

BUSINESS ENTITY AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

This act modifies the Partnership and Corporations Titles and makes technical changes.

This act addresses issues related to registered agents and business addresses. This act provides for conversion of corporations to or from domestic limited liability companies. This act amends provisions of the Utah Revised Limited Liability Company Act.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

48-2a-104, as last amended by Chapter 189, Laws of Utah 1991

48-2a-202, as last amended by Chapter 131, Laws of Utah 2000

48-2c-108, as enacted by Chapter 260, Laws of Utah 2001

48-2c-110, as enacted by Chapter 260, Laws of Utah 2001

48-2c-401, as enacted by Chapter 260, Laws of Utah 2001

48-2c-408, as enacted by Chapter 260, Laws of Utah 2001

48-2c-602, as enacted by Chapter 260, Laws of Utah 2001

48-2c-707, as enacted by Chapter 260, Laws of Utah 2001

48-2c-801, as enacted by Chapter 260, Laws of Utah 2001

48-2c-804, as enacted by Chapter 260, Laws of Utah 2001

48-2c-1103, as enacted by Chapter 260, Laws of Utah 2001

48-2c-1207, as enacted by Chapter 260, Laws of Utah 2001

ENACTS:

16-6a-1008.7, Utah Code Annotated 1953

16-10a-1008.7, Utah Code Annotated 1953

48-2a-202.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **16-6a-1008.7** is enacted to read:

16-6a-1008.7. Conversion to or from a domestic limited liability company.

(1) (a) A domestic nonprofit corporation may convert to a domestic limited liability company subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, by complying with:

(i) this Subsection (1); and

(ii) Section 48-2c-1401.

(b) If a domestic nonprofit corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion shall:

(i) comply with Section 48-2c-1402; and

(ii) if the corporation has any members, provide for:

(A) the cancellation of any membership; or

(B) the conversion of any membership in the domestic nonprofit corporation to a membership interest in the domestic limited liability company.

(c) In accordance with Section 48-2c-1404, before articles of conversion may be filed with the division, the conversion shall be approved:

(i) in the manner provided for the articles of incorporation or bylaws of the domestic nonprofit corporation; or

(ii) if the articles of incorporation or bylaws of the domestic nonprofit corporation do not provide the method for approval:

(A) if the domestic nonprofit corporation has voting members, by all of the members of the domestic nonprofit corporation regardless of limitations or restrictions on the voting rights of the members; or

(B) if the nonprofit domestic corporation does not have voting members, by a majority of:

(I) the directors in office at the time the conversion is approved by the board of directors;

or

(II) if directors have not been appointed or elected, the incorporators.

(2) A domestic limited liability company may convert to a domestic nonprofit corporation subject to this chapter by:

(a) filing articles of incorporation in accordance with this chapter; and

(b) complying with Section 48-2c-1406.

Section 2. Section **16-10a-1008.7** is enacted to read:

16-10a-1008.7. Conversion to or from a domestic limited liability company.

(1) (a) A corporation may convert to a domestic limited liability company subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, by complying with:

(i) this Subsection (1); and

(ii) Section 48-2c-1401.

(b) If a corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion shall:

(i) comply with Section 48-2c-1402; and

(ii) if the corporation has issued shares, provide for:

(A) the cancellation of any issued share; or

(B) the conversion of any issued share to a membership interest in the domestic limited liability company.

(c) In accordance with Section 48-2c-1404, before articles of conversion may be filed with the division, the conversion shall be approved:

(i) in the manner provided for the articles of incorporation or bylaws of the corporation; or

(ii) if the articles of incorporation or bylaws of the corporation do not provide the method for approval:

(A) if the corporation has issued shares, by all of the outstanding shares of all classes of shares of the corporation regardless of limitations or restrictions on the voting rights of the shares;
or

(B) if the corporation has not issued shares, by a majority of:

(I) the directors in office at the time that the conversion is approved by the board of directors; or

(II) if directors have not been appointed or elected, the incorporators.

(2) A domestic limited liability company may convert to a corporation subject to this chapter by:

(a) filing articles of incorporation in accordance with this chapter; and

(b) complying with Section 48-2c-1406.

Section 3. Section **48-2a-104** is amended to read:

48-2a-104. Registered agent.

(1) (a) [Each] A limited partnership shall continuously maintain in this state an agent for service of process on the limited partnership~~[, which]~~.

(b) The agent [must] required by this Subsection (1) shall be:

(i) an individual resident of this state[;];

(ii) a domestic corporation[;]; or

(iii) a foreign corporation authorized to do business in this state.

(2) (a) The registered agent of a limited partnership may resign by filing [an original and one copy of a signed written] with the division a notice of resignation [with the division. The] signed by the resigning agent.

(b) After receipt of the notice of resignation under Subsection (2)(a), the division shall [then mail] provide a copy of the notice of resignation to [the] each general [partners] partner of the limited partnership at the [addresses] address set forth in the limited partnership's certificate for each general partner.

(c) The appointment of [the] a registered agent ends 30 days after the division receives the notice of [the] resignation required by this Subsection (2).

(3) (a) A limited partnership may change the limited partnership's registered agent in this state by filing with the division a notice of change of registered agent.

(b) The notice of change of registered agent required by this Subsection (3) shall:

(i) state:

(A) the name of the limited partnership;

(B) the name of the limited partnership's registered agent before the change of registered agent; and

(C) the name of the limited partnership's registered agent after the change of registered agent; and

(ii) include the new registered agent's written consent to the appointment:

- (A) on the notice of change of registered agent; or
- (B) in a document accompanying the notice of change of registered agent.
- (c) A registered agent may change the registered agent's street address by:
 - (i) notifying the limited partnership in writing of the change; and
 - (ii) filing with the division a notice of change of address that:
 - (A) is signed by the registered agent;
 - (B) includes the information required by Subsection (3)(b); and
 - (C) states that the registered agent notified the limited partnership as required by Subsection (3)(c)(i).
- (d) A notice that is required under this section to be filed with the division shall be filed no later than 30 days after the change for which notice under this section is required.

Section 4. Section **48-2a-202** is amended to read:

48-2a-202. Amendment to certificate.

- (1) (a) A certificate of limited partnership is amended by filing a certificate of amendment with the division. ~~[The]~~
 - (b) A certificate of amendment filed under this Subsection (1) shall ~~[set forth]~~ state:
 - ~~[(a)]~~ (i) the name of the limited partnership;
 - ~~[(b)]~~ (ii) the date of filing the certificate; and
 - ~~[(c)]~~ (iii) the amendment to the certificate.
- (2) ~~[Within 60 days after the happening of any of the following events, an]~~ An amendment to a certificate of limited partnership ~~[reflecting the occurrence of the event or events]~~ shall be filed~~[:~~ ~~(a) the continuation of the]~~ within 60 days after the day the limited partnership continues business under Section 48-2a-801 after an event of withdrawal of a general partner~~[:]~~.
 - ~~[(b) a change of the registered agent required to be maintained by Section 48-2a-104; or]~~
 - ~~[(c) a change of the limited partnership's principal place of business where the records required to be maintained by Section 48-2a-105 are kept.]~~
- (3) A general partner who knows or reasonably should know that any statement in a certificate of limited partnership or a certificate of amendment to a certificate of limited partnership

was false at the time the certificate was executed making the certificate inaccurate in any respect, shall promptly amend the certificate.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(5) A person may not be held liable because an amendment to a certificate of limited partnership has not been filed [~~to reflect the occurrence of any event referred to in~~] under Subsection (2) if the amendment is filed within the 60 days specified in Subsection (2).

(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

Section 5. Section **48-2a-202.5** is enacted to read:

48-2a-202.5. Actions not requiring amendment.

Notwithstanding Section 48-2a-202, a limited partnership is not required to amend the limited partnership's certificate of limited partnership to report a change in:

- (1) the name of the limited partnership's registered agent;
- (2) the street address of the limited partnership's registered agent; or
- (3) the limited partnership's principal place of business where the records required to be maintained by Section 48-2a-105 are kept.

Section 6. Section **48-2c-108** is amended to read:

48-2c-108. Reservation of name.

(1) The exclusive right to register a name for use by a company may be reserved by any person.

(2) (a) The reservation described in Subsection (1) shall be made by filing with the division an application signed [~~under penalty of perjury~~] by the applicant.

(b) If the division finds that the name is available for use by a company, [~~it~~] the division shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days.

(c) The reserved name may be transferred to any other person by filing with the division a notice of the transfer that:

(i) is signed [~~under penalty of perjury~~] by the applicant for whom the name was reserved; and [specifying]

(ii) specifies the name and address of the transferee.

Section 7. Section **48-2c-110** is amended to read:

48-2c-110. Powers.

Each company organized and existing under this chapter may:

- (1) sue or be sued, institute or defend any action, or participate in any proceeding in its own name;
- (2) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;
- (3) sell, convey, assign, encumber, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets;
- (4) lend money to and otherwise assist its members, managers, and employees;
- (5) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, or otherwise use or deal in or with:
 - (a) shares or other interests in any entity or obligations of any person; or
 - (b) direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality or of any instrumentality of any of them;
- (6) make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the company may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;
- (7) lend money for any lawful purpose, invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so loaned or invested;
- (8) conduct its business and maintain offices and exercise the powers granted by this chapter within this state, and in any state, territory, district, or possession of the United States, or in any foreign country;
- (9) elect or appoint managers and agents of the company, define their duties, and fix their compensation;

(10) make and alter an operating agreement as allowed by Part 5 [~~of this chapter~~], Operating Agreements;

(11) make donations for the public welfare or for charitable, scientific, religious, or educational purposes;

(12) indemnify or hold harmless any person;

(13) cease its activities and cancel its certificate of organization;

(14) transact any lawful business which the members or the managers find to be in aid of governmental policy;

(15) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its members, managers, and employees;

(16) be a promoter, incorporator, [~~organizer~~], general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise or entity;

(17) render professional services, if each member of a company who renders professional services in Utah is licensed or registered to render those professional services pursuant to applicable Utah law; and

(18) have and exercise the same powers as an individual, and all powers necessary or convenient to effect or carry out any or all of the purposes for which the company is organized.

Section 8. Section **48-2c-401** is amended to read:

48-2c-401. Organizer.

(1) One or more individuals 18 years of age or older may form a company under this chapter by signing and filing with the division articles of organization that meet the requirements of Section 48-2c-403. The individuals acting as organizer may, but need not, be members or managers of the company at the time of formation or after formation has occurred.

(2) The signing of the articles of organization constitutes an affirmation by the organizers[; ~~under penalty of perjury,~~] that the company has one or more members and, if the company is manager-managed, the person or persons named as managers in the articles of organization have consented to serve as managers of the company. At or prior to filing articles of organization for a

company, the organizer or organizers shall prepare a writing to be held with the records of the company which sets forth:

- (a) the name and street address of each initial member of the company; and
- (b) if the articles of organization provide that the company is manager-managed, the name and street address of each initial manager.

Section 9. Section **48-2c-408** is amended to read:

48-2c-408. Certificate of amendment to articles of organization.

(1) A company amending its articles of organization shall deliver to the division for filing a certificate of amendment which includes:

- (a) the name of the company;
- (b) the text of each amendment adopted;
- (c) if the amendment provides for restructuring the ownership of the company or an exchange or reclassification of the members' interests in the company, provisions for implementing the amendment if not contained in the text of the amendment itself;
- (d) the date each amendment was adopted by the members;
- (e) a statement that each amendment was adopted by the members as required by Section 48-2c-802 or as otherwise required by the articles of organization or operating agreement; and
- (f) the signature required by Section 48-2c-204.

(2) Unless otherwise provided in the articles of organization or operating agreement, each amendment to the articles of organization of a company must be approved by all of the members and, if there are classes of members, by all of the members of each class.

(3) ~~[Each]~~ A company shall deliver ~~[a]~~ the certificate of amendment required by Subsection (1) to the division for filing within 60 days after adoption of the amendment.

(4) Upon the filing with the division of a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of amendment.

Section 10. Section **48-2c-602** is amended to read:

48-2c-602. Exceptions to limited liability.

The following exceptions to limited liability under Section 48-2c-601 shall apply:

(1) All persons who assume to act as a company without complying with this chapter are jointly and severally liable for all debts and liabilities so incurred, except for debts incurred in the course of prefiling activities authorized under Section 48-2c-404.

(2) A member of a company is liable to the company:

(a) for the difference between the amount of the member's contributions to the company which have been actually made and the amount which is stated in the operating agreement or other contract as having been made; and

(b) for any unpaid contribution to the company which the member, in the operating agreement or other contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other contract.

(3) A member holds as trustee for the company:

(a) specific property which is stated in the operating agreement or other contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or erroneously returned; and

(b) money or other property wrongfully or erroneously paid or conveyed to the member.

(4) Persons engaged in prefiling activities other than those authorized by Section 48-2c-404 shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities.

(5) (a) This chapter does not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services.

(b) All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions.

(6) When a member has rightfully received a distribution, in whole or in part, of the member's capital account, the member remains liable to the company for any sum, not in excess of the amount of distribution, with interest, necessary to discharge the company's obligations to all creditors of the company who extended credit in reliance on any representation as to the financial condition of the company that included the amount so distributed [~~or~~] and whose claims arose prior

to the distribution.

Section 11. Section **48-2c-707** is amended to read:

48-2c-707. Classes of members.

(1) The articles of organization or operating agreement of a company may provide for classes or groups of members having such relative rights, powers, and duties as prescribed therein, and may make provision for the future creation of any such classes or groups. ~~[The]~~

(2) Except as provided in Subsection 48-2c-803(2), the articles of organization or operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members and may provide that any particular class or group shall have no voting rights.

Section 12. Section **48-2c-801** is amended to read:

48-2c-801. Management structure.

A company may be managed either by one or more managers, in which case it shall be considered to be a "manager-managed company," or it may be managed by all of its members, in which case it shall be considered to be a "member-managed company."

(1) The choice of management structure shall be designated in the articles of organization for the company. If the articles of organization fail to designate the management structure or do not clearly designate the management structure, management of the company shall be vested in its members.

(2) Unless the operating agreement provides otherwise, a manager-managed company shall become a member-managed company upon the death, withdrawal, or removal of the sole remaining manager, or if one of the events described in Subsection 48-2c-708~~[(4), (5), or (6)]~~ (1)(d), (e), or (f) occurs with regard to the sole remaining manager, unless another manager is appointed by the members within 90 days after the occurrence of any such event.

(3) The dissolution of a company does not alter the authority of the managers or members, as the case may be, to wind up the business and affairs of the company.

Section 13. Section **48-2c-804** is amended to read:

48-2c-804. Management by managers.

In a manager-managed company, each manager and each member shall be subject to the provisions of Section 48-2c-807 and:

(1) the initial managers shall be designated in the articles of organization; thereafter, the managers shall be those persons identified in documents filed with the division including amendments to the articles of organization as well as the annual reports required under Section 48-2c-203 and the statements required or permitted under Section 48-2c-122;

(2) when there is a change in the management structure from a member-managed company to a manager-managed company, the managers shall be those persons identified in the certificate of amendment to the articles of organization that makes the change;

(3) each manager who is a natural person must have attained the age of majority under the laws of this state;

(4) no manager shall have authority to do any act in contravention of the articles of organization or the operating agreement, except as provided in Subsection (6)(g);

(5) a manager who is also a member shall have all of the rights of a member;

(6) unless otherwise provided in the articles of organization or operating agreement of the company:

(a) except for the initial managers, each manager shall be elected at any time by the members holding at least a majority of the profits interests in the company, and any vacancy occurring in the position of manager shall be filled in the same manner;

(b) the number of managers shall be fixed by the members in the operating agreement or if the operating agreement fails to designate the number of managers, the number of managers shall be the number designated by members holding at least a majority of the profits interests in the company;

(c) each manager shall serve until the earliest to occur of the manager's death, withdrawal, or removal or an event described in Subsection 48-2c-708[~~(6)~~] (1)(f) or, if membership in the company is a condition to being a manager, an event described in Subsection 48-2c-708[~~(4)~~] (1)(d) or [~~(5)~~] (e);

(d) a manager need not be a member of the company or a resident of this state;

- (e) any manager may be removed with or without cause by the members, at any time, by the decision of members owning a majority of the profits interests in the company;
- (f) there shall be only one class of managers; and
- (g) approval by the requisite number of members, as well as all of the managers, shall be required as to all matters described in Subsections 48-2c-803(2) and (3).

Section 14. Section **48-2c-1103** is amended to read:

48-2c-1103. Rights of creditor of member.

(1) On application to a court of competent jurisdiction by any judgment creditor of a member or of a member's assignee, the court may charge the interest in the company of the member or assignee with payment of the unsatisfied amount of the judgment plus interest. The court may then or later appoint a receiver of the share of distributions due or to become due to the judgment debtor in respect of the interest in the company. The judgment creditor and receiver shall have only the rights of an assignee. The court may make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's interest in the company. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of an assignee.

(3) Unless otherwise provided in the articles [or] of organization or operating agreement for the company, at any time before foreclosure an interest charged may be redeemed:

- (a) by the judgment debtor;
- (b) with property other than company property, by one or more of the other members; or
- (c) by the company with the consent of all of the members whose interests are not so charged.

(4) This section does not deprive a member of a right under exemption laws with respect to the member's interest in a company.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's interest in a company.

(6) No creditor of a member shall have any right to obtain possession of, or otherwise

exercise legal or equitable remedies with respect to, the property of the company.

Section 15. Section **48-2c-1207** is amended to read:

48-2c-1207. Procedure for and effect of administrative dissolution.

(1) If the division determines that one or more grounds exist under Section 48-2c-1206 for dissolving a company, it shall mail to the company written notice of:

- (a) the division's determination that one or more grounds exist for dissolving the company;
- and
- (b) the grounds for dissolving the company.

(2) (a) If the company does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after mailing the notice provided in Subsection (1), the division shall administratively dissolve the company.

(b) If a company is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved company at its designated office, stating the date of dissolution specified in Subsection (2)(d).

(c) The division shall mail a copy of the notice of administrative dissolution including a statement of the grounds ~~[therefor]~~ for the administrative dissolution, to:

- (i) the registered agent of the dissolved company; or
- (ii) if there is no registered agent of record, or if the mailing to the registered agent is returned as undeliverable, at least one member if the company is member-managed or one manager of the company if the company is manager-managed, at their addresses as reflected on the notice, annual report, or document most recently filed with the division.

(d) A company's effective date of administrative dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).

(e) On the effective date of dissolution, any assumed names filed on behalf of the dissolved company under Title 42, Chapter 2, Conducting Business Under Assumed Name, are canceled.

(f) Notwithstanding Subsection (2)(e), the name of the company that is dissolved and any assumed names filed on its behalf are not available for two years from the effective date of dissolution for use by any other person:

(i) transacting business in this state; or
(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(g) Notwithstanding Subsection (2)(e), if the company that is dissolved is reinstated in accordance with Section 48-2c-1208, the registration of the name of the company and any assumed names filed on its behalf are reinstated back to the effective date of dissolution.

(3) (a) Except as provided in Subsection (3)(b), a company administratively dissolved under this section continues its existence but may not carry on any business except:

(i) the business necessary to wind up and liquidate its business and affairs under Part 13 of this chapter; and

(ii) to give notice to claimants in the manner provided in Sections 48-2c-1305 and 48-2c-1306.

(b) If the company is reinstated in accordance with Section 48-2c-1208, business conducted by the company during a period of administrative dissolution is unaffected by the dissolution.

(4) The administrative dissolution of a company does not terminate the authority of its registered agent.

(5) (a) Upon the administrative dissolution of a company, the director of the division shall be an additional agent of the dissolved company for purposes of service of process.

(b) Service of process on the division under this Subsection (5) is service on the dissolved company.

(c) Upon receipt of process under this Subsection (5), the director of the division shall send a copy of the process to the dissolved company at its designated office and a copy of the process to the registered agent of the dissolved company.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division

for:

(i) the designated office of the company, if the notice is required to be mailed to the

company;

(ii) the registered agent of the company, if the notice is required to be mailed to the registered agent; or

(iii) any member if the company is member-managed, or to any manager of the company if the company is manager-managed, if the notice is required to be mailed to a member or manager of the company.