WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED

Committee Substitute for Committee Substitute

SENATE BILL NO. 10

(By Senator Wooton)

PASSED March 4, 1992
In Effect from Passage
AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to limited liability companies; authorizing and specifying method of formation of limited liability companies; specifying fines for failure to record certificate of organization; regulating internal management of limited liability companies; specifying and limiting member and manager liabilities; providing methods for dissolution and merger of limited liability companies and conversion of partnerships to limited liability companies; providing for registration of foreign limited liability companies; and providing liability of foreign limited liability companies to state for fees, taxes and penalties for failure to obtain certificate of authority.

Be it enacted by the Legislature of West Virginia:
That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. LIMITED LIABILITY COMPANIES.

§31-1A-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Limited Liability Company Act”.

§31-1A-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) “Article” means this article of the West Virginia
4 code;

5 (2) “Articles of organization” means the articles of
6 organization filed with the secretary of state for the
7 purpose of forming a limited liability company as
8 specified in sections eight and nine of this article and
9 all amendments thereto;

10 (3) “Bankruptcy” means a case under the federal
11 Bankruptcy Code of 1978, Title 11 of the United States
12 Code, as amended;

13 (4) “Contribution” means any cash, property or
14 services rendered, or a promissory note or other
15 binding obligations to contribute cash or property or to
16 perform services that a member contributes to a
17 limited liability company in his capacity as a member;

18 (5) “Court” includes every court and judge having
19 jurisdiction in any case;

20 (6) “Distribution” means a direct or indirect transfer
21 of money or other property, or incurrence of indebt-
22 edness by a limited liability company, to or for the
23 benefit of its members in respect of their interests in
24 such company;

25 (7) “Foreign limited liability company” means a
26 limited liability company organized under laws other
27 than the laws of this state;
Limited liability companies may be organized under this article for any lawful purpose.

§31-1A-4. Powers.

(a) Each limited liability company organized and existing under this article shall have the power to:
(1) Sue and be sued, complain and defend, in its name;

(2) Purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property or any legal or equitable interest therein, wherever situated;

(3) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, transfer or otherwise dispose of all or any part of its property and assets;

(4) Lend money to or otherwise assist its members;

(5) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other limited liability companies, domestic or foreign corporations, associations, general partnerships, limited partnerships, joint ventures or persons, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or any instrumentality thereof;

(6) Make contracts and guarantees, incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage, deed of trust or pledge of all or any part of its property, franchises and income;

(7) Lend money for its proper purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so loaned or invested;

(8) Conduct its business and affairs, carry on its operations and have and exercise the powers granted by this article in any state, territory, district or possession of the United States or in any foreign country;

(9) Elect or appoint managers, employees and agents
of the limited liability company and define their duties
and fix their compensation;

(10) Pay compensation, or pay additional compensa-
tion, to any or all managers, members, employees and
agents on account of services previously rendered, or
to be rendered, to the limited liability company,
whether or not an agreement to pay such compensa-
tion was made before such services were rendered;

(11) Make and alter operating agreements for the
administration and regulation of the business and
affairs of the limited liability company;

(12) Indemnify a member, manager, employee or
agent, or former member, manager, employee or
agent, of the limited liability company to the same
extent as a corporation organized under the laws of
this state may indemnify any of the directors, officers,
employees or agents of the corporation against
expenses actually and reasonably incurred by him or
it in connection with the defense of any action, suit or
proceeding, whether civil or criminal, in which he or
it is made a party and to make any other indemnifi-
cation that is authorized by the articles of organization
or by the operating agreement or resolution adopted
by the members after notice;

(13) Cease its activities and surrender its certificate
of organization;

(14) Have and exercise all powers necessary or
convenient to effect any or all of the purposes for
which the limited liability company is organized;

(15) Become a member of a corporation, general
partnership, limited partnership, limited liability
company, joint venture or similar association; and

(16) Transact any lawful business that a corporation,
general partnership, limited partnership or other
business entity may conduct under the laws of this
state.

(b) In addition to the provisions of subsection (a) of
this section, a limited liability company shall have and
79 exercise all powers granted to corporations under the
80 laws of this state.

§31-1A-5. Name.

1 (a) The words “limited liability company” shall be
2 included in the name of every limited liability com-
3 pany formed under the provisions of this article.

4 (b) Such name shall not contain any word or phrase
5 which indicates or implies that it is organized for any
6 purpose other than those permitted by this article and
7 as may be limited by its articles of organization.

8 (c) Such name shall not contain the words “Corpo-
9 ration”, “Incorporated”, “Limited Partnership” or the
10 abbreviations “Corp.” or “Inc.”

11 (d) Such name shall not be the same as, or decept-
12 ively similar to, any of the following:

13 (1) The name of any domestic corporation, limited
14 partnership or limited liability company;

15 (2) The name of any foreign corporation, limited
16 partnership, or limited liability company authorized to
17 transact business in this state that has in effect a
18 registration of its name as provided under the laws of
19 this state;

20 (3) Any name for which an exclusive right has been
21 reserved in the office of the secretary of state;

22 (4) Any trade or assumed name registered with the
23 secretary of state or for which application for registra-
24 tion is pending; or

25 (5) Any name registered in the office of the secre-
26 tary of state.

27 (e) The provisions of subsection (d) of this section
28 shall not apply if the organizer files with the secretary
29 of state either:

30 (1) The written consent of such other limited liabil-
31 ity company, corporation or limited partnership or
32 holder of a reserved or registered name to use the
33 same or a deceptively similar name if one or more
words are added, altered or deleted to make the name
distinguishable from the reserved or registered name;
or
(2) A certified copy of a final decree of a court of
competent jurisdiction establishing the prior right of
the applicant to the use of such name in this state.

(f) A limited liability company that acquires, upon a
sale, lease or other disposition to or exchange with a
domestic limited liability company, all or substantially
all the assets of another domestic or foreign limited
liability company, including its name, may have a
deceptively similar name if one or more words are
added, altered or deleted to make such name distin-
guishable from such other name as that used in this
state by any of such limited liability companies if such
other limited liability company was organized under
the laws of, or is authorized to transact business in,
this state.

§31-1A-6. Reservation of name.

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

(1) Any person intending to organize a limited
liability company under this article and to adopt that
name;

(2) Any domestic or foreign limited liability com-
pany registered in this state that, in either case,
intends to adopt that name;

(3) Any domestic or foreign limited liability com-
pany registered in this state intending to change its
name; or

(4) Any foreign limited liability company or any
person intending to organize a foreign limited liability
company and intending to register in this state and
adopt that name.

(b) To reserve a specified name, a person shall
submit an application to the secretary of state in the
form and manner the secretary of state shall desig-
nate. If the secretary of state finds that the name is
available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed for additional periods not to exceed one hundred twenty days from the date of such renewal.

The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the office of the secretary of state a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§31-1A-7. Formation.

Any two or more persons may form a limited liability company by causing to be signed and filed with the secretary of state articles of organization for such limited liability company. Such persons need not be members of the limited liability company after formation has occurred.

§31-1A-8. Articles of organization.

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

(1) The name of the limited liability company;
(2) The period of its duration, which shall not be perpetual;
(3) The purpose for which the limited liability company is organized; and
(4) The address of its principal place of business in the state and the name and address of its initial registered agent in the state, which may be the same as its initial registered office but need not be located in this state.

(b) The articles of organization may set forth any other matter that is permitted under this article to be set forth in its operating agreement.

(c) It is not necessary to set out in the articles of organization any of the powers enumerated in this
article.

(d) Whenever a provision of the articles of organization is inconsistent with the operating agreement for the limited liability company, the provisions of the articles of organization shall be controlling.

(e) The articles of organization shall contain a statement of the name and address of the person who, or the firm that, prepared such articles of organization.

(f) The articles of organization shall be acknowledged by one or more of the persons forming the limited liability company before a notary public and transmitted with the proper fees to, and shall be filed with, the secretary of state.

§31-1A-9. Filing of articles of organization.

(a) Duplicate originals, which as used in this article shall mean two copies, however reproduced, both of which are executed in the original, of the articles of organization shall be delivered to the secretary of state. If the secretary of state finds that the articles of organization conform to law, he shall, when all fees have been paid as prescribed by law:

(1) Endorse on each of the duplicate originals the word "Filed" and the month, day and year of the filing thereof;

(2) File one of the duplicate originals in his office; and

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

(b) The certificate of organization, together with a duplicate original of the articles of organization affixed thereto by the secretary of state, shall be returned to the limited liability company or to its representative.

(c) If the limited liability company has its principal office in this state, it shall cause such certificate, or a duly certified copy thereof, to be recorded in the office of the clerk of the county commission of the county in which such principal office is located; if its principal
office is not within this state but it conducts affairs or
does or transacts business therein, then in the county
or one of the counties in which it conducts its affairs
or does or transacts its principal business. If its
principal office is without the state and it does not
conduct affairs or do or transact business within the
state, such certificate need not be recorded in the
county clerk's office. A failure to comply with the
foregoing recordation provision within six months
from the date of such certificate shall subject the
limited liability company to a fine of not more than
one thousand dollars.

§31-1A-10. Effect of issuance of certificate of organization.

(a) Upon the issuance of the certificate of organization, or upon any future date stated in the certificate of organization, the limited liability company shall be considered organized and in existence and such certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized under this article, except as against this state in a proceeding to cancel or revoke the certificate of organization or for involuntary dissolution of the limited liability company.

(b) A limited liability company shall not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the secretary of state has issued a certificate of organization.

§31-1A-11. Amendments to articles of organization.

(a) The articles of organization shall be amended within thirty days from the occurrence of any of the following:

(1) There is a change in the name of the limited liability company;

(2) There is a false or erroneous statement in the articles of organization;
There is a change in the duration of the limited liability company as stated in the articles of organization: Provided, That such duration shall not be perpetual;

(4) A time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organization; or

(5) The members desire to make a change in any other statement in the articles of organization in order for it to accurately represent the agreement between them.

(b) The articles of organization as amended shall contain only such provisions as might be lawfully contained in original articles of organization at the time of making such amendment.

(c) The articles of amendment shall be adopted upon approval by a majority vote of the members entitled to vote thereon, unless the articles of organization or the operating agreement of the limited liability company require a greater or lesser vote.

(d) The articles of amendment shall be executed in duplicate and verified by a member or manager so authorized and shall set forth:

(1) The name of the limited liability company;

(2) The amendment as adopted;

(3) The date of the adoption of the amendment by the members;

(4) A statement that the amendment was adopted by a vote of the members in accordance with this article; and

(5) The name and address of the person or firm that prepared such amendment.

§31-1A-12. Filing of articles of amendment; recordation; admission in evidence.

(a) Upon adoption of the articles of amendment, duplicate originals of such articles of amendment shall
be delivered to the secretary of state. If the secretary
of state finds that the articles of amendment conform
to law, he shall, when all fees have been paid as
prescribed by law:

(1) Endorse on each of the duplicate originals the
word “Filed" and the month, day and year of the
filing thereof;

(2) File one of the duplicate originals in his office;

and

(3) Issue a certificate of amendment to which he
shall affix the other duplicate originals.

(b) The certificate of amendment, together with a
duplicate original of the articles of amendment affixed
thereto by the secretary of state, shall be returned to
the persons forming the limited liability company, the
principal office of the limited liability company or to
its representative.

(c) The certificate of amendment issued by the
secretary of state pursuant to this section, or a
certified copy thereof, shall be recorded in the office of
the appropriate county clerk in the same manner as
original certificates of organization are required to be
recorded in accordance with subsection (c), section
nine of this article and received in evidence to the
same extent as an original certificate of organization
or a certified copy of such original.

§31-1A-13. Filing requirements.

(a) A document which satisfies the requirements of
this section and of any other section that adds to or
varies these requirements shall be entitled to be filed
with the secretary of state.

(b) The document to be filed shall be one that this
article requires or permits to be filed with the secre-
tary of state.

(c) The document to be filed shall contain the
information required by this article and may contain
other information as well.
(d) The document to be filed shall be typewritten or printed and shall be executed in the name of the limited liability company:

(1) By any member or manager of the limited liability company;

(2) If the limited liability company has not been formed, by one or more of the persons forming the limited liability company; or

(3) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(e) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs.

(f) If, pursuant to any provision of this article, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

(g) The document to be filed shall be delivered to the secretary of state for filing and shall be accompanied by the required filing fee and any registration fee required.

§31-1A-14. Registered office and registered agent to be maintained.

1 Each domestic limited liability company and each foreign limited liability company which has been issued a certificate of authority pursuant to this article shall have and continuously maintain in this state:

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

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.
§31-1A-15. Change of registered office or registered agent.

(a) Within thirty days of any change in registered office or agent, or both, a limited liability company shall file in the office of the secretary of state a statement setting forth:

(1) The name of the limited liability company;

(2) The address of its then registered office;

(3) If the address of its registered office is to be changed, the address to which the registered office is to be changed;

(4) The name of its then registered agent; and

(5) If its registered agent is to be changed, the name of its successor registered agent.

(b) If the secretary of state finds that the statement conforms to the provisions of this article, he shall file the statement in his office, and upon filing the statement, the change of address of the registered office or the appointment of a new registered agent, or both as the case may be, will be in effect.

(c) Any registered agent of a limited liability company may resign as agent upon filing a written notice thereof, executed in duplicate, with the limited liability company and the secretary of state. The appointment of the agent terminates upon the expiration of thirty days after receipt of notice by the secretary of state.

§31-1A-16. Secretary of state constituted attorney-in-fact for all limited liability companies; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section; venue.

(a) The secretary of state is hereby constituted the attorney-in-fact for and on behalf of every limited liability company created by virtue of the laws of this state and every foreign limited liability company
authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited liability company and upon whom service of notice and process may be made in this state for and upon every such limited liability company. No act of such limited liability company appointing the secretary of state attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of five dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited liability company at the address last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom process may be served, as required by law. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the return day thereof. Such limited liability company shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the secretary of state as its attorney-in-fact.

Any foreign limited liability company which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the secretary of state as its attorney-in-fact with authority to accept service of notice and process on behalf of such limited liability company and upon whom service of notice and process
may be made in this state for and upon every such
limited liability company in any action or proceeding
described in the next following paragraph of this
section. No act of such limited liability company
appointing the secretary of state as such attorney-in-
fact shall be necessary. Immediately after being served
with or accepting any such process or notice, of which
process or notice two copies for each defendant shall
be furnished the secretary of state with the original
notice or process, together with a fee of five dollars,
the secretary of state shall file in his office a copy of
such process or notice, with a note thereon endorsed
of the time of service or acceptance, as the case may
be, and transmit one copy of such process or notice by
registered or certified mail, return receipt requested,
to such limited liability company at the address of its
principal office, which address shall be stated in such
process or notice. Such service or acceptance of such
process or notice shall be sufficient if such return
receipt shall be signed by an agent or employee of
such limited liability company, or the registered or
certified mail so sent by the secretary of state is
refused by the addressee and the registered or certi-
fied mail is returned to the secretary of state or to his
office showing thereon the stamp of the United States
postal service that delivery thereof has been refused,
and such return receipt of registered or certified mail
is appended to the original process or notice and filed
therewith in the clerk's office of the court from which
such process or notice was issued. No process or notice
shall be served on the secretary of state or accepted by
him less than ten days before the return date thereof.
The court may order such continuances as may be
reasonable to afford each defendant opportunity to
defend the action or proceedings.

For the purpose of this section, a foreign limited
liability company not authorized to conduct affairs or
do or transact business in this state pursuant to the
provisions of this article shall nevertheless be deemed
to be conducting affairs or doing or transacting
business herein: (1) If such limited liability company
makes a contract to be performed, in whole or in part,
by any party thereto, in this state; (2) if such limited
liability company commits a tort in whole or in part in
this state; or (3) if such limited liability company
manufactures, sells, offers for sale or supplies any
product in a defective condition and such product
causes injury to any person or property within this
state notwithstanding the fact that such limited
liability company had no agents, servants of employees
or contracts within this state at the time of said injury.
The making of such contract, the committing of such
tort or the manufacture or sale, offer of sale or supply
of such defective product as hereinabove described
shall be deemed to be the agreement of such limited
liability company that any notice or process served
upon, or accepted by, the secretary of state pursuant
to the next preceding paragraph of this section in any
action or proceeding against such limited liability
company arising from, or growing out of, such con-
tract, tort or manufacture or sale, offer of sale or
supply of such defective product shall be of the same
legal force and validity as process duly served on such
limited liability company in this state.

(b) In all cases arising under this article wherein the
limited liability companies seeking to exercise the
rights conferred by this article, or against which any
proceeding is instituted thereunder, do not have or
maintain any office, own any property or conduct
affairs or do or transact business in this state, the
circuit court of the county in which the seat of
government is located shall have original jurisdiction,
except in cases in which jurisdiction is expressly
conferred upon some other court by this article.

§31-1A-17. Fees and charges to be collected by secretary of
state.

Except as otherwise expressly provided in this
article, all fees required to be charged and collected by
the secretary of state by the provisions of this article
shall be charged and collected in accordance with the
provisions of section two, article one, chapter fifty-
nine of this code as applicable to corporations.
§31-1A-18. Management.

(a) Except to the extent that the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

(b) Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company shall vote in proportion to their contributions to the limited liability company, as adjusted from time to time to reflect any additional contributions or withdrawals, and a majority vote of the members of a limited liability company shall consist of the vote or other approval of members having a majority share of the voting power of all members.

(c) Unless otherwise provided in this article or in the articles of organization or an operating agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of the members.

§31-1A-19. Operating agreement.

(a) The members of a limited liability company may enter into any operating agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of this state or the articles of organization.

(b) (1) An operating agreement must initially be agreed to by all of the members. Unless the articles of organization specifically require otherwise, an operating agreement need not be in writing.

(2) If an operating agreement does not provide for the method by which it may be amended, then all of the members must agree to any amendment of an operating agreement.
(c) (1) A court of equity may enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(2) As an alternative to injunctive or other equitable relief, when the provisions of section thirty-six of this article are applicable, the court may order dissolution of the limited liability company.

§31-1A-20. Management of a limited liability company by a manager or managers.

(a) The articles of organization or an operating agreement of a limited liability company may delegate full or partial responsibility for managing a limited liability company to or among one or more managers.

(b) Managers need not be residents of this state or members of the limited liability company unless the articles of organization or an operating agreement so require. The articles of organization or an operating agreement may prescribe other qualifications for managers.

(c) The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

(d) Managers shall be elected by the members pursuant to the articles of organization or an operating agreement, or, if none, pursuant to section eighteen of this article.

(e) Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the position of manager shall be filled by a majority vote in interests of the members.

(f) All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement.
provide otherwise for the removal of managers, then all managers or any lesser number may be removed with or without cause by a majority vote in interests of the members.

(g) Unless otherwise provided in the articles of organization or an operating agreement, any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

(h) (1) A manager shall discharge his duties as a manager in accordance with his good faith business judgment of the best interests of the limited liability company.

(2) Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a manager is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(A) One or more managers or employees of the limited liability company whom the manager believes, in good faith, to be reliable and competent in the matters presented;

(B) Legal counsel, public accountants or other persons as to matters the manager believes in good faith are within the person's professional or expert competence; or

(C) A committee of the managers of which he is not a member if the manager believes in good faith that the committee merits confidence.

(3) A person alleging a violation of this subsection has the burden of proving the violation.

§31-1A-21. Contracting debts.

Except as otherwise provided in this article, no debt shall be contracted or liability incurred by or on behalf of a limited liability company, except by one or more of its managers if management of the limited liability company has been vested by the members in a man-
§31-1A-22. Business transactions of members or managers with the limited liability company.

Except as provided in the articles of organization or an operating agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

§31-1A-23. Contributions.

(a) The contributions of a member to a limited liability company may be in cash, property, services rendered or a promissory note or other binding obligation which has been accepted by the limited liability company to contribute cash or property or to perform services.

(b) Except as provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability company records, of such contribution that has not been made.

(c) No promise by a member to contribute to a limited liability company is enforceable unless set out in a writing signed by the member.


The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing.
in the articles of organization or an operating agree-
ment. If the articles of organization or an operating
agreement do not otherwise provide, profits and losses
shall be allocated on the basis of the value, as stated
in the limited liability company records of the contri-
butions made by each member as adjusted from time
to time to reflect any additional contributions or
withdrawals.

§31-1A-25. Sharing of distributions.

Distributions of cash or other assets of a limited
liability company shall be allocated among the
members, and among classes of members, in the
manner provided in writing in the articles of organi-
zation or an operating agreement. If the articles of
organization or an operating agreement do not so
provide in writing, distributions shall be made on the
basis of the value, as stated in the limited liability
company records, of the contributions made by each
member as adjusted from time to time to reflect any
additional contributions or withdrawals.

§31-1A-26. Interim distributions.

Except as provided in this article, a member is
entitled to receive distributions from a limited liability
company before his or its resignation from the limited
liability company and before the dissolution and
winding up thereof to the extent and at the times or
upon the happening of the events specified in the
articles of organization or an operating agreement.

§31-1A-27. Withdrawal or resignation of member.

Unless otherwise provided in the articles of organi-
zation or in any operating agreement, a member may
withdraw or resign from a limited liability company at
the time or upon the happening of events specified in
writing in the articles of organization or an operating
agreement. If the articles of organization or an oper-
ating agreement do not specify the time or the events
upon the happening of which a member may with-
draw or resign, a member may withdraw or resign
upon not less than six months prior written notice to

Except as provided in writing in the articles of organization or an operating agreement, a member, regardless of the nature of such member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in writing in the articles of organization or an operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to such member exceeds a percentage of that asset which such member's membership interest constitutes of all membership interests in the limited liability company.

§31-1A-29. Restrictions on making distribution.

(a) No distribution may be made by a limited liability company, if, after giving effect to the distribution:

(1) The limited liability company would not be able to pay its debts as they became due to the usual course of business; or

(2) The reasonable value of the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permit otherwise, the amount that would be needed if the limited liability company were to be dissolved at the time of the distribution to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under this section either on:

(1) Financial statements prepared on the basis of
(2) A fair valuation or other method that is reasonable in the circumstances.

(c) The effect of a distribution under subsection (a) of this section is measured as of: (i) The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization; or (ii) the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

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

§31-lA-30. Liability upon wrongful distribution.

If a member has received a distribution in violation of the articles of organization or an operating agreement or in violation of section twenty-nine of this article, then such member is liable to the limited liability company for a period of four years thereafter for the amount of the distribution wrongfully made.


At the time a member becomes entitled to receive a distribution, such member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

§31-lA-32. Liability of member to company.

(a) A member is liable to the limited liability company for any unpaid contribution to capital which such member agreed in the articles of organization or an operating agreement to make at the time and on the conditions stated in the articles of organization or an operating agreement.
(b) A member holds as trustee for the limited liability company:

(1) Specific property which is stated in the articles of organization as having been contributed by such member, but which was not contributed or which has been wrongfully or erroneously returned; and

(2) Money or other property wrongfully paid or conveyed to such member on account of his or its contribution.

(c) The liabilities of a member as set out in this section can be waived or compromised only by the consent of all members, but a waiver or compromise shall not affect the right of a creditor of the limited liability company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the articles of organization to enforce the liabilities.

(d) When a contributor has rightfully received the return in whole or in part of his or its capital contribution, such contributor is nevertheless liable to the limited liability company for any sum, not in excess of the returned capital, necessary to discharge its liability to all creditors of the limited liability company who expended credit or whose claims arose before the return.

§31-1A-33. Liability of members and managers.

The members of a limited liability company shall have the same rights and liabilities as shareholders of corporations organized or registered under article one of this chapter, and such managers shall have the same rights and liabilities as directors of corporations so organized or registered.

§31-1A-34. Interest in company; transferability of interest.

(a) The interest of a member in a limited liability company constitutes personal property.

(b) Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assign-
An assignment of an interest in a limited liability company does not of itself dissolve the limited liability company. An assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Such an assignment entitles the assignee to receive, to the extent assigned, only any share of profits and losses and distributions to which the assignor would be entitled. Except as provided in the articles of organization or an operating agreement, a member ceases to be a member upon assignment of his or its entire membership interest.

(c) (1) An assignee of an interest in a limited liability company may become a member only if the other members unanimously consent.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization or any operating agreement and this article. An assignee who becomes a member also is liable for any obligations of his or its assignor to make and return contributions as provided in this article. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to him at the time he or it became a member.

(3) If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from any liability to the limited liability company under sections twenty-three and thirty of this article.

§31-1A-35. Dissolution.

(a) A limited liability company organized under this article shall be dissolved upon the occurrence of any of the following events:

(1) When the period fixed for the duration of the limited liability company shall expire;

(2) By the unanimous written agreement of all
members;

(3) Upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of all the remaining members under a right to do so stated in the articles of organization of the limited liability company; or

(4) The entry of a decree of judicial dissolution pursuant to section thirty-six of this article.

§31-1A-36. Judicial dissolution.

On application by or for a member, the circuit court of the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

§31-1A-37. Winding up.

Unless otherwise provided in the articles of organization or an operating agreement, the members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs: Provided, That the circuit court of the county in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, his legal representative or assignee.

§31-1A-38. Distribution of assets upon dissolution.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed as follows:

(1) To secured creditors to the extent of their security, including members who are secured creditors for reasons other than unpaid distributions;
(2) To general unsecured creditors, including members who are creditors for reasons other than unpaid distributions, to the extent permitted by law, in satisfaction of liabilities of the limited liability company;

(3) To members who are creditors as a result of an unpaid distribution: Provided, That if such distribution was made within one year of the dissolution then the member will be at parity with other general unsecured creditors; and

(4) Unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.


(a) Upon the completion of winding up of the limited liability company, a certificate of cancellation shall be filed with the secretary of state. The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made and all of the remaining property and assets of the limited liability company have been distributed to the members. A certificate of cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of filing of the articles of organization and each amendment thereto;

(3) The reason for filing the certificate of cancellation;

(4) The effective date (which shall be a date certain) of cancellation, provided that any effective date other than the date of filing the certificate of cancellation must be a date subsequent to the filing; and

(5) Any other information the members determine to include therein.
(b) Unless otherwise provided in this article or in the certificate, a certificate of cancellation (or judicial dissolution) is effective when accepted for filing by the secretary of state.

§31-1A-40. Filing of certificate of cancellation; recordation; issuance of certificate of dissolution.

(a) Duplicate originals of such certificate of cancellation shall be delivered to the secretary of state. If the secretary of state finds that such certificate of cancellation conforms to law, he shall, when all fees and license taxes have been paid as prescribed by law:

(1) Endorse on each of such duplicate originals the word "Files" and the month, day and year of the filing thereof;

(2) File one of the duplicate originals in his office; and

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

(b) The certificate of dissolution, together with the duplicate original of the certificate of cancellation affixed thereto by the secretary of state, shall be returned to the representative of the dissolved limited liability company. Upon the issuance of such certificate of dissolution the existence of the company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in this article. The manager or managers in office at the time of dissolution, or the survivors of them or, if none, the members, shall thereafter be trustees for the members and creditors of the dissolved limited liability company and as such shall have authority to distribute any company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

(c) If the certificate of organization for the dissolved limited liability company shall have been recorded in the office of the clerk of the county commission of any county in this state, the representative of the dissolved
limited liability company shall record the certificate of
dissolution in the office of the clerk of the county
commission in which the certificate of organization is
recorded, and upon such recordation the existence of
the corporation shall cease, except for the purpose of
actions, other proceedings and appropriate action as
provided in this article.

(d) The certificate of organization shall be cancelled
by the secretary of state upon issuance of the certifi-
cate of dissolution.

§31-1A-41. Procedure for merger.

Any two or more domestic limited liability compa-
nies may merge into one limited liability company
pursuant to a plan of merger approved in the manner
provided in this article. The plan of merger shall set
forth:

(a) The names of the limited liability companies
proposing to merge and the name of the limited
liability company into which they propose to merge;

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

(c) The manner and basis of converting the member-
ship interests of each limited liability company or of
any membership interests, obligations or other secur-
ities of the surviving limited liability company or of
any other limited liability company or, in whole or in
part into cash or other property;

(d) A statement of any changes in the articles of
organization of the surviving limited liability company
to be effected by such merger; and

(e) Such other provisions with respect to the pro-
posed merger as are deemed necessary or desirable.

§31-1A-42. Merger; approval by members.

Except to the extent otherwise provided in the
articles of organization or an operating agreement, the
plan of merger shall be approved upon receiving the
affirmative vote of the holders of a majority of the
membership interests entitled to vote thereon of each
such limited liability company, unless any class of membership interests of any such limited liability company is entitled to vote thereon as a class, in which event, as to such limited liability company, the plan of merger shall be approved upon receiving the affirmative vote of the holders of a majority of the membership interests of each class of membership interests entitled to vote thereon as a class and the total membership interests entitled to vote thereon. Any class of membership interests of any such limited liability company shall be entitled to vote as a class if the plan of merger contains any provisions which, if contained in a proposed amendment to articles of organization, would entitle such a class of membership interests to vote as a class. After such approval by a vote of the members of each limited liability company, and at any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

§31-1A-43. Articles of merger; filing; issuance of certificate; recordation; admission in evidence.

(a) Upon approval by the members in accordance with the provisions of section forty-two of this article, articles of merger shall be executed in duplicate by each limited liability company by a member or manager, and verified by such person signing such articles.

(b) Articles of merger shall, in addition to any other matters deemed appropriate, set forth:

(1) The plan of merger;

(2) As to each limited liability company, the number of membership interests outstanding and, if the membership interests of any class are entitled to vote as a class, the designation and number of outstanding membership interests of each such class; and

(3) As to each limited liability company, the number of membership interests voted for and against such plan respectively and, if the membership interests of any class are entitled to vote as a class, the number of
membership interests of each class voted for and
against such plan, respectively.
(c) Duplicate originals of the articles of merger shall
be delivered to the secretary of state. If the secretary
of state finds that such articles conform to law, he
shall, when all fees have been paid as prescribed by
law: (i) Endorse on each of such duplicate originals the
word "Filed" and the month, day and year of the
filing thereof; (ii) file one of such duplicate originals in
his office; and (iii) issue a certificate of merger to
which he shall affix the other duplicate original.
The certificate of merger, together with the dupli-
cate original of the articles of merger affixed thereto
by the secretary of state, shall be returned to the
surviving limited liability company, as the case may
be, or its representative.
(d) The certificate of merger or certified copy
thereof shall be recorded in the office of the appro-
iate county clerk in the same manner as original
certificates of organization are required to be recorded.
§31-1A-44. Effect of merger; conveyance of title to real
estate in state to surviving limited liability
cOMPANY.
(a) Upon the issuance of the certificate of merger by
the secretary of state, the merger shall be effected.
When such a merger has been effected:
(1) The limited liability companies that are parties to
the plan of merger shall be a single limited liability
company, which shall be that limited liability company
designated in the plan of merger as the surviving
limited liability company;
(2) The separate existence of all limited liability
companies that are parties to the plan of merger, except the surviving limited liability company, shall
cease;
(3) Such surviving limited liability company shall
have all the rights, privileges, immunities and powers
and shall be subject to all the duties and liabilities of
a limited liability company under this article;

(4) Such surviving limited liability company shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of a public as well as a private nature of each of the merging limited liability companies; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions for membership interests, if any, and all other choses in action, and all and every other interest of or belonging to or due to each of the limited liability companies so merged, shall be taken and deemed to be transferred to and vested in such single limited liability company without further act or deed; and the title to any real estate, or any interest therein, vested in any of such limited liability company by operation of law shall not revert or be in any way impaired by reason of such merger;

(5) The surviving limited liability company shall henceforth be responsible and liable for all the liabilities and obligations of each of the limited liability companies so merged; and any claim existing or action or proceeding pending by or against any such limited liability companies may be prosecuted as if such merger had not taken place, or such surviving limited liability company may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited liability company shall be impaired by such merger; and

(6) The articles of organization of the surviving limited liability company shall be deemed to be amended to the extent, if any, that changes in its articles of organization are stated in the plan of merger.

(b) In any merger of limited liability companies, 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
§31-1A-45. Merger of domestic and foreign limited liability companies; effect; abandonment; confirmation of title to real estate required.

(a) One or more domestic limited liability companies and one or more foreign limited liability companies may merge into one limited liability company if such merger is permitted by the laws of the state under which each such foreign limited liability company is organized. Any such merger shall be completed in the following manner:

(1) Each domestic limited liability company shall comply with the provisions of this article with respect to the merger of domestic limited liability companies and each foreign limited liability company shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) If the surviving limited liability company is to be governed by the laws of any state other than this state, it shall comply with the provisions of this article with respect to foreign limited liability companies if it is to conduct its affairs or do or transact business in this state, and in every case it shall file with the secretary of state of this state: (i) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic limited liability company which is a party to such merger and in any proceeding for the enforcement of the rights of a dissenting member of any such domestic limited liability company against the surviving limited liability company; (ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and (iii) an agreement that it will promptly pay to the dissenting members of any such domestic limited liability company 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.
liability company the amount, if any, to which they shall be entitled under the provisions of this article with respect to the rights of dissenting members.

(b) The effect of such merger shall be the same as in the case of the merger of domestic limited liability companies if the surviving limited liability company is to be governed by the laws of this state. If the surviving limited liability company is to be governed by the laws of any state other than this state, the effect of such merger on any domestic limited liability company shall be the same as in the case of the merger of domestic limited liability companies, except insofar as the laws of such other state provide otherwise.

(c) At any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to the provisions therefor, if any, set forth in the plan of merger.

(d) Irrespective of whether such 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 West Virginia 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.

§31-1A-46. Right of members to dissent.

1 Any member of a limited liability company shall have the right to dissent from any of the following actions:

4 (1) Any plan of merger to which the limited liability company is a party; or
(2) Any sale or exchange of all or substantially all of the property and assets of the limited liability company not made in the usual and regular course of its business, including a sale in dissolution. The rights of members of limited liability companies shall be similar to, and shall be governed by the procedures set forth in sections one hundred twenty-two and one hundred twenty-three, article one of this chapter, except to the extent otherwise inconsistent with this article.

§31-1A-47. Conversion of partnerships to limited liability companies; effect of conversion.

(a) Any domestic or foreign general partnership or limited partnership may convert to a limited liability company by filing articles of organization as provided in this article, which include, in addition to any other information required by this article, the name of the former general partnership or limited partnership.

(b) The conversion of a general partnership or limited partnership to a limited liability company shall cause all assets of such partnership to transfer to the limited liability company by operation of law without further act or deed and without reversion or impairment: Provided, That if such partnership owned or held title to real estate in West Virginia, it shall further evidence title thereto in the limited liability company by executing, acknowledging and recording a confirmatory deed or deeds pursuant to the provisions of subsection (b), section forty-four of this article.

(c) Nothing in this section shall be construed to require, cause or be deemed to constitute a dissolution of the general partnership or limited partnership prior to or upon its conversion to a limited liability company pursuant to this section.

§31-1A-48. Law governing foreign limited liability companies.

Subject to the constitution of this state: (1) The laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members;
and (2) a foreign limited liability company may not be
valued. denied a certificate of authority to transact business in
this state by reason of any difference between those
laws and the laws of this state.

§31-1A-49. Admission of foreign limited liability company;
acts permitted to be done without certificate
of authority.

(a) No foreign limited liability company shall have
the right to conduct affairs or do or transact business
in this state until it shall have procured a certificate of
authority so to do from the secretary of state. No
foreign limited liability company shall be entitled to
procure a certificate of authority under this article to
conduct affairs or do or transact any business in this
state which would not be permitted to be conducted,
done or transacted by a limited liability company
organized under this article.

(b) Without excluding other activities which may not
count as conducting affairs or doing or transacting
business in this state, a foreign limited liability
company shall not be considered to be conducting
affairs or doing or transacting business in this state,
for the purposes of this article, by reason of carrying
on in this state any one or more of the following
activities:

(1) Maintaining or defending any legal action or
proceeding or any administrative or arbitration pro-
cceeding, or affecting the settlement thereof or the
settlement of claims or disputes;

(2) Holding meetings of its members or managers or
carrying on other activities concerning its internal
affairs;

(3) Maintaining bank accounts;

(4) Creating evidences of debt, mortgages or liens on
real or personal property;

(5) Securing or collecting debts or enforcing any
rights in property securing the same;

(6) Conducting its affairs or doing or transacting
(7) Granting funds or other gifts;
(8) Distributing information to its members;
(9) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature;
(10) Maintaining offices or agencies for the transfer, exchange or registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;
(11) Affecting sales through independent contractors;
(12) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders required acceptance without this state before becoming binding contracts;
(13) The acquisition by purchase of loans secured by mortgages or deeds of trust, drawn and executed in compliance with section two, article one, chapter thirty-eight of this code on real or personal property situated in West Virginia pursuant to commitment agreements or arrangements made prior to or following the origination or creation of said loans;
(14) The ownership, modification, renewal, extension, transfer or foreclosure of such loans or the acceptance of substitute or additional obligors thereon;
(15) The maintaining or defending of any actions or suits relative to such loans, mortgages or deeds of trust;
(16) The maintenance of bank accounts in West Virginia banks in connection with the collection or servicing of such loans;
(17) The making, collection and servicing of such loans through a resident person, firm, limited liability company or corporation, or a foreign person, firm, limited liability company or corporation qualified to do business in West Virginia engaged in the business of servicing loans for investors;
(18) The taking of deeds to the mortgaged property either in lieu of foreclosure or for the purpose of transferring title either to the federal housing administration or to the veterans administration as the insurer or guarantor;

(19) The acquisition of title to property under foreclosure sale or from the owner in lieu of foreclosure;

(20) The management, rental, maintenance and sale, or the operating, maintaining, renting or otherwise dealing with, selling or disposing of property acquired under foreclosure sale or by agreement in lieu thereof;

(21) Physical inspection and appraisal of property in West Virginia as security for deeds of trust or mortgages and negotiations for the purchase of such loans; or

(22) Any other transaction directly related to the activities above described: Provided, That if property acquired in or by reason of any of the activities defined in the provisions of subdivisions (18), (19) and (20) of this subsection shall be held longer than a period of five years, the provisions of this section shall thereafter be inapplicable.

§31-1A-50. Powers of foreign limited liability company.

A foreign limited liability company which shall have received a certificate of authority under this article shall enjoy the same, but no greater, rights and privileges as a domestic limited liability company organized for the purposes set forth in the application pursuant to which such certificate of authority is issued, until a certificate of revocation or of withdrawal shall have been issued as provided in this article; and except as in this article otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic limited liability company of like character.

§31-1A-51. Name of foreign limited liability company; when certificate of authority shall not be issued;
change of name by foreign limited liability company.

(a) No certificate of authority shall be issued to a foreign limited liability company unless the name of such limited liability company:

(1) Satisfied the requirements of section five of this article as applicable to domestic limited liability companies;

(2) Does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes in its articles of organization; or

(3) Is not the same as, or deceptively similar to, the name of any limited liability company existing under the laws of this state or any foreign limited liability company authorized to conduct affairs or do or transact business in this state or a name reserved or registered as permitted by the laws of this state.

(b) The provisions of subdivision (3), subsection (a) of this section shall not apply if the foreign limited liability company applying for a certificate of authority files with the secretary of state any one of the following:

(1) A resolution of its members or managers adopting a fictitious name for use in conducting affairs or doing or transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic limited liability company or of any foreign limited liability company authorized to conduct affairs or do or transact business in this state or to any name reserved or registered as provided in this article; or

(2) The written consent of such other limited liability company or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(3) A certified copy of a final order of a court of
competent jurisdiction establishing the prior right of
such foreign limited liability company to the use of
such name in this state.

(c) Whenever a foreign limited liability company
that is authorized to conduct affairs or do or transact
business in this state shall change its name to one
under which a certificate of authority would not be
granted to it on application therefor, the certificate of
authority of such limited liability company shall be
suspended and it shall not thereafter conduct any
affairs or do or transact any business in this state until
it has changed its name to a name that is available to
it under the laws of this state or has otherwise
complied with the provisions of this article.

§31-1A-52. Application for certificate of authority by foreign
limited liability company; contents.

(a) A foreign limited liability company, in order to
procure a certificate of authority to conduct affairs or
do or transact business in this state, shall make
application therefor to the secretary of state, which
applications shall set forth:

(1) The name of the limited liability company and
the state or country under the laws of which it is
organized;

(2) If the name of the limited liability company does
not contain the words "limited liability company",
then a name for the limited liability company which
it adopts and complies with the requirements of this
article;

(3) The date of formation and the period of duration
of the limited liability company;

(4) The address of the principal office of the limited
liability company;

(5) The name and address of the person to whom
shall be sent notice or process served upon, or service
of which is accepted by, the secretary of state, if one
has been designated;

(6) The purpose or purposes of the limited liability
company which it proposes to pursue in conducting its
affairs or doing or transacting business in this state; and

(7) Such additional information as may be necessary
or appropriate in order to enable the secretary of state
to determine whether such limited liability company
is entitled to a certificate of authority to conduct its
affairs or do or transact business in this state and to
determine and assess the fees payable as prescribed by
law.

(b) Such application shall be made on forms pre­
scribed and furnished by the secretary of state and
shall be executed in duplicate by the limited liability
company by a member or manager, and verified by
one of the persons signing such application.

§31-1A-53. Application for certificate of authority; filing;
issuance of certificate; recordation; penalty
for failure to record.

(a) Duplicate originals of the application of a foreign
limited liability company for a certificate of authority
shall be delivered to the secretary of state, together
with a copy of its articles of organization and all
amendments thereto, or a proper restatement thereof,
duly certified by the proper officer of the state or
country under the laws of which it is formed, and a
statement or certificate from such officer that the
limited liability company is in good standing with the
state or country under the laws of which it is formed.
If the secretary of state finds that such application
conforms to law, he shall, when all fees have been
paid as prescribed by law: (i) Endorse on each of such
originals the word “Filed” and the month, day and
year of the filing thereof; (ii) file one of such duplicate
originals of the application and the copy of the articles
of organization and amendments thereto; and (iii)
issue a certificate of authority to conduct affairs or to
do or transact business in this state, to which he shall
affix the other duplicate original application.

(b) The certificate of authority, together with the
duplicate original of the application affixed thereto by
the secretary of state, shall be returned to the limited
liability company or its representative.

(c) The certificate of authority, together with a copy
of the articles of organization and all amendments
thereof, or a proper restatement thereof, shall be
recorded in the office of the clerk of the county
commission of the county in which the principal office
of the limited liability company in this state is located.
If such limited liability company does not maintain a
principal office in this state, such recordation may be
completed in any county in which it is conducting its
affairs or doing or transacting business. A failure to
comply with the provisions of this subsection within
six months from the date of issuance of a certificate of
authority shall subject such limited liability company
to a fine of not more than one thousand dollars.

§31-1A-54. Effect of certificate of authority.

Upon the issuance of a certificate of authority by the
secretary of state, the limited liability company shall
be authorized to conduct its affairs or do or transact
business in this state for those purposes set forth in its
application, subject, however, to the right of this state
to suspend or to revoke such authority as provided in
this article.

§31-1A-55. Appointment of person to whom notice or
process may be sent by the secretary of state;
change of principal office or name and
address of person to receive notice or process.

(a) A foreign limited liability company may at any
time appoint a person other than the limited liability
company to whom notice or process served upon the
secretary of state or service of which is accepted by
the secretary of state may be sent, as required by
section sixteen of this article, by filing with the
secretary of state a statement setting forth:

(1) The name of the limited liability company and
the state or country of its organization;

(2) The present address of its principal office;
(3) Express appointment of and the name and address of the person to whom notice or process shall be sent by the secretary of state under section sixteen of this article;

(4) Express authority to the secretary of state to send to such person at the address given, all notices and process served upon the secretary of state or service of which is accepted by the secretary of state; and

(5) That such appointment was duly authorized by the members or managers.

Such statement shall be signed by a member or manager, verified by the signer and delivered to the secretary of state, and upon receipt thereof shall be filed by the secretary of state in his office.

(b) A limited liability company may at any time change the address of its principal office or the name and address or the address of the person to whom shall be sent notice or process served upon, or service of which is accepted by, the secretary of state. Such change shall become effective as the name and address or address last furnished to the secretary of state for the purposes of section sixteen of this article only when such limited liability company has filed in the office of the secretary of state a statement setting forth:

(1) The name of the limited liability company;

(2) The state or country under whose laws it was organized;

(3) If the address of the principal office is changed, then the address of the former or present principal office and the address to which it is changed or to be changed;

(4) If the name and address only of the person to whom notice or process is to be sent is to be changed, then the name and address of such person to be used from and after the filing of the statement required by this section; and

(5) That such change was duly authorized by the
§31-1A-56. Amendment to articles of organization of foreign limited liability company; filing; recordation; penalty for failure to record.

(a) Whenever the articles of organization of a foreign limited liability company authorized to conduct affairs or do or transact business in this state are amended, such foreign limited liability company shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is organized; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such limited liability company is authorized to pursue in conducting its affairs or in doing or transacting business in this state, nor authorize such limited liability company to conduct affairs or do or transact business in this state under any other name than the name set forth in its certificate of authority.

(b) The secretary of state shall issue to such limited liability company a certificate showing the filing of such amendment and collect a fee of five dollars for such certificate. The certificate so issued by the secretary of state, together with a true copy of the amendment, shall be recorded in the office of the clerk of the county commission of the county in which its original certificate of authority was recorded, pursuant to the provisions of subsection (c), section fifty-three of this article. A failure to comply with the provisions of this subsection within six months from the date of such amendment shall subject such limited liability company to a fine of not more than one thousand dollars.

§31-1A-57. Merger of foreign limited liability company authorized to conduct affairs or do or transact business in this state; filing of articles of merger; recordation; penalty for failure to record.
(a) Whenever a foreign limited liability company authorized to conduct affairs or do or transact business in this state shall be a party to a merger permitted by the laws of the state or country under the laws of which it is organized, and such limited liability company shall be the surviving limited liability company, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such merger was effected; and it shall not be necessary for such limited liability company to procure either a new or amended certificate of authority to conduct affairs or do or transact business in this state unless the name of such limited liability company be changed thereby or unless the limited liability company desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

(b) The secretary of state shall issue to such surviving limited liability company a certificate showing the filing of a copy of the articles of merger and collect a fee of five dollars for such certificate. The certificate so issued by the secretary of state, together with a true copy of the articles of merger, shall be recorded in the office of the clerk of the county commission of the county in which its original certificate of authority was recorded, pursuant to the provisions of subsection (c), section fifty-three of this article. A failure to comply with the provisions of this subsection within six months from the date of such merger shall subject such limited liability company to a fine of not more than one thousand dollars.

§31-1A-58. Amended certificate of authority; requirements; recordation; penalty for failure to record.

A foreign limited liability company authorized to conduct its affairs or do or transact business in this state shall procure an amended certificate of authority in the event it changes its limited liability company name, or desires to pursue in this state purposes other than or in addition to those purposes set forth in its
prior application for a certificate of authority, by
making application therefor to the secretary of state.

The requirements in respect to the form and con-
tents of such application, the manner of its execution,
the filing of duplicate originals thereof with the
secretary of state, the issuance of an amended certif-
icate of authority and the effect thereof, and the
recordation requirements for such amended certificate
of authority shall be the same as in the case of an
original application for a certificate of authority. A
failure to comply with the provisions of this section
within six months from the date of such change of
limited liability company name or purposes shall
subject such limited liability company to a fine of not
more than one thousand dollars.

§31-1A-59. Procedure for withdrawal of foreign limited
liability company; publication required;
application for certificate of withdrawal;
contents; filing; issuance of certificate;
recordation.

(a) A foreign limited liability company authorized to
conduct its affairs or do or transact business in this
state may withdraw from this state upon procuring
from the secretary of state a certificate of withdrawal.
In order to procure such certificate of withdrawal,
such foreign limited liability company shall publish a
notice of its intention to withdraw from the state, such
notice to be published as a Class II legal advertisement
in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication
area for such publication shall be the county in which
its principal office in this state is situated, or if there
be no such office in this state, then any county in this
state where it conducts its affairs or does or transacts
business.

(b) After publication of the notice required by the
provisions of subsection (a) of this section, such foreign
limited liability company shall make application to the
secretary of state for a certificate of withdrawal, which
application shall set forth:
(1) The name of the limited liability company and the state or country under the laws of which it is organized;

(2) That the limited liability company has ceased conducting its affairs or has ceased doing or transacting business in this state;

(3) That the limited liability company surrenders its authority to conduct its affairs to do or transact business in this state;

(4) A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him; and

(5) Such additional information as may be necessary or appropriate in order to enable the secretary of state and tax commissioner to determine and assess any unpaid fees and taxes payable by such foreign limited liability company as may be prescribed by law.

(c) The application for a certificate of withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the limited liability company by a member or manager, and verified by one of such persons signing the application, or, if the limited liability company is in the hands of a receiver or trustee, shall be executed on behalf of the limited liability company by such receiver or trustee and verified by him. Such application shall be accompanied by a copy of the notice required to be published under the provisions of subsection (a) of this section and the publisher's certificate of such publication.

(d) Duplicate originals of such application for a certificate of withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid, as prescribed by law: (i) Endorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof; (ii) file one of such duplicate originals in his office; and (iii) issue a certificate of withdrawal to which he shall
affix the other duplicate original.

(e) The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the limited liability company or its representative. The limited liability company or its representative shall record the certificate of withdrawal in the office of the clerk of the county commission in which the limited liability company's certificate of authority is recorded and the clerk shall note on the margin of the record book in which such certificate of authority is engrossed the fact of the withdrawal of the limited liability company.

§31-1A-60. Conditions for revocation of certificate of authority.

(a) The certificate of authority of a foreign limited liability company to conduct its affairs or do or transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(1) The limited liability company has failed to file in the office of the secretary of state any amendment to its articles of organization as required by the provisions of section fifty-six of this article; or

(2) The limited liability company has failed to file in the office of the secretary of state any articles of merger as required by the provisions of section fifty-seven of this article; or

(3) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such limited liability company pursuant to the provisions of this article.

(b) No certificate of authority of a foreign limited liability company shall be revoked by the secretary of state unless:

(1) He shall have given the limited liability company not less than sixty days notice thereof by registered or certified mail, return receipt requested, addressed to
its principal office; and

(2) The limited liability company shall fail, prior to revocation, to file any amendment to its articles of organization or shall fail to file any articles of merger or shall fail to correct any such misrepresentation.

§31-1A-61. Application to limited liability company heretofore authorized to conduct its affairs or do or transact business in this state.

Subject to the limitations set forth in their respective certificates of authority, foreign limited liability companies that are duly authorized to conduct their affairs or do or transact business in this state at the time this article takes effect for a purpose or purposes for which a limited liability company might secure such authority under this article, shall be entitled to all the rights and privileges applicable to foreign limited liability companies procuring certificates of authority to conduct their affairs or do or transact business in this state under this article, and shall not be required to make reapplication for authority to conduct their affairs or do or transact business in this state by reason of the adoption of this article. From the time this article takes effect each such limited liability company shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign limited liability companies procuring certificates of authority to conduct their affairs or do or transact business in this state.

§31-1A-62. Conducting affairs or doing or transacting business without certificate of authority.

No foreign limited liability company which is conducting its affairs or doing or transacting business in this state without a certificate of authority shall be permitted to maintain any action or proceeding in any court of this state until such limited liability company shall have obtained a certificate of authority. Nor shall any action or proceeding be maintained in any court of this state by any successor or assignee of such limited liability company on any right, claim or demand arising out of the conducting of affairs or the
doing or transacting of business by such limited
liability company in this state until a certificate of
authority shall have been obtained by such limited
liability company or by a limited liability company
which has acquired all or substantially all of its assets.

The failure of a foreign limited liability company to
obtain a certificate of authority to conduct its affairs or
do or transact business in this state shall not impair
the validity of any contract or act of such limited
liability company, and shall not prevent such limited
liability company from defending any action or pro-
ceeding in any court of this state.

A foreign limited liability company that conducts its
affairs or does or transacts business in this state
without a certificate of authority shall be liable to this
state, for the years or parts thereof during which it
conducted affairs or did or transacted business in this
state without a certificate of authority, in an amount
equal to all fees and taxes that would have been
imposed by this article, or by any other provisions of
this code, upon such limited liability company had it
duly applied for and received a certificate of authority
to conduct its affairs or do or transact business in this
state as required by this article and thereafter filed all
reports, statements or returns required by this article
or by any other provisions of this code, plus all
penalties imposed for failure to pay any such fees and
taxes.

§31-1A-63. Requirement for registered agent and certain
reports.

A foreign limited liability company authorized to
transact business in this state shall:

(1) Appoint and continuously maintain a registered
agent in the same manner as provided in this article
for domestic limited liability companies;

(2) File a report upon any change in the name or
business address of its registered agent in the same
manner as provided in this article for domestic limited
liability companies; and
10    (3) File limited liability company reports as provided
11    in this article for domestic limited liability companies.

§31-1A-64. Parties to actions.
1    A member or manager of a limited liability company
2    is not a proper party to proceedings by or against a
3    limited liability company, except where the object is to
4    enforce a member's or manager's right against, or
5    liability to, the limited liability company.

§31-1A-65. Title to limited liability company property.
1    Any estate or interest in property may be acquired
2    in the name of the limited liability company and title
3    to any estate or interest so acquired shall vest in the
4    limited liability company.

§31-1A-66. Waiver of notice.
1    When, under the provisions of this article or under
2    the provisions of the articles of organization or oper-
3    ating agreement of a limited liability company, notice
4    is required to be given to a member or to a manager
5    of a limited liability company having a manager or
6    managers, a waiver in writing signed by the person or
7    persons entitled to the notice, whether made before or
8    after the time for notice to be given, is equivalent to
9    the giving of notice.

§31-1A-67. Applicability of provisions to foreign and inter-
1    state commerce.
2    The provisions of this article shall apply to com-
3    merce with foreign nations and among the several
4    states only as permitted by law.

§31-1A-68. Definition of “person” to indicate limited liability
1    company.
2    For purposes of this code, whenever the term
3    “person” is defined to include both corporations and
4    general or limited partnerships, it shall include limited
5    liability companies.

§31-1A-69. Conflicting laws; existing rights and liabilities.
1    This article takes precedence in the event of a
conflict with the provisions of article one of this chapter or other laws. This article does not affect a right accrued or established or any liability or penalty incurred, prior to its effective date.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of 1992.

Governor