WEST VIRGINIA CODE CHAPTER 31B ARTICLE 9

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§31B-9-901. Definitions.

In this article:

(1) "Corporation" means a corporation under chapter thirty-one of this code, a predecessor law, or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership created under article nine, chapter forty-seven of this code, a predecessor law, or comparable law of another jurisdiction.

(5) "Partner" includes a general partner and a limited partner.

(6) "Partnership" means a general partnership under chapter forty-seven-b of this code, a predecessor law, or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

(8) "Shareholder" means a shareholder in a corporation.

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§31B-9-902. Conversion of partnership or limited partnership to limited liability company.

(a) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(c) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.

(d) After a conversion is approved under subsection (b) of this section, the partnership or limited partnership shall file articles of organization in the office of the Secretary of State which satisfy the requirements of section 2-203 and contain:

(1) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;

(2) Its former name;

(3) A statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (b) of this section; and

(4) In the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date the conversion took effect.

(e) In the case of a limited partnership, the filing of articles of organization under subsection (d) of this section cancels its certificate of limited partnership as of the date the conversion took effect.

(f) A conversion takes effect when the articles of organization are filed in the office of the Secretary of State or at any later date specified in the articles of organization.

(g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

(h) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited

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partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

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§31B-9-903. Effect of conversion; entity unchanged.

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partnership vests in the limited liability company;

(2) All debts, liabilities and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(3) An action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(4) Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(5) Except as otherwise provided in the agreement of conversion under section 9-902(c), all of the partners of the converting partnership continue as members of the limited liability company.

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§31B-9-904. Merger of entities; confirmation of title to real estate required.

(a) Pursuant to a plan of merger approved under subsection (c) of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

(b) A plan of merger must set forth:

(1) The name of each entity that is a party to the merger;

(2) The name of the surviving entity into which the other entities will merge;

(3) The type of organization of the surviving entity;

(4) The terms and conditions of the merger;

(5) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property, in whole or in part; and

(6) The street address of the surviving entity's principal place of business.

(c) A plan of merger must be approved:

(1) In the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(3) In the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under section 9-902(b); and

(4) In the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger is effective upon the filing of the articles of merger with the Secretary of State, or at such later date as the articles may provide.

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(f) Irrespective of whether the surviving limited liability company is to be governed by the laws of this state or by the laws of any other state, any constituent limited liability company thereof owning or holding real estate in this state shall further evidence title thereto in the surviving limited liability company by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerk of the county commission of the respective counties in which such real estate is situate; and such deed or deeds shall recite as the consideration therefor the said merger and shall be deemed confirmatory of the title of such real estate in the surviving limited liability company.

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§31B-9-905. Articles of merger.

(a) After approval of the plan of merger under section 9-904(c), unless the merger is abandoned under section 9-904(d), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the Secretary of State for filing. The articles must set forth:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(2) For each limited liability company that is to merge, the date its articles of organization were filed with the Secretary of State;

(3) That a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(4) The name and address of the surviving limited liability company or other surviving entity;

(5) The effective date of the merger;

(6) If a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

(7) If a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the Secretary of State or, if an application has not been filed, a statement to that effect; and

(8) If the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state which is to merge, and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

(b) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the Secretary of State.

(c) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

(d) Articles of merger operate as an amendment to the limited liability company's articles of organization.

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§31B-9-906. Effect of merger.

(a) When a merger takes effect:

(1) The separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) All property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

(3) All debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) An action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(5) Except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of every limited liability company and other entity that is a party to a merger become vested in the surviving entity.

(b) The Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the Secretary of State shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(1) The date the company receives the process, notice or demand;

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

(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

(e) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

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§31B-9-907. Article not exclusive.

This article does not preclude an entity from being converted or merged under other law.

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