proceeding by a manager or member to dissolve the limited liability company if it is established that:

1. The conduct of all or substantially all of the company's activities and affairs is unlawful;
2. It is not reasonably practicable to carry on the company's activities and affairs in conformity with the articles of organization and the operating agreement;
3. The managers or members in control of the company have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;
4. The limited liability company's assets are being misappropriated or wasted, causing injury to the limited liability company, or in a proceeding by a member, causing injury to one or more of its members; or
5. The managers or the members of the limited liability company are deadlocked in the management of the limited liability company's activities and affairs, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered.

(c) In a proceeding by the limited liability company to have its voluntary dissolution continued under court supervision.

(2)(a) If the managers or the members of the limited liability company are deadlocked in the management of the limited liability company's activities and affairs, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered, if the operating agreement contains a deadlock sale provision that has been initiated before the time that the court determines that the grounds for judicial dissolution exist under subparagraph (1)(b)5., then such deadlock sale provision applies to the resolution of such deadlock instead of the court entering an order of judicial dissolution or an order directing the purchase of petitioner's interest under s. 605.0706, so long as the provisions of such deadlock sale provision are thereafter initiated and effectuated in accordance with the terms of such deadlock sale provision or otherwise pursuant to an agreement of the members of the company.

(b) As used in this section, the term "deadlock sale provision" means a provision in an operating agreement which is or may be applicable in the event of a deadlock among the managers or the members of the limited liability company which the members of the company are unable to break and which provides for a deadlock breaking mechanism, including, but not limited to:

1. A redemption or a purchase and sale of interests;
2. A governance change, among or between members;
3. The sale of the company or all or substantially all of the assets of the company; or
4. A similar provision that, if initiated and effectuated, breaks the deadlock by causing the transfer of interests, a governance change, or the sale of all or substantially all of the company's assets.

(3) A deadlock sale provision in an operating agreement which is not initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest under s. 605.0706, does not adversely affect the rights of members and managers to seek judicial dissolution under subparagraph (1)(b)5. or the rights of the company or one or more members to purchase the petitioner's interest under s. 605.0706. The filing of an action for judicial dissolution on the grounds described in subparagraph (1)(b)5. or an election to purchase the petitioner's interest under s. 605.0706, does not adversely affect the right of a member to initiate an available deadlock sale provision under the operating agreement or to enforce a member-initiated or an automatically-initiated deadlock sale provision if the deadlock sale provision is initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest under s. 605.0706.

History.—s. 2, ch. 2013-180; s. 251, ch. 2019-90.

605.0703 Procedure for judicial dissolution; alternative remedies.—

(1) Venue for a proceeding brought under s. 605.0702 lies in the circuit court of the county where the limited liability company's principal office is or was last located, as shown by the records of the department, or, if there is or was no principal office in this state, in the circuit court of the county where the company's registered office is or was last located.

(2) It is not necessary to make members parties to a proceeding to dissolve a limited liability company unless relief is sought against such members individually.

(3) A court in a proceeding brought to dissolve a limited liability company may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the limited liability company's assets wherever located, and carry on the business of the limited liability company until a full hearing can be held.

(4) In a proceeding brought under s. 605.0702, the court may, upon a showing of sufficient merit to warrant such a remedy:

(a) Appoint a receiver or custodian under s. 605.0704;

(b) Order a purchase of a petitioning member's interest pursuant to s. 605.0706; or

(c) Upon a showing of good cause, order another remedy the court deems appropriate in its discretion, including an equitable remedy.

(5) Section 57.105 applies to a proceeding brought under s. 605.0702.

History.—s. 2, ch. 2013-180.

605.0704 Receivership or custodianship.—

(1) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind up and liquidate or one or more custodians to manage the business and affairs of the limited liability company. The court shall hold a hearing, after notifying all parties to the proceeding and an interested person designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the limited liability company and all of its property, wherever located.

(2) The court may appoint a person authorized to act as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended. Among other powers:

(a) The receiver:

1. May dispose of all or a part of the assets of the limited liability company, wherever located, at a public or private sale, if authorized by the court; and

2. May sue and defend in the receiver's own name, as receiver of the limited liability company, in all courts of this state; and

(b) The custodian may exercise all of the powers of the limited liability company, through or in place of its managers or members, to the extent necessary to manage the activities and affairs of the limited liability company in the best interest of its members and creditors.

(4) During a receivership, the court may redesignate the receiver as a custodian and, during a custodianship, may redesignate the custodian as a receiver if doing so is in the best interests of the limited liability company and its members and creditors.

(5) During the receivership or custodianship the court may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the limited liability company or proceeds from the sale of part or all of those assets.

(6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of a limited liability company. The ancillary receiver shall serve ancillary to a receiver located in another state if the court deems that circumstances exist requiring the appointment of such a receiver. The court may appoint a receiver for a foreign limited liability company even though a receiver has not been appointed elsewhere. The receivership shall be converted into an ancillary receivership if an order entered by a court of competent jurisdiction in the other state provides for a receivership of the foreign limited liability company.

History.—s. 2, ch. 2013-180.

605.0705 Decree of dissolution.—

(1) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in s. 605.0702 exist, the court may enter a decree dissolving the limited liability company and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the department, which shall file the decree.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the limited liability company's activities and affairs in accordance with ss. 605.0709-605.0713, subject to subsection (3).

(3) In a proceeding for judicial dissolution, the court may require all creditors of the limited liability company to file with the clerk of the court or with the receiver, in a form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, the court shall fix a date, which may not be earlier than 4 months after the date of the order, as the last day for filing claims. The court shall prescribe the deadline for filing claims which shall be given to creditors and claimants. Before the date so fixed, the court may extend the time for the filing of claims by court order. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the limited liability company. This section does not affect the enforceability of a recorded mortgage or lien or the perfected security interest or rights of a person in possession of real or personal property.

History.—s. 2, ch. 2013-180.

605.0706 Election to purchase instead of dissolution.—

(1) In a proceeding initiated by a member of a limited liability company under s. 605.0702(1)(b), the company may elect, or, if it fails to elect, one or more other members may elect, to purchase the entire interest of the petitioner in the company at the fair value of the interest. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court within 90 days after the filing of the petition by the petitioning member under s. 605.0702(1)(b) or at such later time as the court may allow. If the election to purchase is filed, the company shall within 10 days thereafter give written notice to all members, other than the petitioning member. The notice must describe the interest in the company owned by each petitioning member and must advise the recipients of their right to join in the election to purchase the petitioning member's interest in accordance with this section. Members who wish to participate must file notice of their intention to join in the purchase within 30 days after the effective date of the notice. A member who has filed an election or notice of the intent to participate in the election to purchase thereby becomes a party to the proceeding and shall participate in the purchase in proportion to the ownership interest as of the date the first election was filed unless the members otherwise agree or the court otherwise directs. After an election to purchase has been filed by the limited liability company or one or more members, the proceeding under s. 605.0702(1)(b) may not be discontinued or settled, and the petitioning member may not sell or otherwise dispose of the interest of the petitioner in the company unless the court determines that it would be equitable to the company and the members, other than the petitioner, to authorize such discontinuance, settlement, sale, or other disposition or the sale is pursuant to a deadlock sale provision described in s. 605.0702(1)(b).

(3) If, within 60 days after the filing of the first election, the parties reach an agreement as to the fair value and terms of the purchase of the petitioner's interest, the court shall enter an order directing the purchase of the petitioner's interest upon the terms and conditions agreed to by the parties, unless the petitioner's interest has been acquired pursuant to a deadlock sale provision before the order.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of a party, may stay the proceedings to dissolve under s. 605.0702(1)(b) and shall, whether or not the proceeding is stayed, determine the fair value of the petitioner's interest as of the day before the date on which the petition was filed or as of such other date as the court deems appropriate under the circumstances.

(5) Upon determining the fair value of the petitioner's interest in the company, unless the petitioner's interest has been acquired pursuant to a deadlock sale provision before the order, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include: payment of the purchase price in installments, when necessary in the interests of equity; a provision for security to ensure payment of the purchase price and additional costs, fees, and expenses as may have been awarded; and, if the interest is to be purchased by members, the allocation of the interest among those members. In allocating the petitioner's interest among holders of different classes or series of interests in the company, the court shall attempt to preserve any existing distribution of voting rights among holders of different classes or series insofar as practicable and may direct that holders of any specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good faith, payment of interest is not allowed. If the court finds that the petitioning member had probable grounds for relief under s. 605.0702(1)(b), it may award expenses to the petitioning member, including reasonable fees and expenses of counsel and of experts employed by petitioner.

(6) The entry of an order under subsection (3) or subsection (5) shall be subject to subsection (8), and the order may not be entered unless the award is determined by the court to be allowed under subsection (8). In determining compliance with s. 605.0405, the court may rely on an affidavit from the limited liability company as to compliance with that section as of the measurement date. Upon entry of an order under subsection (3) or subsection (5), the court shall dismiss the petition to dissolve the limited liability company under s. 605.0702(1)(b), and the petitioning member shall no longer have rights or status as a member of the limited liability company except the right to receive the amounts awarded by the order of the court, which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after the date the order becomes final.

(8) Any award pursuant to an order under subsection (3) or subsection (5), other than an award of fees and expenses pursuant to subsection (5), is subject to s. 605.0405. Unless otherwise provided in the court's order, the effect of a distribution under s. 605.0405 shall be measured as of the date of the court's order under subsection (3) or subsection (5).

History.—s. 2, ch. 2013-180; s. 252, ch. 2019-90.

605.0707 Articles of dissolution; filing of articles of dissolution.—

(1) Upon the occurrence of an event described in s. 605.0701(1)-(3), the limited liability company shall deliver for filing articles of dissolution as provided in this section.

(2) The articles of dissolution must state the following:

(a) The name of the limited liability company.

(b) The delayed effective date of the limited liability company's dissolution if the dissolution is not to be effective on the date the articles of dissolution are filed by the department.

(c) The occurrence that resulted in the limited liability company's dissolution.

(d) If there are no members, the name, address, and signature of the person appointed in accordance with this subsection to wind up the company.

(3) The articles of dissolution of the limited liability company shall be delivered to the department. If the department finds that the articles of dissolution conform to law, it shall, when all fees have been paid as prescribed in this chapter, file the articles of dissolution and issue a certificate of dissolution.

(4) Upon the filing of the articles of dissolution, the limited liability company shall cease conducting its business and shall continue solely for the purpose of winding up its affairs in accordance with s. 605.0709, except for the purpose of lawsuits, other proceedings, and appropriate action as provided in this chapter.

History.—s. 2, ch. 2013-180.

605.0708 Revocation of articles of dissolution.—

(1) A limited liability company that has dissolved as the result of an event described in s. 605.0701(1)-(3) and filed articles of dissolution with the department, but has not filed a statement of termination which has become effective, may revoke its dissolution at any time before 120 days after the effective date of its articles of dissolution.

(2) The revocation of the dissolution shall be authorized in the same manner as the dissolution was authorized.

(3) After the revocation of dissolution is authorized, the limited liability company shall deliver a statement of revocation of dissolution to the department for filing, together with a copy of its articles of dissolution, which must include the following:

(a) The name of the limited liability company.

(b) The effective date of the dissolution which was revoked.

(c) The date that the statement of revocation of dissolution was authorized.

(4) If there has been substantial compliance with subsection (3), the revocation of dissolution is effective when the department files the statement of revocation of dissolution.

(5) When the revocation of dissolution becomes effective:

(a) The company resumes carrying on its activities and affairs as if dissolution had never occurred;

(b) Subject to paragraph (c), a liability incurred by the company after the dissolution and before the revocation is effective is determined as if dissolution had never occurred; and

(c) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the revocation may not be adversely affected.

History.—s. 2, ch. 2013-180.

605.0709 Winding up.—

(1) A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in ss. 605.0708 and 605.0715, the company continues after dissolution only for the purpose of winding up.

(2) In winding up its activities and affairs, a limited liability company:

(a) Shall discharge or make provision for the company's debts, obligations, and other liabilities as provided in ss. 605.0710-605.0713, settle and close the company's activities and affairs, and marshal and distribute the assets of the company; and

(b) May:

1. Preserve the company's activities, affairs, and property as a going concern for a reasonable time;

2. Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

3. Transfer title to the company's real estate and other property;

4. Settle disputes by mediation or arbitration;

5. Dispose of its properties that will not be distributed in kind to its members; and

6. Perform other acts necessary or appropriate to the winding up.

(3) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the company. If the legal representative does so, the person has the powers of a sole manager under s. 605.0407(3) and is deemed to be a manager for the purposes of s. 605.0304(1).

(4) If the legal representative under subsection (3) declines or fails to wind up the company's activities and affairs, a person may be appointed to do so by the consent of the transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection has the powers of a sole manager under s. 605.0407(3) and is deemed to be a manager for the purposes of s. 605.0304(1).

(5) A circuit court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of one or more persons to wind up the company's activities and affairs:

(a) On application of a member or manager if the applicant establishes good cause;

- (b) On the application of a transferee if:
 1. The company does not have any members;
 2. The legal representative of the last person to have been a member declines or fails to wind up the company's activities and affairs; or
 3. Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (3);
- (c) On application of a creditor of the company if the applicant establishes good cause, but only if a receiver, custodian, or another person has not already been appointed for that purpose under this chapter; or
- (d) In connection with a proceeding under s. 605.0702 if a receiver, custodian, or another person has not already been appointed for that purpose under s. 605.0704.
- (6) The person or persons appointed by a court under subsection (5) may also be designated trustees for or receivers of the company with the authority to take charge of the limited liability company's property; to collect the debts and property due and belonging to the limited liability company; to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes described above; to appoint an agent or agents under them; and to do all other acts that might be done by the limited liability company, if in being, which may be necessary for the final settlement of the unfinished activities and affairs of the limited liability company. The powers of the trustees or receivers may be continued as long as the court determines is necessary for the above purposes.
- (7) A dissolved limited liability company that has completed winding up may deliver to the department for filing a statement of termination that provides the following:
 - (a) The name of the limited liability company.
 - (b) The date of filing of its initial articles of organization.
 - (c) The date of the filing of its articles of dissolution.
 - (d) The limited liability company has completed winding up its activities and affairs and has determined that it will file a statement of termination.
 - (e) Other information as determined by the authorized representative.
- (8) The manager or managers in office at the time of dissolution or the survivors of such manager or managers, or, if none, the members, shall thereafter be trustees for the members and creditors of the dissolved limited liability company. The trustees may distribute property of the limited liability company discovered after dissolution, convey real estate and other property, and take such other action as may be necessary on behalf of and in the name of the dissolved limited liability company.

History.—s. 2, ch. 2013-180.

605.0710 Disposition of assets in winding up.—

- (1) In winding up its activities and affairs, a limited liability company must apply its assets to discharge its obligations to creditors, including members who are creditors.
- (2) After a limited liability company complies with subsection (1), the surplus must be distributed in the following order, subject to a charging order in effect under s. 605.0503:
 - (a) To each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; then
 - (b) To members and persons dissociated as members, in the proportions in which they shared in distributions before dissolution, except to the extent necessary to comply with a transfer effective under s. 605.0502.
- (3) If the limited liability company does not have sufficient surplus to comply with paragraph (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.
- (4) All distributions made under subsections (2) and (3) must be paid in money.

History.—s. 2, ch. 2013-180.

605.0711 Known claims against dissolved limited liability company.—

(1) A dissolved limited liability company or successor entity, as defined in subsection (14), may dispose of the known claims against it by following the procedures described in subsections (2)-(7).

(2) A dissolved limited liability company or successor entity shall deliver to each of its known claimants written notice of the dissolution after its effective date. The written notice must do the following:

- (a) Provide a reasonable description of the claim that the claimant may be entitled to assert.
- (b) State whether the claim is admitted or not admitted, in whole or in part, and, if admitted:
 1. The amount that is admitted, which may be as of a given date; and
 2. An interest obligation if fixed by an instrument of indebtedness.
- (c) Provide a mailing address to which a claim may be sent.
- (d) State the deadline, which may not be less than 120 days after the effective date of the written

notice, by which confirmation of the claim must be delivered to the dissolved limited liability company or successor entity.

(e) State that the dissolved limited liability company or successor entity may make distributions to other claimants and to the members or transferees of the limited liability company or persons interested without further notice.

(3) A dissolved limited liability company or successor entity may reject, in whole or in part, a claim made by a claimant pursuant to this subsection by mailing notice of the rejection to the claimant within 90 days after receipt of the claim and, in all events, at least 150 days before the expiration of the 3-year period after the effective date of dissolution. A notice sent by the dissolved limited liability company or successor entity pursuant to this subsection must be accompanied by a copy of this section.

(4) A dissolved limited liability company or successor entity electing to follow the procedures described in subsections (2) and (3) shall also give notice of the dissolution of the limited liability company to persons who have known claims that are contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured and request that the persons present the claims in accordance with the terms of the notice. The notice must be in substantially the same form and sent in the same manner as described in subsection (2).

(5) A dissolved limited liability company or successor entity shall offer a claimant whose known claim is contingent, conditional, or unmatured such security as the limited liability company or entity determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved limited liability company or successor entity shall deliver such offer to the claimant within 90 days after receipt of the claim and, in all events, at least 150 days before expiration of 3 years after the effective date of dissolution. If the claimant that is offered the security does not deliver in writing to the dissolved limited liability company or successor entity a notice rejecting the offer within 120 days after receipt of the offer for security, the claimant is deemed to have accepted such security as the sole source from which to satisfy his, her, or its claim against the limited liability company.

(6) A dissolved limited liability company or successor entity that gives notice in accordance with subsections (2) and (4) shall petition the circuit court in the applicable county to determine the amount and form of security that are sufficient to provide compensation to a claimant that has rejected the offer for security made pursuant to subsection (5).

(7) A dissolved limited liability company or successor entity that has given notice in accordance with subsection (2) shall petition the circuit court in the applicable county to determine the amount and form of security that will be sufficient to provide compensation to claimants whose claims are known to the limited liability company or successor entity but whose identities are unknown. The court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in a proceeding brought under this subsection. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the petitioner in the proceeding.

(8) The giving of notice or making of an offer pursuant to this section does not revive a claim then barred, extend an otherwise applicable statute of limitations, or constitute acknowledgment by the dissolved limited

liability company or successor entity that a person to whom such notice is sent is a proper claimant, and does not operate as a waiver of a defense or counterclaim in respect of a claim asserted by a person to whom such notice is sent.

(9) A dissolved limited liability company or successor entity that followed the procedures described in subsections (2)-(7) must:

- (a) Pay the claims admitted or made and not rejected in accordance with subsection (3);
- (b) Post the security offered and not rejected pursuant to subsection (5);
- (c) Post a security ordered by the circuit court in a proceeding under subsections (6) and (7); and
- (d) Pay or make provision for all other known obligations of the limited liability company or the successor entity.

If there are sufficient funds, such claims or obligations must be paid in full, and a provision for payments must be made in full. If there are insufficient funds, the claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds that are legally available therefor. Remaining funds shall be distributed to the members and transferees of the dissolved limited liability company. However, the distribution may not be made before the expiration of 150 days after the date of the last notice of a rejection given pursuant to subsection (3). In the absence of actual fraud, the judgment of the managers of a dissolved manager-managed limited liability company or the members of a dissolved member-managed limited liability company, or other person or persons winding up the limited liability company or the governing persons of the successor entity, as to the provisions made for the payment of all obligations under paragraph (d), is conclusive.

(10) A dissolved limited liability company or successor entity that has not followed the procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims and obligations, including all contingent, conditional, or unmatured claims known to the dissolved limited liability company or the successor entity and all claims that are known to the dissolved limited liability company or the successor entity but for which the identity of the claimant is unknown. If there are sufficient funds, the claims must be paid in full, and a provision made for payment must be made in full. If there are insufficient funds, the claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds that are legally available. Remaining funds shall be distributed to the members and transferees of the dissolved limited liability company.

(11) A member or transferee of a dissolved limited liability company to which the assets were distributed pursuant to subsection (9) or subsection (10) is not liable for a claim against the limited liability company in an amount in excess of the member's or transferee's pro rata share of the claim or the amount distributed to the member or transferee, whichever is less.

(12) A member or transferee of a dissolved limited liability company to whom the assets were distributed pursuant to subsection (9) is not liable for a claim against the limited liability company, which claim is known to the limited liability company or successor entity and on which a proceeding is not begun before the expiration of 3 years after the effective date of dissolution.

(13) The aggregate liability of a person for claims against the dissolved limited liability company arising under this section or s. 605.0710 may not exceed the amount distributed to the person in dissolution.

(14) As used in this section and s. 605.0712, the term "successor entity" includes a trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved limited liability company are transferred and which exists solely for the purposes of prosecuting and defending suits by or against the dissolved limited liability company, thereby enabling the dissolved limited liability company to settle and close the activities and affairs of the dissolved limited liability company, to dispose of and convey the property of the dissolved limited liability company, to discharge the liabilities of the dissolved limited liability company, and to distribute to the dissolved limited liability company's members or transferees any remaining assets, but not for the purpose of continuing the activities and affairs for which the dissolved limited liability company was organized.

(15) As used in this section and ss. 605.0712 and 605.0713, the term “applicable county” means the county in this state in which the limited liability company’s principal office is located or was located at the effective date of dissolution; if the company has, and at the effective date of dissolution had, no principal office in this state, then in the county in which the company has, or at the effective date of dissolution had, an office in this state; or if none in this state, then in the county in which the company’s registered office is or was last located.

(16) As used in this section, the term “known claim” or “claim” includes unliquidated claims, but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

History.—s. 2, ch. 2013-180; s. 134, ch. 2014-17.

605.0712 Other claims against a dissolved limited liability company.—

(1) A dissolved limited liability company or successor entity, as defined in s. 605.0711(14), may choose to execute one of the following procedures to resolve payment of unknown claims:

(a) The company or successor entity may file notice of its dissolution with the department on the form prescribed by the department and request that persons who have claims against the company which are not known to the company or successor entity present them in accordance with the notice. The notice must:

1. State the name of the company and the date of dissolution;
2. Describe the information that must be included in a claim, state that the claim must be in writing, and provide a mailing address to which the claim may be sent; and
3. State that a claim against the company is barred unless an action to enforce the claim is commenced within 4 years after the filing of the notice.

(b) The company or successor entity may publish notice of its dissolution and request persons who have claims against the company to present them in accordance with the notice. The notice must:

1. Be published in a newspaper of general circulation in the county in which the dissolved limited liability company’s principal office is located or, if the principal office is not located in this state, in the county in which the office of the company’s registered agent is or was last located;
2. Describe the information that must be included in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and
3. State that a claim against the company is barred unless an action to enforce the claim is commenced within 4 years after publication of the notice.

(2) If a dissolved limited liability company complies with paragraph (1)(a) or paragraph (1)(b), unless sooner barred by another statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited liability company within 4 years after the publication date of the notice:

- (a) A claimant that did not receive notice in a record under s. 605.0711;
- (b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on; and
- (c) A claimant whose claim is contingent at or based on an event occurring after the effective date of dissolution.

(3) A claim that is not barred by this section or another statute limiting actions may be enforced:

- (a) Against a dissolved limited liability company, to the extent of its undistributed assets; and
- (b) Except as otherwise provided in s. 605.0713, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person’s proportionate share of the claim or of the company’s assets distributed to the member or transferee after dissolution, whichever is less, but a person’s total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

(4) This section does not extend an otherwise applicable statute of limitations.

History.—s. 2, ch. 2013-180; s. 73, ch. 2015-2; s. 25, ch. 2015-148.

605.0713 Court proceedings.—

(1) A dissolved limited liability company that has filed or published a notice under s. 605.0712(1)(a) or (1)(b) may file an application with the circuit court in the applicable county, as defined in s. 605.0711(15), for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the company, or are based on an event occurring after the effective date of dissolution but which, based on the facts known to the dissolved company, are reasonably expected to arise after the effective date of dissolution. Security is not required for a claim that is, or is reasonably anticipated to be, barred under s. 605.0712.

(2) Within 10 days after filing an application under subsection (1), the dissolved limited liability company must give notice of the proceeding to each claimant holding a contingent claim known to the company.

(3) In a proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian ad litem, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(4) A dissolved limited liability company that provides security in the amount and form ordered by the court under subsection (1) satisfies the company's obligations with respect to claims that are contingent, have not been made known to the company, or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a member or transferee that received assets in liquidation.

History.—s. 2, ch. 2013-180.

605.0714 Administrative dissolution.—

(1) The department may dissolve a limited liability company administratively if the company does not:

(a) Deliver its annual report to the department by 5:00 p.m. Eastern Time on the third Friday in September of each year;

(b) Pay a fee or penalty due to the department under this chapter;

(c) Appoint and maintain a registered agent as required under s. 605.0113; or

(d) Deliver for filing a statement of a change under s. 605.0114 within 30 days after a change has occurred in the name or address of the agent unless, within 30 days after the change occurred:

1. The agent filed a statement of change under s. 605.0116; or

2. The change was made in accordance with s. 605.0114(4).

(2) Administrative dissolution of a limited liability company for failure to file an annual report must occur on the fourth Friday in September of each year. The department shall issue a notice in a record of administrative dissolution to the limited liability company dissolved for failure to file an annual report. Issuance of the notice may be by electronic transmission to a limited liability company that has provided the department with an e-mail address.

(3) If the department determines that one or more grounds exist for administratively dissolving a limited liability company under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the department shall serve notice in a record to the limited liability company of its intent to administratively dissolve the limited liability company. Issuance of the notice may be by electronic transmission to a limited liability company that has provided the department with an e-mail address.

(4) If, within 60 days after sending the notice of intent to administratively dissolve pursuant to subsection (3), a limited liability company does not correct each ground for dissolution under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d) or demonstrate to the reasonable satisfaction of the department that each ground determined by the department does not exist, the department shall dissolve the limited liability company administratively and issue to the company a notice in a record of administrative dissolution that states the grounds for dissolution. Issuance of the notice of administrative dissolution may be by electronic transmission to a limited liability company that has provided the department with an e-mail address.

(5) A limited liability company that has been administratively dissolved continues in existence but may only carry on activities necessary to wind up its activities and affairs, liquidate and distribute its assets, and

notify claimants under ss. 605.0711 and 605.0712.

(6) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

History.—s. 2, ch. 2013-180; s. 135, ch. 2014-17.

605.0715 Reinstatement.—

(1) A limited liability company that is administratively dissolved under s. 605.0714 or former s. 608.4481 may apply to the department for reinstatement at any time after the effective date of dissolution. The company must submit all fees and penalties then owed by the company at the rates provided by law at the time the company applies for reinstatement, together with an application for reinstatement prescribed and furnished by the department, which is signed by both the registered agent and an authorized representative of the company and states:

- (a) The name of the limited liability company.
- (b) The street address of the company's principal office and mailing address.
- (c) The date of the company's organization.
- (d) The company's federal employer identification number or, if none, whether one has been applied for.
- (e) The name, title or capacity, and address of at least one person who has authority to manage the company.
- (f) Additional information that is necessary or appropriate to enable the department to carry out this chapter.

(2) In lieu of the requirement to file an application for reinstatement as described in subsection (1), an administratively dissolved limited liability company may submit all fees and penalties owed by the company at the rates provided by law at the time the company applies for reinstatement, together with a current annual report, signed by both the registered agent and an authorized representative of the company, which contains the information described in subsection (1).

(3) If the department determines that an application for reinstatement contains the information required under subsection (1) or subsection (2) and that the information is correct, upon payment of all required fees and penalties, the department shall reinstate the limited liability company.

- (4) When reinstatement under this section becomes effective:
- (a) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.
 - (b) The limited liability company may resume its activities and affairs as if the administrative dissolution had not occurred.
 - (c) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

(5) The name of the dissolved limited liability company is not available for assumption or use by another business entity until 1 year after the effective date of dissolution unless the dissolved limited liability company provides the department with a record executed as required pursuant to s. 605.0203 permitting the immediate assumption or use of the name by another business entity.

(6) If the name of the dissolved limited liability company has been lawfully assumed in this state by another business entity, the department shall require the dissolved limited liability company to amend its articles of organization to change its name before accepting the application for reinstatement.

History.—s. 2, ch. 2013-180; s. 7, ch. 2015-148; s. 253, ch. 2019-90.

605.0716 Judicial review of denial of reinstatement.—

(1) If the department denies a limited liability company's application for reinstatement after administrative dissolution, the department shall serve the company with a notice in a record that explains the reason or reasons for the denial.

(2) Within 30 days after service of a notice of denial of reinstatement, a limited liability company may appeal the denial by petitioning the Circuit Court of Leon County to set aside the dissolution. The petition

must be served on the department and contain a copy of the department's notice of administrative dissolution, the company's application for reinstatement, and the department's notice of denial.

(3) The circuit court may order the department to reinstate a dissolved limited liability company or take other action the court considers appropriate.

(4) The circuit court's final decision may be appealed as in other civil proceedings.

History.—s. 2, ch. 2013-180; s. 254, ch. 2019-90.

605.0717 Effect of dissolution.—

(1) Dissolution of a limited liability company does not:

(a) Transfer title to the limited liability company's assets;

(b) Prevent commencement of a proceeding by or against the limited liability company in its name;

(c) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution; or

(d) Terminate the authority of the registered agent of the limited liability company.

(2) Except as provided in s. 605.0715(5), the name of the dissolved limited liability company is not available for assumption or use by another business entity until 120 days after the effective date of dissolution or filing of a statement of termination, if earlier.

History.—s. 2, ch. 2013-180; s. 26, ch. 2015-148.

605.0801 Direct action by member.—

(1) Subject to subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove either:

(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company; or

(b) An actual or threatened injury resulting from a violation of a separate statutory or contractual duty owed by the alleged wrongdoer to the member, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the limited liability company.

History.—s. 2, ch. 2013-180; s. 255, ch. 2019-90.

605.0802 Derivative action.—A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) The member first makes a demand on the other members in a member-managed limited liability company or the managers of a manager-managed limited liability company requesting that the managers or other members cause the company to take suitable action to enforce the right, and the managers or other members do not take the action within a reasonable time, not to exceed 90 days; or

(2) A demand under subsection (1) would be futile, or irreparable injury would result to the company by waiting for the other members or the managers to take action to enforce the right in accordance with subsection (1).

History.—s. 2, ch. 2013-180.

605.0803 Proper plaintiff.—A derivative action to enforce a right of a limited liability company may be commenced only by a person who is a member at the time the action is commenced and:

(1) Was a member when the conduct giving rise to the action occurred; or

(2) Whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person who was a member when the conduct giving rise to the action occurred.

History.—s. 2, ch. 2013-180; s. 256, ch. 2019-90.

605.0804 Special litigation committee.—

(1) If a limited liability company is named as or made a party in a derivative action, the company may appoint a special litigation committee to investigate the claims asserted in the derivative action and determine whether pursuing the action is in the best interest of the company. If the company appoints a special litigation committee, on motion, except for good cause shown, the court may stay any derivative action for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

(a) Enforcing a person's rights under the company's operating agreement or this chapter, including the person's rights to information under s. 605.0410; or

(b) Exercising its equitable or other powers, including granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

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

(3) A special litigation committee may be appointed:

(a) In a member-managed limited liability company, by the consent of the members who are not named as parties in the derivative action, who are otherwise disinterested and independent, and who hold a majority of the current percentage or other interest in the profits of the company owned by all of the members of the company who are not named as parties in the derivative action and who are otherwise disinterested and independent;

(b) In a manager-managed limited liability company, by a majority of the managers not named as parties in the derivative action and who are otherwise disinterested and independent; or

(c) Upon motion by the limited liability company, consisting of a panel of one or more disinterested and independent persons.

(4) After appropriate investigation, a special litigation committee shall determine what action is in the best interest of the limited liability company, including continuing, dismissing, or settling the derivative action or taking another action that the special litigation committee deems appropriate.

(5) After making a determination under subsection (4), a special litigation committee shall file or cause to be filed with the court a statement of its determination and its report supporting its determination and shall serve each party to the derivative action with a copy of the determination and report. Upon motion to enforce the determination of the special litigation committee, the court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court may enforce the determination of the committee. Otherwise, the court shall dissolve any stay of derivative action entered under subsection (1) and allow the derivative action to continue under the control of the plaintiff.

History.—s. 2, ch. 2013-180.

605.0805 Proceeds and expenses.—

(1) Except as otherwise provided in subsection (2):

(a) Proceeds or other benefits of a derivative action under s. 605.0802, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(b) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

History.—s. 2, ch. 2013-180; s. 74, ch. 2015-2; s. 27, ch. 2015-148.

605.0806 Voluntary dismissal or settlement; notice.—

(1) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

(2) If the court determines that a proposed voluntary dismissal or settlement will substantially affect the interest of the limited liability company's members or a class, series, or voting group of members, the court shall direct that notice be given to the members affected. The court may determine which party or parties to the derivative action shall bear the expense of giving the notice.

History.—s. 2, ch. 2013-180.

605.0901 Governing law.—

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

(a) The organization and internal affairs of the foreign limited liability company; and
(b) The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the foreign limited liability company.

(2) A foreign limited liability company may not be denied a certificate of authority by reason of a difference between its jurisdiction of formation and the laws of this state.

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

History.—s. 2, ch. 2013-180.

605.0902 Application for certificate of authority.—

(1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the department. A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the department for filing. Such application must be made on forms prescribed by the department. The application must contain the following:

(a) The name of the foreign limited liability company and, if the name does not comply with s. 605.0112, an alternate name adopted pursuant to s. 605.0906.

(b) The name of the foreign limited liability company's jurisdiction of formation.

(c) The principal office and mailing addresses of the foreign limited liability company.

(d) The name and street address in this state of, and the written acceptance by, the foreign limited liability company's initial registered agent in this state.

(e) The name, title or capacity, and address of at least one person who has the authority to manage the foreign limited liability company.

(f) Additional information as may be necessary or appropriate in order to enable the department to determine whether the foreign limited liability company is entitled to file an application for a certificate of authority to transact business in this state and to determine and assess the fees as prescribed in this chapter.

(2) A foreign limited liability company shall deliver with a completed application under subsection (1) a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the foreign limited liability company's publicly filed records in its jurisdiction of formation, dated not more than 90 days before the delivery of the application to the department.

(3) For purposes of complying with the requirements of this chapter, the department may require each individual series or cell of a foreign series limited liability company that transacts business in this state to make a separate application for certificate of authority, and to make such other filings as may be required for purposes of complying with the requirements of this chapter as if each such series or cell were a separate foreign limited liability company.

History.—s. 2, ch. 2013-180.

605.0903 Effect of a certificate of authority.—

(1) Unless the department determines that an application for a certificate of authority of a foreign limited liability company to transact business in this state does not comply with the filing requirements of this chapter, the department shall, upon payment of all filing fees, authorize the foreign limited liability company to transact business in this state and file the application for a certificate of authority.

(2) The filing by the department of an application for a certificate of authority means the foreign limited liability company that filed the application to transact business in this state has obtained a certificate of authority to transact business in this state and is authorized to transact business in this state, subject, however, to the right of the department to suspend or revoke the certificate of authority as provided in this chapter.

History.—s. 2, ch. 2013-180; s. 257, ch. 2019-90.

605.0904 Effect of failure to have certificate of authority.—

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

(2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in a court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign limited liability company or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign limited liability company or its successor has obtained a certificate of authority to transact business in this state.

(4) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of any contract, deed, mortgage, security interest, or act of the foreign limited liability company or prevent the foreign limited liability company from defending an action or proceeding in this state.

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

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

(7) A foreign limited liability company that transacts business in this state without obtaining a certificate of authority is liable to this state for the years or parts thereof during which it transacted business in this state without obtaining a certificate of authority in an amount equal to all fees and penalties that would have been imposed by this chapter upon the foreign limited liability company had it duly applied for and received a certificate of authority to transact business in this state as required under this chapter. In addition to the payments thus prescribed, the foreign limited liability company is liable for a civil penalty of at least \$500 but not more than \$1,000 for each year or part thereof during which it transacts business in this state without a certificate of authority. The department may collect all penalties due under this subsection.

History.—s. 2, ch. 2013-180; s. 136, ch. 2014-17; s. 258, ch. 2019-90.

605.0905 Activities not constituting transacting business.—

(1) The following activities, among others, do not constitute transacting business within the meaning of s. 605.0902(1):

- (a) Maintaining, defending, or settling any proceeding.
- (b) Holding meetings of the managers or members or carrying on other activities concerning internal company affairs.
- (c) Maintaining bank accounts.
- (d) Maintaining managers or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositaries with respect to those securities.
- (e) Selling through independent contractors.

- (f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.
 - (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
 - (i) Transacting business in interstate commerce.
 - (j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.
 - (k) Owning and controlling a subsidiary corporation incorporated in or limited liability company formed in, or transacting business within, this state; voting the stock of any such subsidiary corporation; or voting the membership interests of any such limited liability company, which it has lawfully acquired.
 - (l) Owning a limited partner interest in a limited partnership that is transacting business within this state, unless the limited partner manages or controls the partnership or exercises the powers and duties of a general partner.
 - (m) Owning, without more, real or personal property.
- (2) The list of activities in subsection (1) is not an exhaustive list of activities that do not constitute transacting business within the meaning of s. 605.0902(1).
- (3) The ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1), constitutes transacting business in this state for purposes of s. 605.0902(1).
- (4) This section does not apply when determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under the law of this state other than this chapter.

History.—s. 2, ch. 2013-180; s. 137, ch. 2014-17.

605.0906 Noncomplying name of foreign limited liability company.—

- (1) A foreign limited liability company whose name is unavailable under or whose name does not otherwise comply with s. 605.0112 shall use an alternate name that complies with s. 605.0112 to transact business in this state. An alternate name adopted for use in this state shall be cross-referenced to the actual name of the foreign limited liability company in the records of the department. If the actual name of the foreign limited liability company subsequently becomes available in this state or the foreign limited liability company chooses to change its alternate name, a copy of the record approving the change by its members, managers, or other persons having the authority to do so, and executed as required pursuant to s. 605.0203, shall be delivered to the department for filing.
- (2) A foreign limited liability company that adopts an alternate name under subsection (1) and obtains a certificate of authority with the alternate name need not comply with s. 865.09.
- (3) After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under s. 865.09 to transact business in this state under another name.
- (4) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with s. 605.0112, it may not thereafter transact business in this state until it complies with subsection (1) and obtains an amended certificate of authority pursuant to s. 605.0907.

History.—s. 2, ch. 2013-180; s. 259, ch. 2019-90.

605.0907 Amendment to certificate of authority.—

- (1) A foreign limited liability company authorized to transact business in this state shall deliver for filing an amendment to its certificate of authority to reflect the change of any of the following:
- (a) Its name on the records of the department.
 - (b) Its jurisdiction of formation.

(c) The name and street address in this state of the company's registered agent in this state, unless the change was timely made in accordance with s. 605.0114 or s. 605.0116.

(d) Any person identified in accordance with s. 605.0902(1)(e), or a change in the title or capacity or address of that person.

(2) The amendment must be filed within 90 days after the occurrence of a change described in subsection (1), must be signed by an authorized representative of the foreign limited liability company, and must state the following:

(a) The name of the foreign limited liability company as it appears on the records of the department.

(b) Its jurisdiction of formation.

(c) The date the foreign limited liability company was authorized to transact business in this state.

(d) If the name of the foreign limited liability company has been changed, the name relinquished and its new name.

(e) If the amendment changes the jurisdiction of formation of the foreign limited liability company, a statement of that change.

(3) Subject to subsection (4), a foreign limited liability company authorized to do business in this state may make application to the department to obtain an amended certificate of authority to add, remove, or change the name, title, capacity, or address of a person who has the authority to manage the foreign limited liability company.

(4) The requirements of s. 605.0902 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section unless the official having custody of the foreign limited liability company's publicly filed records in its jurisdiction of formation did not require an amendment to effectuate the change on its records.

History.—s. 2, ch. 2013-180; s. 138, ch. 2014-17; s. 260, ch. 2019-90.

605.0908 Revocation of certificate of authority.—

(1) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the department if:

(a) The foreign limited liability company does not deliver its annual report to the department by 5 p.m. Eastern Time on the third Friday in September of each year.

(b) The foreign limited liability company does not pay a fee or penalty due to the department under this chapter.

(c) The foreign limited liability company does not appoint and maintain a registered agent as required under s. 605.0113.

(d) The foreign limited liability company does not deliver for filing a statement of a change under s. 605.0114 within 30 days after a change in the name or address of the agent has occurred, unless, within 30 days after the change occurred, either:

1. The registered agent files a statement of change under s. 605.0116; or

2. The change was made in accordance with s. 605.0114(4).

(e) The foreign limited liability company has failed to amend its certificate of authority to reflect a change in its name on the records of the department or its jurisdiction of formation.

(f) The department receives a duly authenticated certificate from the official having custody of records in the company's jurisdiction of formation stating that it has been dissolved or is no longer active on the official's records.

(g) The foreign limited liability company's period of duration has expired.

(h) A member, manager, or agent of the foreign limited liability company signs a document that the member, manager, or agent knew was false in a material respect with the intent that the document be delivered to the department for filing.

(i) The foreign limited liability company has failed to answer truthfully and fully, within the time prescribed in s. 605.1104, interrogatories propounded by the department.

(2) Revocation of a foreign limited liability company's certificate of authority for failure to file an annual report shall occur on the fourth Friday in September of each year. The department shall issue a notice in a record of the revocation to the revoked foreign limited liability company. Issuance of the notice may be by electronic transmission to a foreign limited liability company that has provided the department with an e-mail address.

(3) If the department determines that one or more grounds exist under paragraphs (1)(b)-(i) for revoking a foreign limited liability company's certificate of authority, the department shall issue a notice in a record to the foreign limited liability company of the department's intent to revoke the certificate of authority. Issuance of the notice may be by electronic transmission to a foreign limited liability company that has provided the department with an e-mail address.

(4) If, within 60 days after the department sends the notice of intent to revoke in accordance with subsection (3), the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the department that each ground determined by the department does not exist, the department shall revoke the foreign limited liability company's authority to transact business in this state and issue a notice in a record of revocation which states the grounds for revocation. Issuance of the notice may be by electronic transmission to a foreign limited liability company that has provided the department with an e-mail address.

History.—s. 2, ch. 2013-180; s. 261, ch. 2019-90.

605.0909 Reinstatement following revocation of certificate of authority.—

(1) A foreign limited liability company whose certificate of authority has been revoked may apply to the department for reinstatement at any time after the effective date of the revocation. The foreign limited liability company applying for reinstatement must submit all fees and penalties then owed by the foreign limited liability company at rates provided by law at the time the foreign limited liability company applies for reinstatement, together with an application for reinstatement prescribed and furnished by the department, which is signed by both the registered agent and an authorized representative of the company and states:

- (a) The name under which the foreign limited liability company is registered to transact business in this state.
- (b) The street address of the company's principal office and its mailing address.
- (c) The jurisdiction of the company's formation and the date on which it became qualified to transact business in this state.
- (d) The company's federal employer identification number or, if none, whether one has been applied for.
- (e) The name, title or capacity, and address of at least one person who has authority to manage the company.
- (f) Additional information that is necessary or appropriate to enable the department to carry out this chapter.

(2) In lieu of the requirement to file an application for reinstatement as described in subsection (1), a foreign limited liability company whose certificate of authority has been revoked may submit all fees and penalties owed by the company at the rates provided by law at the time the company applies for reinstatement, together with a current annual report, signed by both the registered agent and an authorized representative of the company, which contains the information described in subsection (1).

(3) If the department determines that an application for reinstatement contains the information required under subsection (1) or subsection (2) and that the information is correct, upon payment of all required fees and penalties, the department shall reinstate the foreign limited liability company's certificate of authority.

(4) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the revocation of authority and the foreign limited liability company may resume its activities in this state as if the revocation of authority had not occurred.

(5) The name of the foreign limited liability company whose certificate of authority has been revoked is not available for assumption or use by another business entity until 1 year after the effective date of

revocation of authority unless the limited liability company provides the department with a record executed pursuant to s. 605.0203 which authorizes the immediate assumption or use of its name by another limited liability company.

(6) If the name of the foreign limited liability company applying for reinstatement has been lawfully assumed in this state by another business entity, the department shall require the foreign limited liability company to comply with s. 605.0906 before accepting its application for reinstatement.

History.—s. 2, ch. 2013-180; s. 8, ch. 2015-148.

605.09091 Judicial review of denial of reinstatement.—

(1) If the department denies a foreign limited liability company's application for reinstatement after revocation of its certificate of authority, the department shall serve the foreign limited liability company, pursuant to s. 605.0117(7), with a written notice that explains the reason or reasons for the denial.

(2) Within 30 days after service of a notice of denial of reinstatement, a foreign limited liability company may appeal the denial by petitioning the Circuit Court of Leon County to set aside the revocation. The petition must be served on the department and must contain a copy of the department's notice of revocation, the foreign limited liability company's application for reinstatement, and the department's notice of denial.

(3) The circuit court may order the department to reinstate the certificate of authority of the foreign limited liability company or take other action the court considers appropriate.

(4) The circuit court's final decision may be appealed as in other civil proceedings.

History.—s. 262, ch. 2019-90.

605.0910 Withdrawal and cancellation of certificate of authority.—

(1) To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the department for filing a notice of withdrawal of certificate of authority. The certificate of authority is canceled when the notice becomes effective pursuant to s. 605.0207. The notice of withdrawal of certificate of authority must be signed by an authorized representative and state the following:

(a) The name of the foreign limited liability company as it appears on the records of the department.

(b) The name of the foreign limited liability company's jurisdiction of formation.

(c) The date the foreign limited liability company was authorized to transact business in this state.

(d) That the foreign limited liability company is withdrawing its certificate of authority in this state.

(e) That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process based on a cause of action arising during the time the foreign limited liability company was authorized to transact business in this state.

(f) A mailing address to which the department may mail a copy of any process served on the secretary of state under paragraph (e).

(g) A commitment to notify the department in the future of any change in its mailing address.

(2) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of the process, the department shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under paragraph (1)(f).

History.—s. 2, ch. 2013-180; s. 263, ch. 2019-90.

605.0911 Withdrawal deemed on conversion to domestic filing entity.—A registered foreign limited liability company authorized to transact business in this state that converts to a domestic limited liability company or to another domestic entity that is organized, incorporated, registered or otherwise formed through the delivery of a record to the department for filing is deemed to have withdrawn its certificate of authority on the effective date of the conversion.

History.—s. 2, ch. 2013-180; s. 264, ch. 2019-90.

605.0912 Withdrawal on dissolution, merger, or conversion to nonfiling entity.—

(1) A registered foreign limited liability company that has dissolved and completed winding up, has merged into a foreign entity that is not authorized to transact business in this state, or has converted to a domestic or foreign entity that is not organized, incorporated, registered or otherwise formed through the public filing of a record, shall deliver a notice of withdrawal of certificate of authority to the department for filing in accordance with s. 605.0910.

(2) After a withdrawal under this section of a foreign limited liability company that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was authorized to transact business in this state may be made pursuant to s. 605.0117.

History.—s. 2, ch. 2013-180; s. 139, ch. 2014-17; s. 265, ch. 2019-90.

605.0913 Action by Department of Legal Affairs.—The Department of Legal Affairs may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this chapter.

History.—s. 2, ch. 2013-180.

605.1001 Relationship of the provisions of this section and ss. 605.1002-605.1072 to other laws.—

(1) The provisions of this section and ss. 605.1002-605.1072 do not authorize an act prohibited by, and do not affect the application or requirements of, law other than the provisions of this section and ss. 605.1002-605.1072.

(2) A transaction effected under this section and ss. 605.1002-605.1072 may not create or impair a right or obligation on the part of a person under a provision of the law of this state other than this section and ss. 605.1002-605.1072, relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a merging, acquiring, or converting domestic business corporation unless:

(a) If the corporation does not survive the transaction, the transaction satisfies the requirements of the provision; or

(b) If the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.

History.—s. 2, ch. 2013-180.

605.1002 Charitable and donative provisions.—

(1) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required under or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the appropriate court specifying the disposition of the property.

(2) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the nonsurviving entity applies to property that is transferred to the surviving entity under this section.

History.—s. 2, ch. 2013-180.

605.1003 Status of filings.—A filing under ss. 605.1001-605.1072 signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

History.—s. 2, ch. 2013-180.

605.1004 Nonexclusivity.—The fact that a transaction under ss. 605.1001-605.1072 produces a certain result does not preclude the same result from being accomplished in any other manner authorized under a law other than the provisions of ss. 605.1001-605.1072.

History.—s. 2, ch. 2013-180.

605.1005 Reference to external facts.—A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

History.—s. 2, ch. 2013-180.

605.1006 Appraisal rights.—

(1) A member of a limited liability company is entitled to appraisal rights and to obtain payment of the fair value of that member's membership interest in the following events:

(a) Consummation of a merger of a limited liability company pursuant to this chapter where the member possessed the right to vote upon the merger.

(b) Consummation of a conversion of such limited liability company pursuant to this chapter where the member possessed the right to vote upon the conversion.

(c) Consummation of an interest exchange pursuant to this chapter where the member possessed the right to vote upon the interest exchange except that appraisal rights are not available to any interest holder of the limited liability company whose interest in the limited liability company is not subject to exchange in the interest exchange.

(d) Consummation of a sale of substantially all of the assets of a limited liability company where the member possessed the right to vote upon the sale unless the sale is pursuant to court order or the sale is for cash pursuant to a plan under which all or substantially all of the net proceeds of the sale will be distributed to the interest holders within 1 year after the date of sale.

(e) An amendment to the organic rules of the entity which reduces the interest of the holder to a fraction of an interest, if the limited liability company will be obligated to or will have the right to repurchase the fractional interest so created.

(f) An amendment to the organic rules of an entity, the effect of which is to alter or abolish voting or other rights with respect to such interest in a manner that is adverse to the interest of such member, except as the right may be affected by the voting or other rights of new interests then being authorized of a new class or series of interests.

(g) An amendment to the organic rules of an entity the effect of which is to adversely affect the interest of the member by altering or abolishing appraisal rights under this section.

(h) To the extent otherwise expressly authorized by the organic rules of the limited liability company.

(2) A limited liability company may modify, restrict, or eliminate the appraisal rights provided in this section in its organic rules if the provision modifying, restricting, or eliminating the appraisal rights is authorized by each member whose appraisal rights are being modified, restricted, or eliminated. Organic rules containing an express waiver of appraisal rights that are approved by a member constitute a waiver of appraisal rights with respect to such member to the extent provided in such organic rules.

(3) To the extent that appraisal rights are available hereunder, ss. 605.1061-605.1072 govern the procedures with respect to such appraisal rights as between the limited liability company and its members.

(4) Notwithstanding subsection (1), the availability of appraisal rights must be limited in accordance with the following provisions:

(a) Appraisal rights are not available for holders of a membership interest that is:

1. A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended;

2. Traded in an organized market and part of a class or series that has at least 2,000 members or other holders and a market value of at least \$20 million, exclusive of the value of such class or series of

membership interests held by the limited liability company's subsidiaries, senior executives, managers, and beneficial members owning more than 10 percent of such class or series of membership interests; or

3. Issued by an open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and subject to being redeemed at the option of the holder at net asset value.

(b) The applicability of paragraph (a) shall be determined as of the date fixed to determine the members entitled to receive notice of and to vote upon the appraisal event, or the day before the effective date of such appraisal event if there is no meeting of the members to vote upon the appraisal event.

(c) This subsection does not apply to, and appraisal rights must be available pursuant to subsection (1) for, any members who are required by the appraisal event to accept for their membership interests anything other than cash or a proprietary interest in an entity that satisfies the standards provided in paragraph (a) at the time the appraisal event becomes effective.

(d) This subsection does not apply to, and appraisal rights must be available pursuant to subsection (1) for, the holder of a membership interest if:

1. Any of the members' interests in the limited liability company or the limited liability company's assets are being acquired or converted, whether by merger, conversion, or otherwise, pursuant to the appraisal event by a person or by an affiliate of a person who:

a. Is or at any time in the 1-year period immediately preceding approval of the appraisal event was the beneficial owner of 20 percent or more of those interests in the limited liability company entitled to vote on the appraisal event, excluding any such interests acquired pursuant to an offer for all interests having such voting rights, if such offer was made within 1 year before the appraisal event for consideration of the same kind and of a value equal to or less than that paid in connection with the appraisal event; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval of the appraisal event had, the power, contractually or otherwise, to cause the appointment or election of any senior executives or managers of the limited liability company; or

2. Any of the members' interests in the limited liability company or the limited liability company's assets are being acquired or converted, whether by merger, conversion, or otherwise, pursuant to the appraisal event by a person, or by an affiliate of a person, who is or at any time in the 1-year period immediately preceding approval of the appraisal event was a senior executive of the limited liability company or a senior executive of any affiliate of the limited liability company, and that senior executive will receive, as a result of the limited liability company action, a financial benefit not generally available to members, other than:

a. Employment, consulting, retirement, or similar benefits established separately and not as part, or in contemplation, of the appraisal event;

b. Employment, consulting, retirement, or similar benefits established in contemplation, or as part, of the appraisal event which are not more favorable than those existing before the appraisal event or, if more favorable, which have been approved by the limited liability company; or

c. In the case of a manager of the limited liability company who will, during or as the result of the appraisal event, become a manager, general partner, or director of the surviving or converted entity or one of its affiliates, those rights and benefits as a manager, general partner, or director which are provided on the same basis as those afforded by the surviving or converted entity generally to other managers, general partners, or directors of the surviving or converted entity or its affiliate.

(e) For the purposes of sub-subparagraph (d)1.a., the term "beneficial owner" means a person who, directly or indirectly, through a contract, arrangement, or understanding, other than a revocable proxy, has or shares the right to vote or to direct the voting of an interest in a limited liability company with respect to approval of the appraisal event; however, a member of a national securities exchange may not be deemed to be a beneficial owner of an interest in a limited liability company held directly or indirectly by it on behalf of another person solely because the member is the record holder of interests in the limited liability company if the member is precluded by the rules of such exchange from voting without instruction on contested matters

or matters that may substantially affect the rights or privileges of the holders of the interests in the limited liability company to be voted. If two or more persons agree to act together for the purpose of voting such interests, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting interests in the limited liability company beneficially owned by a member or members of the group.

History.—s. 2, ch. 2013-180; s. 140, ch. 2014-17.

605.1021 Merger authorized.—

(1) By complying with the provisions of this section and ss. 605.1022-605.1026:

(a) One or more domestic limited liability companies may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(b) Two or more foreign entities may merge into a domestic limited liability company.

(2) By complying with the provisions of this section and ss. 605.1022-605.1026 which are applicable to foreign entities, a foreign entity may be a party to a merger under the provisions of this section and ss. 605.1022-605.1026 or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

(3) In the case of a merger involving a limited liability company that is a not-for-profit company, the surviving limited liability company or other business entity must also be a not-for-profit entity.

History.—s. 2, ch. 2013-180.

605.1022 Plan of merger.—

(1) A domestic limited liability company may become a party to a merger under the provisions of ss. 605.1021-605.1026 by approving a plan of merger. The plan must be in a record and contain the following:

(a) As to each merging entity, its name, jurisdiction of formation, and type of entity.

(b) The surviving entity in the merger.

(c) The manner and basis of converting the interests and the rights to acquire interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(d) If the surviving entity exists before the merger, any proposed amendments to or restatements of its public organic record, or any proposed amendments to or restatements of its private organic rules, which are or are proposed to be in a record, and all such amendments or restatements that are effective at the effective date of the merger.

(e) If the surviving entity is to be created in the merger, its proposed public organic record and the full text of its private organic rules that are proposed to be in a record, if any.

(f) The other terms and conditions of the merger.

(g) Any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(2) In addition to the requirements under subsection (1), a plan of merger may contain any other provision not prohibited by law.

History.—s. 2, ch. 2013-180.

605.1023 Approval of merger.—

(1) A plan of merger is not effective unless it has been approved:

(a) With respect to a domestic merging limited liability company, by a majority-in-interest of the members; and

(b) In a record, by each member of a merging limited liability company which will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:

1. The organic rules of the company in a record provide for the approval of a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all of the members; and

2. The member consented in a record to or voted for that provision of the organic rules or became a member after the adoption of that provision.

(2) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.

(3) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(4) All members of each domestic limited liability company that is a party to the merger who have a right to vote upon the merger must be given written notice of any meeting with respect to the approval of a plan of merger as provided in subsection (1) not less than 10 days and not more than 60 days before the date of the meeting at which the plan of merger is submitted for approval by the members of such limited liability company. The notification required under this subsection may be waived in writing by the person or persons entitled to such notification.

(5) The notification required under subsection (4) must be in writing and must include the following:

(a) The date, time, and place of the meeting at which the plan of merger is to be submitted for approval by the members of the limited liability company.

(b) A copy of the plan of merger.

(c) The statement or statements required under ss. 605.1006 and 605.1061-605.1072 regarding the availability of appraisal rights, if any, to members of the limited liability company.

(d) The date on which such notification was mailed or delivered to the members.

(6) In addition to the requirements under subsection (5), the notification required under subsection (4) may contain any other information concerning the plan of merger not prohibited by applicable law.

(7) The notification required under subsection (4) is deemed to be given at the earliest date of:

(a) The date such notification is received;

(b) Five days after the date such notification is deposited in the United States mail addressed to the member at the member's address as it appears in the books and records of the limited liability company, with prepaid postage affixed;

(c) The date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(d) The date such notification is given in accordance with the provisions of the organic rules of the limited liability company.

History.—s. 2, ch. 2013-180.

605.1024 Amendment or abandonment of plan of merger.—

(1) A plan of merger may be amended only with the consent of each party to the plan except as otherwise provided in the plan or in the organic rules of each such entity.

(2) A merging limited liability company may approve an amendment of a plan of merger:

(a) In the same manner that the plan was approved if the plan does not provide for the manner in which it may be amended; or

(b) By the managers or members in the manner provided in the plan, but a member who was entitled to vote on or consent to the approval of the merger is entitled to vote on or consent to an amendment of the plan which will change:

1. The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

2. The public organic record, if any, or private organic rules of the surviving entity which will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

3. Any other terms or conditions of the plan if the change would adversely affect the member in any material respect.

(3) After a plan of merger has been approved and before the articles of merger become effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.

(4) If a plan of merger is abandoned after articles of merger have been delivered to the department for filing and before such articles of merger have become effective, a statement of abandonment, signed by a party to the plan, must be delivered to the department for filing before the articles of merger become effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain the following:

- (a) The name of each party to the plan of merger.
- (b) The date on which the articles of merger were delivered to the department for filing.
- (c) A statement that the merger has been abandoned in accordance with this section.

History.—s. 2, ch. 2013-180.

605.1025 Articles of merger.—

(1) After a plan of merger is approved, articles of merger must be signed by each merging entity and delivered to the department for filing.

(2) The articles of merger must contain the following:

(a) The name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity.

(b) The name, jurisdiction of formation, and type of entity of the surviving entity.

(c) A statement that the merger was approved by each domestic merging entity that is a limited liability company, if any, in accordance with the provisions of ss. 605.1021-605.1026; by each other merging entity, if any, in accordance with the law of its jurisdiction of formation; and by each member of such limited liability company who, as a result of the merger, will have interest holder liability under s. 605.1023(1)(b) and whose approval is required.

(d) If the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger.

(e) If the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment.

(f) If the surviving entity is created by the merger and is a domestic limited liability partnership or domestic limited liability limited partnership, its statement of qualification, as an attachment.

(g) If the surviving entity is a foreign entity that does not have a certificate of authority to transact business in this state, a mailing address to which the department may send any process served on the department pursuant to s. 605.0117 and chapter 48.

(h) A statement that the surviving entity has agreed to pay to any members of any limited liability company with appraisal rights the amount to which such members are entitled under the provisions of ss. 605.1006 and 605.1061-605.1072.

(i) The effective date of the merger if the effective date of the merger is not the same as the date of filing of the articles of merger, subject to the limitations contained in s. 605.0207.

(3) In addition to the requirements of subsection (2), articles of merger may contain any other provision not prohibited by law.

(4) A merger becomes effective when the articles of merger become effective, unless the articles of merger specify an effective time or a delayed effective date that complies with s. 605.0207.

(5) A copy of the articles of merger, certified by the department, may be filed in the official records of any county in this state in which any party to the merger holds an interest in real property.

(6) A limited liability company is not required to deliver articles of merger for filing pursuant to subsection (1) if the limited liability company is named as a merging entity or surviving entity in articles of merger or a certificate of merger filed for the same merger in accordance with s. 607.1105, s. 617.1108, s. 620.2108(3), or s. 620.8918(3), and if such articles of merger or certificate of merger substantially comply

with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (5).

History.—s. 2, ch. 2013-180; s. 266, ch. 2019-90.

605.1026 Effect of merger.—

- (1) When a merger becomes effective:
 - (a) The surviving entity continues in existence;
 - (b) Each merging entity that is not the surviving entity ceases to exist;
 - (c) All property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;
 - (d) All debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;
 - (e) Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;
 - (f) If the surviving entity exists before the merger:
 1. All its property continues to be vested in it without transfer, reversion, or impairment;
 2. It remains subject to all of its debts, obligations, and other liabilities; and
 3. All of its rights, privileges, immunities, powers, and purposes continue to be vested in it;
 - (g) The name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
 - (h) If the surviving entity exists before the merger:
 1. Its public organic record, if any, is amended as provided in the articles of merger; and
 2. Its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;
 - (i) If the surviving entity is created by the merger:
 1. Its public organic record, if any, is effective; and
 2. Its private organic rules are effective; and
 - (j) The interests or rights to acquire interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under ss. 605.1006 and 605.1061-605.1072 and the merging entity's organic law.
- (2) Except as otherwise provided in the organic law or organic rules of a merging entity:
 - (a) The merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity; and
 - (b) The merging entity is not required to wind up its affairs, pay its liabilities, and distribute its assets under ss. 605.0701-605.0717, and the merger shall not constitute a dissolution of the merging entity.
- (3) When a merger becomes effective, a person who did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger will have interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that arise after the merger becomes effective.
- (4) When a merger becomes effective, the interest holder liability of a person who ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:
 - (a) The merger does not discharge an interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective.
 - (b) The person does not have interest holder liability under the organic law of the domestic merging entity for a debt, obligation, or other liability that arises after the merger becomes effective.

(c) The organic law of the domestic merging entity and any rights of contribution provided under such law, or the organic rules of the domestic merging entity, continue to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) as if the merger had not occurred and the surviving entity were the domestic merging entity.

(5) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity as provided in s. 605.0117 and chapter 48.

(6) When a merger becomes effective, the certificate of authority to transact business in this state of any foreign merging entity that is not the surviving entity is canceled.

History.—s. 2, ch. 2013-180.

605.1031 Interest exchange authorized.—

(1) By complying with the provisions this section and of ss. 605.1032-605.1036:

(a) A domestic limited liability company may acquire all of one or more classes or series of interests of another domestic or foreign entity, or rights to acquire one or more classes or series of any such interests, in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(b) All of one or more classes or series of interests of a domestic limited liability company or rights to acquire one or more classes or series of any such interests may be acquired by another domestic or foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(2) By complying with the provisions of this section and ss. 605.1032-605.1036 which are applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange completed under the provisions of this section and ss. 605.1032-605.1036 if the interest exchange is authorized by the organic law in the foreign entity's jurisdiction of formation.

(3) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited liability company is the acquired entity as if the interest exchange were a merger until the provision is amended after January 1, 2014.

History.—s. 2, ch. 2013-180.

605.1032 Plan of interest exchange.—

(1) A domestic limited liability company may be the acquired entity in an interest exchange under the provisions of ss. 605.1031-605.1036 by approving a plan of interest exchange. The plan must be in a record and contain the following:

(a) The name of the acquired entity.

(b) The name, jurisdiction of formation, and type of entity of the acquiring entity.

(c) The manner and basis of converting the interests and the rights to acquire interests of the members of each limited liability company that is to be an acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(d) If the acquired entity is a domestic limited liability company, any proposed amendments to or restatements of its public organic record or any amendments to or restatements of its private organic rules that are or are proposed to be in a record and all such amendments or restatements are effective at the effective date of the interest exchange.

(e) The other terms and conditions of the interest exchange.

(f) Any other provision required by the law of an acquired entity's jurisdiction of formation, the organic rules of the acquired entity, the organic rules of an acquiring entity, or the law of the jurisdiction of formation of the acquiring entity.

(2) In addition to the requirements of subsection (1), a plan of interest exchange may contain any other provision not prohibited by law.

History.—s. 2, ch. 2013-180.

605.1033 Approval of interest exchange.—

- (1) A plan of interest exchange is not effective unless it has been approved:
 - (a) With respect to a domestic limited liability company that is the acquired entity in the interest exchange, by a majority-in-interest of the members of such company; and
 - (b) In a record, by each member of the domestic-acquired limited liability company that will have interest holder liability for debts, obligations, and other liabilities that arise after the interest exchange becomes effective, unless:
 1. The organic rules of the company in a record provide for the approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the vote or consent of fewer than all the members; and
 2. The member consented in a record to or voted for that provision of the organic rules or became a member after the adoption of that provision.
- (2) An interest exchange involving a domestic-acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.
- (3) An interest exchange involving a foreign-acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.
- (4) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.
- (5) All members of each domestic limited liability company that is a party to the interest exchange who have a right to vote upon the interest exchange must be given written notice of any meeting with respect to the approval of a plan of interest exchange as provided in subsection (1) not less than 10 days and not more than 60 days before the date of the meeting at which the plan of interest exchange is submitted for approval by the members of such limited liability company. The notification required under this subsection may be waived in writing by the person entitled to such notification.
- (6) The notification required under subsection (5) must be in writing and must include the following:
 - (a) The date, time, and place of the meeting at which the plan of interest exchange is to be submitted for approval by the members of the limited liability company.
 - (b) A copy of the plan of interest exchange.
 - (c) The statement or statements required under ss. 605.1006 and 605.1061-605.1072 regarding the availability of appraisal rights, if any, to members of the limited liability company.
 - (d) The date on which such notification was mailed or delivered to the members.
- (7) In addition to the requirements of subsection (6), the notification required under subsection (5) may contain any other information concerning the plan of interest exchange not prohibited by applicable law.
- (8) The notification required under subsection (5) is deemed to be given at the earliest date of:
 - (a) The date the notification is received;
 - (b) Five days after the date such notification is deposited in the United States mail addressed to the member at the member's address as it appears in the books and records of the limited liability company, with prepaid postage affixed;
 - (c) The date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee; or
 - (d) The date such notification is given in accordance with the provisions of the organic rules of the limited liability company.

History.—s. 2, ch. 2013-180; s. 141, ch. 2014-17.

605.1034 Amendment or abandonment of plan of interest exchange.—

- (1) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan or in the organic rules of each such entity.

(2) A domestic-acquired limited liability company may approve an amendment of a plan of interest exchange:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) By the managers or members in the manner provided in the plan, but a member who was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan which will change:

1. The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

2. The public organic record, if any, or private organic rules of the acquired entity which will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the acquired entity under its organic law or organic rules; or

3. Any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(3) After a plan of interest exchange has been approved and before such articles of interest exchange become effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic limited liability company may abandon the plan in the same manner as the plan was approved.

(4) If a plan of interest exchange is abandoned after articles of interest exchange have been delivered to the department for filing and before such articles of interest exchange have become effective, a statement of abandonment, signed by a party to the plan, must be delivered to the department for filing before the articles of interest exchange become effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain the following:

(a) The name of each party to the plan of interest exchange.

(b) The date on which the articles of interest exchange were delivered to the department for filing.

(c) A statement that the interest exchange has been abandoned in accordance with this section.

History.—s. 2, ch. 2013-180.

605.1035 Articles of interest exchange.—

(1) After a plan of interest exchange has been approved, articles of interest exchange must be signed by each party to the interest exchange and delivered to the department for filing.

(2) The articles of interest exchange must contain the following:

(a) The name of the acquired limited liability company.

(b) The name, jurisdiction of formation, and type of entity of the acquiring entity.

(c) A statement that the plan of interest exchange was approved by the acquired limited liability entity in accordance with the provisions of ss. 605.1031-605.1036 and by each member of such limited liability company who, as a result of the interest exchange, will have interest holder liability under s. 605.1033(1)(b) and whose approval is required.

(d) Any amendments to the acquired limited liability company's public organic record approved as part of the plan of interest exchange.

(e) A statement that the plan of interest exchange was approved by each acquiring entity that is a party to the interest exchange in accordance with the organic laws in its jurisdiction of formation, or, if such approval was not required, a statement to that effect.

(f) A statement that the acquiring entity has agreed to pay to any members of the acquired entity with appraisal rights the amount to which such members are entitled under ss. 605.1006 and 605.1061-605.1072.

(g) The effective date of the interest exchange, if the effective date of the interest exchange is not the same as the date of filing of the articles of interest exchange, subject to the limitations in s. 605.0207.

(3) In addition to the requirements of subsection (2), articles of interest exchange may include any other provision not prohibited by law.

(4) An interest exchange becomes effective when the articles of interest exchange become effective, unless the articles of interest exchange specify an effective time or a delayed effective date that complies with s. 605.0207.

(5) A limited liability company is not required to deliver articles of interest exchange for filing pursuant to subsection (1) if the domestic limited liability company is named as an acquired entity or as an acquiring entity in the articles of share exchange filed for the same interest exchange in accordance with s. 607.1105 and if such articles of share exchange substantially comply with the requirements of this section.

History.—s. 2, ch. 2013-180; s. 267, ch. 2019-90.

605.1036 Effect of interest exchange.—

(1) When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective:

(a) The interests in a domestic company which are the subject of the interest exchange cease to exist or are converted or exchanged, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under ss. 605.1006 and 605.1061-605.1072;

(b) The acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;

(c) The public organic record of the acquired entity is amended as provided in the articles of interest exchange; and

(d) The provisions of the private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(2) Except as otherwise provided in the organic rules of the acquired limited liability company, the interest exchange does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the acquired entity.

(3) When an interest exchange becomes effective, a person who did not have interest holder liability with respect to a domestic-acquired limited liability company and who becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange will have interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the interest exchange becomes effective.

(4) When an interest exchange becomes effective, the interest holder liability of a person who ceases to hold an interest in a domestic-acquired limited liability company with respect to which the person had interest holder liability is as follows:

(a) The interest exchange does not discharge any interest holder liability to the extent the interest holder liability arose before the interest exchange became effective.

(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the interest exchange becomes effective.

(c) The organic law of the acquired entity's jurisdiction of formation and any rights of contribution provided by such law, or under the organic rules of the acquired entity, continue to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) as if the interest exchange had not occurred.

History.—s. 2, ch. 2013-180.

605.1041 Conversion authorized.—

(1) By complying with the provisions of this section and ss. 605.1042-605.1046, a domestic limited liability company may become:

(a) A domestic entity that is a different type of entity; or

(b) A foreign entity that is a limited liability company or a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(2) By complying with the provisions of this section and ss. 605.1042-605.1046, which are applicable to a domestic entity that is not a domestic limited liability company, the domestic entity may become a domestic limited liability company if the conversion is authorized by the law governing the domestic entity.

(3) By complying with the provisions of this section and ss. 605.1042-605.1046 which are applicable to foreign entities, a foreign entity may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(4) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after January 1, 2014.

History.—s. 2, ch. 2013-180; s. 142, ch. 2014-17.

605.1042 Plan of conversion.—

(1) A domestic limited liability company may convert into a different type of domestic entity or into a foreign entity that is a foreign limited liability company or a different type of foreign entity by approving a plan of conversion. The plan must be in a record and contain the following:

- (a) The name of the converting limited liability company.
- (b) The name, jurisdiction of formation, and type of entity of the converted entity.
- (c) The manner and basis of converting the interests and rights to acquire interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.
- (d) The proposed public organic record of the converted entity, if it will be a filing entity.
- (e) The full text of the private organic rules of the converted entity which are proposed to be in a record, if any.
- (f) Any other provision required by the law of this state or the organic rules of the converted limited liability company, if the entity is to be an entity other than a domestic limited liability company.
- (g) All other statements required to be set forth in a plan of conversion by the law of the jurisdiction of formation of the converted entity following the conversion.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

History.—s. 2, ch. 2013-180.

605.1043 Approval of conversion.—

- (1) A plan of conversion is not effective unless it has been approved:
 - (a) If the converting entity is a domestic limited liability company, by a majority-in-interest of the members of such company who have a right to vote upon the conversion; and
 - (b) In a record, by each member of a converting limited liability company which will have interest holder liability for debts, obligations, and other liabilities that arise after the conversion becomes effective, unless:
 1. The organic rules of the company in a record provide for the approval of a conversion in which some or all of its members become subject to interest holder liability by the vote or consent of less than all of the members; and
 2. The member consented in a record to or voted for that provision of the organic rules or became a member after the adoption of that provision.
- (2) A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.
- (3) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.
- (4) If the converting entity is a domestic limited liability company, all members of the company who have the right to vote upon the conversion must be given written notice of a meeting with respect to the approval

of a plan of conversion as provided in subsection (1) not less than 10 days and not more than 60 days before the date of the meeting at which the plan of conversion is submitted for approval by the members of such limited liability company. The notification required under this subsection may be waived in writing by the person or persons entitled to such notification.

(5) The notification required under subsection (4) must be in writing and include the following:

(a) The date, time, and place of the meeting at which the plan of conversion is to be submitted for approval by the members of the limited liability company.

(b) A copy of the plan of conversion.

(c) The statement or statements required under ss. 605.1006 and 605.1061-605.1072 regarding the availability of appraisal rights, if any, to members of the limited liability company.

(d) The date on which such notification was mailed or delivered to the members.

(6) In addition to the requirements of subsection (5), the notification required under subsection (4) may contain any other information concerning the plan of conversion not prohibited by applicable law.

(7) The notification required under subsection (4) is deemed to be given at the earliest date of:

(a) The date the notification is received;

(b) Five days after the date the notification is deposited in the United States mail addressed to the member at the member's address as it appears in the books and records of the limited liability company, with prepaid postage affixed;

(c) The date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee; or

(d) The date the notification is given in accordance with the organic rules of the limited liability company.

History.—s. 2, ch. 2013-180.

605.1044 Amendment or abandonment of plan of conversion.—

(1) A plan of conversion of a domestic converting limited liability company may be amended:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) By the managers or members of the entity in the manner provided in the plan, but a member who was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to an amendment of the plan which will change:

1. The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of the converting entity under the plan;

2. The public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converting entity under its organic law or organic rules; or

3. Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(2) After a plan of conversion has been approved and before the articles of conversion become effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

(3) If a plan of conversion is abandoned after articles of conversion have been delivered to the department for filing and before such articles of conversion have become effective, a statement of abandonment, signed by the converting entity, must be delivered to the department for filing before the articles of conversion become effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain the following:

(a) The name of the converting limited liability company.

- (b) The date on which the articles of conversion were delivered to the department for filing.
- (c) A statement that the conversion has been abandoned in accordance with this section.

History.—s. 2, ch. 2013-180.

605.1045 Articles of conversion.—

(1) After a plan of conversion is approved, articles of conversion signed by the converting entity must be delivered to the department for filing.

(2) The articles of conversion must contain the following:

- (a) The name, jurisdiction of formation, and type of entity of the converting entity.
- (b) The name, jurisdiction of formation, and type of entity of the converted entity.
- (c) If the converting entity is a domestic limited liability company, a statement that the plan of conversion has been approved in accordance with ss. 605.1041-605.1046, or if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation and by each member of the converting entity who as a result of the conversion will have interest holder liability under s. 605.1043(1)(b) and whose approval is required.

(d) If the converted entity is a domestic filing entity, the text of its public organic record, as an attachment.

(e) If the converted entity is a domestic limited liability partnership, the text of its statement of qualification, as an attachment.

(f) If the converted entity is a foreign entity that does not have a certificate of authority to transact business in this state, a mailing address to which the department may send any process served on the department pursuant to s. 605.0117 and chapter 48.

(g) A statement that the converted entity has agreed to pay to the members of any limited liability company with appraisal rights the amount to which such members are entitled under ss. 605.1006 and 605.1061-605.1072.

(h) The effective date of the conversion, if the effective date of the conversion is not the same as the date of filing of the articles of conversion, subject to the limitations contained in s. 605.0207.

(3) In addition to the requirements of subsection (2), articles of conversion may contain any other provision not prohibited by law.

(4) A conversion becomes effective when the articles of conversion become effective, unless the articles of conversion specify an effective time or a delayed effective date that complies with s. 605.0207.

(5) A copy of the articles of conversion, certified by the department, may be filed in the official records of any county in this state in which the converted entity holds an interest in real property.

History.—s. 2, ch. 2013-180.

605.1046 Effect of conversion.—

(1) When a conversion in which the converted entity is a domestic limited liability company becomes effective:

(a) The converted entity is:

- 1. Organized under and subject to this chapter; and
- 2. The same entity, without interruption, as the converting entity;

(b) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(c) All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(d) Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(e) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(f) The provisions of the organic rules of the converted entity which are to be in a record, if any, approved as part of the plan of conversion are effective; and

(g) The interests or rights to acquire interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under ss. 605.1006 and 605.1061-605.1072 and the converting entity's organic law.

(2) Except as otherwise provided in the private organic rules of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would otherwise have upon a dissolution, liquidation, or winding up of the converting entity.

(3) When a conversion becomes effective, a person who did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(4) When a conversion becomes effective, the interest holder liability of a person who ceases to hold an interest in a domestic limited liability company with respect to which the person had interest holder liability is as follows:

(a) The conversion does not discharge interest holder liability to the extent the interest holder liability arose before the conversion became effective.

(b) The person does not have interest holder liability for any debt, obligation, or other liability that arises after the conversion becomes effective.

(c) The organic law of the jurisdiction of formation of the converting limited liability company and the rights of contribution provided under such law, or the organic rules of the converting limited liability company, continue to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) as if the conversion had not occurred.

(5) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of its debts, obligations, and liabilities as provided in s. 605.0117 and chapter 48.

(6) If the converting entity is a registered foreign entity, the certificate of authority to conduct business in this state of the converting entity is canceled when the conversion becomes effective.

(7) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

History.—s. 2, ch. 2013-180.

605.1051 Domestication authorized.—By complying with this section and ss. 605.1052-605.1056, a non-United States entity may become a domestic limited liability company if the domestication is authorized under the organic law of the non-United States entity's jurisdiction of formation.

History.—s. 2, ch. 2013-180.

605.1052 Plan of domestication.—

(1) A non-United States entity may become a domestic limited liability company by approving a plan of domestication. The plan of domestication must be in a record and contain the following:

(a) The name and jurisdiction of formation of the domesticating entity.

(b) If applicable, the manner and basis of converting the interests and rights to acquire interests in the domesticating entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(c) The proposed public organic record of the domesticating entity in this state.

(d) The full text of the proposed private organic rules of the domesticated entity that are to be in a record, if any.

(e) Any other provision required by the law of the jurisdiction of formation of the domesticating entity or the organic rules of the domesticating entity.

(2) In addition to the requirements of subsection (1), a plan of domestication may contain any other provision not prohibited by law.

History.—s. 2, ch. 2013-180.

605.1053 Approval of domestication.—A plan of domestication of a domesticating entity shall be approved:

- (1) In accordance with the organic law of the domesticating entity's jurisdiction of formation; and
- (2) In a record, by each of the domesticating entity's owners who will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless:
 - (a) The organic rules of the domesticating entity in a record provide for the approval of a domestication in which some or all of the persons who are its owners become subject to interest holder liability by the vote or consent of fewer than all of the persons who are its owners; and
 - (b) The person who will be a member of the domesticated limited liability company consented in a record to or voted for that provision of the organic rules of the domesticating entity or became an owner of the domesticating entity after the adoption of that provision.

History.—s. 2, ch. 2013-180.

605.1054 Amendment or abandonment of plan of domestication.—

- (1) A plan of domestication of a domesticating entity may be amended:
 - (a) In the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended; or
 - (b) By the interest holders of the domesticating entity in the manner provided in the plan, but an owner who was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:
 1. If applicable, the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of the domesticating entity under the plan;
 2. The public organic record, if any, or private organic rules of the domesticated limited liability company which will be in effect immediately after the domestication becomes effective except for changes that do not require approval of the interest holders of the domesticating entity under its organic law or organic rules; or
 3. Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.
- (2) After a plan of domestication has been approved and before the articles of domestication become effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, the domesticating entity may abandon the plan in the same manner as the plan was approved.
- (3) If a plan of domestication is abandoned after articles of domestication have been delivered to the department for filing and before such articles of domestication have become effective, a statement of abandonment, signed by the domesticating entity, must be delivered to the department for filing before the articles of domestication become effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain the following:

- (a) The name of the domesticating entity.
- (b) The date on which the articles of domestication were delivered to the department for filing.
- (c) A statement that the domestication has been abandoned in accordance with this section.

History.—s. 2, ch. 2013-180.

605.1055 Articles of domestication.—

(1) The articles of domestication must be filed with the department. The articles of domestication must contain the following:

- (a) The date on which the domesticating entity was first formed, incorporated, created, or otherwise came into being.
- (b) The name of the domesticating entity immediately before the filing of the articles of domestication.
- (c) The articles of organization of the domesticated limited liability company, as an attachment.
- (d) The effective date of the domestication as a limited liability company, if the effective date of the domestication is not the same as the date of filing of the articles of domestication, subject to the limitations contained in s. 605.0207.

(e) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the domesticating entity, or any other equivalent thereto under the law of the jurisdiction of formation, immediately before the filing of the articles of domestication.

(f) A statement that the domestication has been approved in accordance with the laws of the jurisdiction of formation of the domesticating entity.

(2) In addition to the requirements of subsection (1), articles of domestication may contain any other provision not prohibited by law.

(3) The articles of domestication which are filed with the department must be accompanied by a certificate of status or equivalent document, if any, from the domesticating entity's jurisdiction of formation.

(4) The articles of domestication and the articles of organization of a domesticated limited liability company must satisfy the requirements of the law of this state, and may be executed by an authorized representative and registered agent in accordance with this chapter.

History.—s. 2, ch. 2013-180.

605.1056 Effect of domestication.—

(1) When a domestication becomes effective:

(a) The domesticated limited liability company is:

- 1. Organized under and subject to the organic law of this state; and
- 2. The same entity, without interruption, as the domesticating entity;

(b) All property of the domesticating entity continues to be vested in the domesticated limited liability company without transfer, reversion, or impairment;

(c) All debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated limited liability company;

(d) Except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated limited liability company;

(e) The name of the domesticated limited liability company may be substituted for the name of the domesticating entity in any pending action or proceeding;

(f) The articles of organization of the domesticated limited liability company are effective;

(g) The provisions of the private organic rules of the domesticated limited liability company which are to be in a record, if any, approved as part of the plan of domestication are effective; and

(h) The interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication.

(2) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder or third party would otherwise have upon a dissolution, liquidation, or winding up of the domesticating entity.

(3) When a domestication becomes effective, a person who did not have interest holder liability with respect to the domesticating entity and becomes subject to interest holder liability with respect to the domesticated limited liability company as a result of the domestication has interest holder liability only to

the extent provided by the organic law of the domesticating entity and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(4) When a domestication becomes effective, the interest holder liability of a person who ceases to hold an interest in a domestic limited liability company with respect to which the person had interest holder liability is as follows:

(a) The domestication does not discharge any interest holder liability under this chapter to the extent the interest holder liability arose before the domestication became effective;

(b) A person does not have interest holder liability under this chapter for any debt, obligation, or other liability that arises after the domestication becomes effective; and

(c) The organic law of the jurisdiction of formation of the domesticating entity and any rights of contribution provided under such law, or the organic rules of the domesticating entity, continue to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (a) as if the domestication had not occurred.

(5) When a domestication becomes effective, a domesticating entity that has become the domesticated limited liability company may be served with process in this state for the collection and enforcement of its debts, obligations, and liabilities as provided in s. 605.0117 and chapter 48.

(6) If the domesticating entity is qualified to transact business in this state, the certificate of authority of the domesticating entity is canceled when the domestication becomes effective.

(7) A domestication does not require the domesticating entity to wind up its affairs and does not constitute or cause the dissolution of the domesticating entity.

History.—s. 2, ch. 2013-180.

605.1061 Appraisal rights; definitions.—The following definitions apply to this section and to ss. 605.1006 and 605.1062-605.1072:

(1) “Accrued interest” means interest from the effective date of the appraisal event to which the member objects until the date of payment, at the rate of interest determined for judgments in accordance with s. 55.03, determined as of the effective date of the appraisal event.

(2) “Affiliate” means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of s. 605.1006(4)(d), a person is deemed to be an affiliate of its senior executives.

(3) “Appraisal event” means an event described in s. 605.1006(1).

(4) “Beneficial member” means a person who is the beneficial owner of a membership interest held in a voting trust or by a nominee on the beneficial owner’s behalf.

(5) “Fair value” means the value of the member’s membership interest determined:

(a) Immediately before the effectiveness of the appraisal event to which the member objects;

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the transaction to which the member objects, unless exclusion would be inequitable to the limited liability company and its remaining members; and

(c) Without discounting for lack of marketability or minority status.

(6) “Limited liability company” means the limited liability company that issued the membership interest held by a member demanding appraisal and, for matters covered in this section and ss. 605.1062-605.1072, includes the converted entity in a conversion or the surviving entity in a merger.

(7) “Member” means a record member or a beneficial member.

(8) “Membership interest” means a member’s transferable interest and all other rights as a member of the limited liability company that issued the membership interest, including voting rights, management rights, or other rights under this chapter or the organic rules of the limited liability company except, if the appraisal rights of a member under s. 605.1006 pertain to only a certain class or series of a membership

interest, the term “membership interest” means only the membership interest pertaining to such class or series.

(9) “Record member” means each person who is identified as a member in the current list of members maintained for purposes of s. 605.1006 by the limited liability company, or to the extent the limited liability company has failed to maintain a current list, each person who is the rightful owner of a membership interest in the limited liability company. A transferee of a membership interest who has not been admitted as a member is not a record member.

(10) “Senior executive” means a manager in a manager-managed limited liability company; a member in a member-managed limited liability company; or the chief executive officer, chief operating officer, chief financial officer, or president or any other person in charge of a principal business unit or function of a limited liability company, in charge of a manager in a manager-managed limited liability company, or in charge of a member in a member-managed limited liability company.

History.—s. 2, ch. 2013-180; s. 268, ch. 2019-90.

605.1062 Assertion of rights by nominees and beneficial owners.—

(1) A record member may assert appraisal rights as to less than all the membership interests registered in the record member’s name which are owned by a beneficial member only if the record member objects with respect to all membership interests of the class or series owned by that beneficial member and notifies the limited liability company in writing of the name and address of each beneficial member on whose behalf appraisal rights are being asserted. The rights of a record member who asserts appraisal rights for only part of the membership interests of the class or series held of record in the record member’s name under this subsection shall be determined as if the membership interests to which the record member objects and the record member’s other membership interests were registered in the names of different record members.

(2) A beneficial member may assert appraisal rights as to a membership interest held on behalf of the member only if such beneficial member:

(a) Submits to the limited liability company the record member’s written consent to the assertion of such rights by the date provided in s. 605.1063(3)(b); and

(b) Does so with respect to all membership interests of the class or series that are beneficially owned by the beneficial member.

History.—s. 2, ch. 2013-180.

605.1063 Notice of appraisal rights.—

(1) If a proposed appraisal event is to be submitted to a vote at a members’ meeting, the meeting notice must state that the limited liability company has concluded that the members are, are not, or may be entitled to assert appraisal rights under this chapter.

(2) If the limited liability company concludes that appraisal rights are or may be available, a copy of ss. 605.1006 and 605.1061-605.1072 must accompany the meeting notice sent to those record members who are or may be entitled to exercise appraisal rights.

(3) If the appraisal event is to be approved by written consent of the members pursuant to s. 605.04073:

(a) Written notice that appraisal rights are, are not, or may be available must be sent to each member from whom a consent is solicited at the time consent of such member is first solicited, and if the limited liability company has concluded that appraisal rights are or may be available, a copy of ss. 605.1006 and 605.1061-605.1072 must accompany such written notice; or

(b) Written notice that appraisal rights are, are not, or may be available must be delivered, at least 10 days before the appraisal event becomes effective, to all nonconsenting and nonvoting members, and, if the limited liability company has concluded that appraisal rights are or may be available, a copy of ss. 605.1006 and 605.1061-605.1072 must accompany such written notice.

(4) If a particular appraisal event is proposed and the limited liability company concludes that appraisal rights are or may be available, the notice referred to in subsection (1), paragraph (3)(a), or paragraph (3)(b) must be accompanied by:

(a) Financial statements of the limited liability company that issued the membership interests that may be or are subject to appraisal rights, consisting of a balance sheet as of the end of the fiscal year ending not more than 16 months before the date of the notice, an income statement for that fiscal year, and a cash flow statement for that fiscal year; however, if such financial statements are not reasonably available, the limited liability company shall provide reasonably equivalent financial information; and

(b) The latest available interim financial statements, including year-to-date through the end of the interim period, of such limited liability company, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a member before or after the appraisal event.

History.—s. 2, ch. 2013-180; s. 269, ch. 2019-90.

605.1064 Notice of intent to demand payment.—

(1) If a proposed appraisal event is submitted to a vote at a members' meeting, a member who is entitled to and who wishes to assert appraisal rights with respect to a class or series of membership interests:

(a) Must deliver, before the vote is taken, to any other member of a member-managed limited liability company, to a manager of a manager-managed limited liability company, or, if the limited liability company has appointed officers, to an officer written notice of such person's intent to demand payment if the proposed appraisal event is effectuated; and

(b) May not vote, or cause or permit to be voted, any membership interests of the class or series in favor of the appraisal event.

(2) If a proposed appraisal event is to be approved by less than unanimous written consent of the members, a member who is entitled to and who wishes to assert appraisal rights with respect to a class or series of membership interests must not sign a consent in favor of the proposed appraisal event with respect to that class or series of membership interests.

(3) A person who may otherwise be entitled to appraisal rights, but does not satisfy the requirements of subsection (1) or subsection (2), is not entitled to payment under ss. 605.1006 and 605.1061-605.1072.

History.—s. 2, ch. 2013-180.

605.1065 Appraisal notice and form.—

(1) If the proposed appraisal event becomes effective, the limited liability company must send a written appraisal notice and form required by paragraph (2)(a) to all members who satisfy the requirements of s. 605.1064(1) or (2).

(2) The appraisal notice must be sent no earlier than the date the appraisal event became effective and within 10 days after such date and must:

(a) Supply a form that specifies the date that the appraisal event became effective and that provides for the member to state:

1. The member's name and address;

2. The number, classes, and series of membership interests as to which the member asserts appraisal rights;

rights;

3. That the member did not vote for or execute a written consent with respect to the transaction as to any classes or series of membership interests as to which the member asserts appraisal rights;

4. Whether the member accepts the limited liability company's offer as stated in subparagraph (b)5.; and

5. If the offer is not accepted, the member's estimated fair value of the membership interests and a demand for payment of the member's estimated value plus accrued interest.

(b) State:

1. Where the form described in paragraph (a) must be sent;

2. A date by which the limited liability company must receive the form, which date may not be less than 40 days or more than 60 days after the date the appraisal notice and form described in this section are sent, and that the member is considered to have waived the right to demand appraisal with respect to the membership interests unless the form is received by the limited liability company by such specified date;

3. In the case of membership interests represented by a certificate, the location at which certificates for the certificated membership interests must be deposited, if that action is required by the limited liability company, and the date by which those certificates must be deposited, which may not be earlier than the date for receiving the required form under subparagraph 2.;

4. The limited liability company's estimate of the fair value of the membership interests;

5. An offer to each member who is entitled to appraisal rights to pay the limited liability company's estimate of fair value provided in subparagraph 4.;

6. That, if requested in writing, the limited liability company will provide to the member so requesting, within 10 days after the date specified in subparagraph 2., the number of members who return the forms by the specified date and the total number of membership interests owned by such members;

7. The date by which the notice to withdraw under s. 605.1066 must be received, which date must be within 20 days after the date specified in subparagraph 2.; and

8. If not previously provided, accompanied by a copy of ss. 605.1006 and 605.1061-605.1072.

History.—s. 2, ch. 2013-180.

605.1066 Perfection of rights; right to withdraw.—

(1) A member who receives notice pursuant to s. 605.1065 and wishes to exercise appraisal rights must sign and return the form received pursuant to s. 605.1065(1) and, in the case of certificated membership interests and if the limited liability company so requires, deposit the member's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 605.1065(2)(b)2. Once a member deposits that member's certificates or, in the case of uncertificated membership interests, returns the signed form described in s. 605.1065(2), the member loses all rights as a member, unless the member withdraws pursuant to subsection (2). Upon receiving a demand for payment from a member who holds an uncertificated membership interest, the limited liability company shall make an appropriate notation of the demand for payment in its records and shall restrict the transfer of the membership interest, or the applicable class or series, from the date the member delivers the items required by this section.

(2) A member who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date provided in the appraisal notice pursuant to s. 605.1065(2)(b)7. A member who fails to notify the limited liability company in writing of the withdrawal by the date provided in the appraisal notice may not thereafter withdraw without the limited liability company's written consent.

(3) A member who does not sign and return the form and, in the case of certificated membership interests, deposit that member's certificates, if so required by the limited liability company, each by the date set forth in the notice described in s. 605.1065(2)(a), is not entitled to payment under ss. 605.1006 and 605.1061-605.1072.

(4) If the member's right to receive fair value is terminated other than by the purchase of the membership interest by the limited liability company, all rights of the member, with respect to such membership interest, shall be reinstated effective as of the date the member delivered the items required by subsection (1), including the right to receive any intervening payment or other distribution with respect to such membership interest, or, if any such rights have expired or any such distribution other than a cash payment has been completed, in lieu thereof at the election of the limited liability company, the fair value thereof in cash as determined by the limited liability company as of the time of such expiration or completion, but without prejudice otherwise to any action or proceeding of the limited liability company that may have been taken by the limited liability company on or after the date the member delivered the items required by subsection (1).

History.—s. 2, ch. 2013-180.

605.1067 Member's acceptance of limited liability company's offer.—

(1) If the member states on the form provided in s. 605.1065(1) that the member accepts the offer of the limited liability company to pay the limited liability company's estimated fair value for the membership

interest, the limited liability company shall make the payment to the member within 90 days after the limited liability company's receipt of the items required by s. 605.1066(1).

(2) Upon payment of the agreed value, the member shall cease to have an interest in the membership interest.

History.—s. 2, ch. 2013-180.

605.1068 Procedure if member is dissatisfied with offer.—

(1) A member who is dissatisfied with the limited liability company's offer as provided pursuant to s. 605.1065(2)(b)4. must notify the limited liability company on the form provided pursuant to s. 605.1065(1) of the member's estimate of the fair value of the membership interest and demand payment of that estimate plus accrued interest.

(2) A member who fails to notify the limited liability company in writing of the member's demand to be paid the member's estimate of the fair value plus interest under subsection (1) within the timeframe provided in s. 605.1065(2)(b)2. waives the right to demand payment under this section and is entitled only to the payment offered by the limited liability company pursuant to s. 605.1065(2)(b)4.

History.—s. 2, ch. 2013-180.

605.1069 Court action.—

(1) If a member makes demand for payment under s. 605.1068 which remains unsettled, the limited liability company shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the membership interest plus accrued interest from the date of the appraisal event. If the limited liability company does not commence the proceeding within the 60-day period, any member who has made a demand pursuant to s. 605.1068 may commence the proceeding in the name of the limited liability company.

(2) The proceeding must be commenced in the appropriate court of the county in which the limited liability company's principal office in this state is located or, if none, the county in which its registered agent is located. If by virtue of the appraisal event becoming effective the entity has become a foreign entity without a registered agent in this state, the proceeding must be commenced in the county in this state in which the principal office or registered agent of the limited liability company was located immediately before the time the appraisal event became effective; if it has, and immediately before the appraisal event became effective had no principal office in this state, then in the county in which the limited liability company has, or immediately before the time the appraisal event became effective had, an office in this state; or if none in this state, then in the county in which the limited liability company's registered office is or was last located.

(3) All members, whether or not residents of this state, whose demands remain unsettled shall be made parties to the proceeding as in an action against their membership interests. The limited liability company shall serve a copy of the initial pleading in such proceeding upon each member-party who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident member-party by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in an amendment to the order. The members demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each member who is made a party to the proceeding is entitled to judgment for the amount of the fair value of such member's membership interests, plus interest, as found by the court.

(6) The limited liability company shall pay each such member the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the member ceases to have any interest in the membership interests.

History.—s. 2, ch. 2013-180.

605.1070 Court costs and attorney fees.—

(1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the members demanding appraisal, in amounts the court finds equitable, to the extent the court finds the members acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the expenses incurred by the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all members demanding appraisal, if the court finds the limited liability company did not substantially comply with the requirements of ss. 605.1061-605.1072; or

(b) Against either the limited liability company or a member demanding appraisal, in favor of another party, if the court finds that the party against whom the expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the expenses incurred by any member were of substantial benefit to other members similarly situated and should not be assessed against the limited liability company, the court may direct that the expenses be paid out of the amounts awarded the members who were benefited.

(4) To the extent the limited liability company fails to make a required payment pursuant to s. 605.1067 or s. 605.1069, the member may sue the limited liability company directly for the amount owed and, to the extent successful, is entitled to recover from the limited liability company all costs and expenses of the suit, including attorney fees.

History.—s. 2, ch. 2013-180.

605.1071 Limitation on limited liability company payment.—

(1) Payment may not be made to a member seeking appraisal rights if, at the time of payment, the limited liability company is unable to meet the distribution standards of s. 605.0405. In such event, the member shall, at the member's option:

(a) Withdraw the notice of intent to assert appraisal rights, which is deemed withdrawn with the consent of the limited liability company; or

(b) Retain the status as a claimant against the limited liability company and, if the limited liability company is liquidated, be subordinated to the rights of creditors of the limited liability company, but have rights superior to the members not asserting appraisal rights and, if the limited liability company is not liquidated, retain the right to be paid for the membership interest, which right the limited liability company shall be obligated to satisfy when the restrictions of this section do not apply.

(2) The member shall exercise the option under paragraph (1)(a) or paragraph (1)(b) by written notice filed with the limited liability company within 30 days after the limited liability company has given written notice that the payment for the membership interests cannot be made because of the restrictions of this section. If the member fails to exercise the option, the member is deemed to have withdrawn the notice of intent to assert appraisal rights.

History.—s. 2, ch. 2013-180.

605.1072 Other remedies limited.—

(1) A member entitled to appraisal rights under this chapter may not challenge a completed appraisal event for which appraisal rights are available unless such completed appraisal event was either:

(a) Not authorized and approved in accordance with the applicable provisions of this chapter, the organic rules of the limited liability company, or the resolutions of the members authorizing the appraisal event.

(b) Procured as a result of fraud, a material misrepresentation, or an omission of a material fact that is necessary to make statements made, in light of the circumstances in which they were made, not misleading.

(2) Nothing in this section operates to override or supersede s. 605.04092.

History.—s. 2, ch. 2013-180; s. 9, ch. 2015-148; s. 270, ch. 2019-90.

605.1101 Uniformity of application and construction.—In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the uniform act upon which it is based.

History.—s. 2, ch. 2013-180.

605.1102 Relation to Electronic Signatures in Global and National Commerce Act.—This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). Notwithstanding the foregoing, this chapter does not operate to modify, limit, or supersede any provisions of s. 15.16, s. 116.34, or s. 668.50.

History.—s. 2, ch. 2013-180.

605.1103 Tax exemption on income of certain limited liability companies.—

(1) A limited liability company classified as a partnership for federal income tax purposes, or a single-member limited liability company that is disregarded as an entity separate from its owner for federal income tax purposes, and organized pursuant to this chapter or qualified to do business in this state as a foreign limited liability company is not an “artificial entity” within the purview of s. 220.02 and is not subject to the tax imposed under chapter 220. If a single-member limited liability company is disregarded as an entity separate from its owner for federal income tax purposes, its activities are, for purposes of taxation under chapter 220, treated in the same manner as a sole proprietorship, branch, or division of the owner.

(2) For purposes of taxation under chapter 220, a limited liability company formed in this state or a foreign limited liability company with a certificate of authority to transact business in this state shall be classified as a partnership or a limited liability company that has only one member shall be disregarded as an entity separate from its owner for federal income tax purposes, unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified identically to its classification for federal income tax purposes. For purposes of taxation under chapter 220, a member or a transferee of a member of a limited liability company formed in this state or a foreign limited liability company with a certificate of authority to transact business in this state shall be treated as a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or transferee of a member has the same status as the member or transferee of a member for federal income tax purposes.

(3) Single-member limited liability companies and other entities that are disregarded for federal income tax purposes must be treated as separate legal entities for all non-income tax purposes. The Department of Revenue shall adopt rules to take into account that single-member disregarded entities such as limited liability companies and qualified subchapter S corporations may be disregarded as separate entities for federal tax purposes and therefore may report and account for income, employment, and other taxes under the taxpayer identification number of the owner of the single-member entity.

History.—s. 2, ch. 2013-180; s. 143, ch. 2014-17.

605.1104 Interrogatories by department; other powers of department.—

(1) The department may direct to any limited liability company or foreign limited liability company subject to this chapter, and to a member or manager of any limited liability company or foreign limited liability company subject to this chapter, interrogatories reasonably necessary and proper to enable the department to ascertain whether the limited liability company or foreign limited liability company has complied with the provisions of this chapter applicable to the limited liability company or foreign limited liability company. The interrogatories must be answered within 30 days after the date of mailing, or within such additional time as fixed by the department. The answers to the interrogatories must be full and complete and must be made in writing and under oath. If the interrogatories are directed to an individual,

they must be answered by the individual, and if directed to a limited liability company or foreign limited liability company, they must be answered by a manager of a manager-managed company, a member of a member-managed company, or other applicable governor if a foreign limited liability company is not member-managed or manager managed, or a fiduciary if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.

(2) The department need not file a record in a court of competent jurisdiction to which the interrogatories relate until the interrogatories are answered as provided in this chapter, and is not required to file a record if the answers disclose that the record is not in conformity with the requirements of this chapter or if the department has determined that the parties to such document have not paid all fees, taxes, and penalties due and owing this state. The department shall certify to the Department of Legal Affairs, for such action as the Department of Legal Affairs may deem appropriate, all interrogatories and answers that disclose a violation of this chapter.

(3) The department may, based upon its findings under this section or as provided in s. 213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to be due and owing the state and to compel any filing, qualification, or registration required by law. In connection with such proceeding, the department may, without prior approval by the court, file a lis pendens against any property owned by the limited liability company and may further certify any findings to the Department of Legal Affairs for the initiation of an action permitted pursuant to this chapter which the Department of Legal Affairs may deem appropriate.

(4) The department has the power and authority reasonably necessary to administer this chapter efficiently, to perform the duties herein imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter.

History.—s. 2, ch. 2013-180.

605.1105 Reservation of power to amend or repeal.—The Legislature has the power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

History.—s. 2, ch. 2013-180.

605.1106 Savings clause.—

(1) Except as provided in subsection (2), the repeal of a statute by this chapter does not affect:

(a) The operation of the statute or an action taken under it before its repeal, including, without limiting the generality of the foregoing, the continuing validity of any provision of the articles of organization, regulations, or operating agreements of a limited liability company authorized under the statute at the time of its adoption;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, merger, sale of assets, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, merger, sale of assets, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute is reduced by this chapter, the penalty or punishment, if not already imposed, shall be imposed in accordance with this chapter.

(3) This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

History.—s. 2, ch. 2013-180.

605.1107 Severability clause.—If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter

which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.—s. 2, ch. 2013-180.

605.1108 Application to limited liability company formed under the Florida Limited Liability Company Act.—

- (1) Subject to subsection (4), before January 1, 2015, this chapter governs only:
 - (a) A limited liability company formed on or after January 1, 2014; and
 - (b) A limited liability company formed before January 1, 2014, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.
- (2) On or after January 1, 2015, this chapter governs all limited liability companies.
- (3) For the purpose of applying this chapter to a limited liability company formed before January 1, 2014, under the Florida Limited Liability Company Act, former ss. 608.401-608.705, the company's articles of organization are deemed to be the company's articles of organization under this chapter.
- (4) Notwithstanding the provisions of subsections (1) and (2), effective January 1, 2014, all documents, instruments, and other records submitted to the department must comply with the filing requirements stipulated by this chapter.

History.—s. 2, ch. 2013-180; s. 10, ch. 2015-148.