WEST VIRGINIA CODE CHAPTER 31b ARTICLE 2

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§31B-2-201. Limited liability company as legal entity.

A limited liability company is a legal entity distinct from its members.

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§31B-2-202. Organization.

(a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the office of the Secretary of State for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

(b) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the Secretary of State is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.

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§31B-2-203. Articles of organization.

(a) Articles of organization of a limited liability company must set forth:

(1) The name of the company;

(2) The address of the initial designated office in West Virginia, if any, and the mailing address of the principal office;

(3) The name and address of the initial agent for service of process, if any;

(4) The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company;

(5) Whether the company is to be a term company and, if so, the term specified;

(6) Whether the company is to be manager-managed and, if so, the name and address of each initial manager;

(7) Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c);

(8) The purpose or purposes for which the limited liability company is organized; and

(9) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) Articles of organization of a limited liability company may set forth:

(1) Provisions permitted to be set forth in an operating agreement; or

(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members' transferees; and

(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

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§31B-2-204. Amendment or restatement of articles of organization.

(a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the Secretary of State for filing. The articles of amendment must set forth the:

(1) Name of the limited liability company;

(2) Date of filing of the articles of organization; and

(3) Amendment to the articles.

(b) A limited liability company may restate its articles of organization at any time. Restated articles of organization must be signed and filed in the same manner as articles of amendment. Restated articles of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

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§31B-2-205. Signing of records.

(a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the Secretary of State must be signed in the name of the company by a:

(1) Manager of a manager-managed company;

(2) Member of a member-managed company;

(3) Person organizing the company, if the company has not been formed; or

(4) Fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary.

(b) A record signed under subsection (a) of this section must state adjacent to the signature the name and capacity of the signer.

(c) Any person may sign a record to be filed under subsection (a) of this section by an attorney-in-fact. Powers of attorney relating to the signing of records to be filed under subsection (a) of this section by an attorney-in-fact need not be filed in the office of the Secretary of State as evidence of authority by the person filing but must be retained by the company.

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§31B-2-206. Filing in office of Secretary of State.

(a) Articles of organization or any other record authorized to be filed under this chapter must be in a medium permitted by the Secretary of State and must be delivered to the office of the Secretary of State. Delivery may be made by electronic transmission if permitted by the Secretary of State. Unless the Secretary of State determines that a record fails to comply as to form with the filing requirements of this chapter, and if all filing fees have been paid, the Secretary of State shall file the record and send a receipt for the record and the fees to the limited liability company or its representative.

(b) Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

(c) Except as otherwise provided in subsection (d) of this section and section 2-207(c), a record accepted for filing by the Secretary of State is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original record; or

(2) At the time specified in the record as its effective time on the date it is filed.

(d) A record may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. If a delayed effective date is later than the ninetieth day after the record is filed, the record is effective on the ninetieth day.

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§31B-2-207. Correcting filed record.

(a) A limited liability company or foreign limited liability company may correct a record filed by the Secretary of State if the record contains a false or erroneous statement or was defectively signed.

(b) A record is corrected:

(1) By preparing articles of correction that:

(i) Describe the record, including its filing date, or attach a copy of it to the articles of correction;

(ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective; and

(iii) Correct the incorrect statement or defective signing; and

(2) By delivering the corrected record to the Secretary of State for filing.

(c) Articles of correction are effective retroactively on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

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§31B-2-208. Certificate of existence or authorization.

(a) A person may request the Secretary of State to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence for a limited liability company must set forth:

(1) The company's name;

(2) That it is duly organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if the latter, the period specified;

(3) If payment is reflected in the records of the Secretary of State and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(4) Whether its most recent annual or biennial report required by §31B-2-211 of this code has been filed with the Secretary of State;

(5) That articles of termination have not been filed; and

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

(c) A certificate of authorization for a foreign limited liability company must set forth:

(1) The company's name used in this state;

(2) That it is authorized to transact business in this state;

(3) If payment is reflected in the records of the Secretary of State and nonpayment affects the authorization of the company that all fees, taxes, and penalties owed to this state have been paid;

(4) Whether its most recent annual or biennial report required by §31B-2-211 of this code has been filed with the Secretary of State;

(5) That a certificate of cancellation has not been filed; and

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

(d) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

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§31B-2-209. Liability for false statement in filed record.

If a record authorized or required to be filed under this chapter contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

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§31B-2-210. Filing by judicial act.

If a person required by section 2-205 to sign any record fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court to direct the signing of the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or refused to sign the record, it shall order the Secretary of State to sign and file an appropriate record.

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§31B-2-211. Annual and Biennial Report for Secretary of State.

(a) A limited liability company, and a foreign limited liability company authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:

(1) The name of the company and the state or country under whose law it is organized;

(2) The address of its designated office, if any, and the name and address of its agent for service of process in this state, if any;

(3) The address of its principal office;

(4) The names and business addresses of any managers and the name and address of each member having authority to execute instruments on behalf of the limited liability company; and

(5) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

(c) The first annual report must be delivered to the Secretary of State between January 1 and July 1 of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the Secretary of State between January 1 and July 1 of the ensuing calendar years.

(d) If an annual report does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within 30 days after the effective date of the notice, it is timely filed.

(e) Notwithstanding any provision of this section to the contrary, a limited liability company or a foreign limited liability company authorized to transact business in this state may elect to file a biennial report in lieu of an annual report if the company has timely filed all required annual reports under this section for five consecutive calendar years and is in good standing with the Secretary of State at the time of election.

(1) The election shall be made at the time of filing the fifth consecutive timely annual report, or, for any limited liability company or foreign limited liability company that has already satisfied the five-year timely filing requirement as of the effective date of this subsection, at any time between January 1 and July 1 of the next calendar year following the effective date

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of this subsection in a form and manner prescribed by the Secretary of State;

(2) Upon making the biennial reporting election, the limited liability company or foreign limited liability company is not required to file an annual report for the next calendar year. The first biennial report shall be delivered to the Secretary of State between January 1 and July 1 of the second calendar year following the calendar year in which the election is made, and every two years thereafter;

(3) Biennial reports shall include the same information as the annual reports outlined in subsection (a) of this section and shall be delivered in a form and manner prescribed by the Secretary of State. If a biennial report does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within 60 days after the effective date of the notice, it is timely filed;

(4) After election of biennial reporting, any failure to timely file a biennial report or loss of good standing revokes the biennial reporting election, and the limited liability company or foreign limited liability company must timely file annual reports for another five consecutive calendar years before making the election again.

(f) Amendments to this section concerning the election of biennial reporting enacted into law during the Regular Legislative Session of the year 2026, shall take effect on July 1, 2026, and shall not forgive prior failures to file annual reports or pay annual fees previously due.

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