

## **Part 2**

### **Formation -- Certificate of Organization and Other Filings**

#### **48-3a-201 Formation of limited liability company -- Certificate of organization.**

- (1) One or more persons may act as organizers to form a limited liability company by delivering to the division for filing a certificate of organization.
- (2) A certificate of organization must state:
  - (a) the name of the limited liability company, which must comply with Section 48-3a-108;
  - (b) the street and mailing address of the limited liability company's principal office;
  - (c) the information required by Subsection 16-17-203(1);
  - (d) if the limited liability company is a low-profit limited liability company, a statement that the limited liability company is a low-profit limited liability company;
  - (e) if the limited liability company is a professional services company, the information required by Section 48-3a-1103; and
  - (f) if the limited liability company is to have one or more series in which the liabilities of the series are to be limited as contemplated by Subsection 48-3a-1201(2), notice of the limitation on liability in accordance with Section 48-3a-1202.
- (3) A certificate of organization may contain statements as to matters other than those required by Subsection (2), but may not vary or otherwise affect the provisions specified in Subsection 48-3a-112(3) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.
- (4) A limited liability company is formed when the limited liability company's certificate of organization becomes effective and at least one person becomes a member.

Enacted by Chapter 412, 2013 General Session

#### **48-3a-202 Amendment or restatement of certificate of organization.**

- (1) A certificate of organization may be amended or restated at any time, except that in accordance with Section 48-3a-1303, a low-profit limited liability company shall amend its certificate of organization if the limited liability company ceases to be a low-profit limited liability company.
- (2) To amend its certificate of organization, a limited liability company must deliver to the division for filing an amendment stating:
  - (a) the name of the limited liability company;
  - (b) the date of filing of its initial certificate of organization; and
  - (c) the changes the amendment makes to the certificate as most recently amended or restated.
- (3) To restate its certificate of organization, a limited liability company must deliver to the division for filing a restatement designated as such in its heading.
- (4) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the member or manager shall promptly:
  - (a) cause the certificate to be amended; or
  - (b) if appropriate, deliver to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3a-208.

Enacted by Chapter 412, 2013 General Session

**48-3a-203 Signing of records to be delivered for filing to division.**

- (1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:
  - (a) Except as otherwise provided in Subsections (1)(b) and (c), a record signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.
  - (b) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.
  - (c) A record delivered on behalf of a dissolved limited liability company that has no member must be signed by the person winding up the limited liability company's activities and affairs under Subsection 48-3a-703(3) or a person appointed under Subsection 48-3a-703(4) to wind up the activities and affairs.
  - (d) A statement of denial by a person under Section 48-3a-303 must be signed by that person.
  - (e) Any other record delivered on behalf of a person to the division for filing must be signed by that person.
- (2) Any record filed under this chapter may be signed by an agent. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.
- (3) A person that signs a record as an agent or legal representative thereby affirms as a fact that the person is authorized to sign the record.

Enacted by Chapter 412, 2013 General Session

**48-3a-204 Signing and filing pursuant to judicial order.**

- (1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to order:
  - (a) the person to sign the record;
  - (b) the person to deliver the record to the division for filing; or
  - (c) the division to file the record unsigned.
- (2) If a petitioner under Subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action.
- (3) A record filed under Subsection (1)(c) is effective without being signed.

Amended by Chapter 401, 2023 General Session

**48-3a-205 Filing requirements.**

- (1) To be filed by the division pursuant to this chapter, a record must be received by the division, comply with this chapter, and satisfy the following:
  - (a) The filing of the record must be required or permitted by this chapter.
  - (b) The record must be physically delivered in written form unless and to the extent the division permits electronic delivery of records.
  - (c) The record must be typewritten or computer generated.
  - (d) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.
  - (e) The record must be signed by a person authorized or required under this chapter to sign the record.

- (f) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.
- (2) If law other than this chapter prohibits the disclosure by the division of information contained in a record delivered to the division for filing, the division shall accept the record if the record otherwise complies with this chapter, but the division may redact the information.
- (3) When a record is delivered to the division for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the division or by that law.
- (4) The division may require that a record delivered in written form be accompanied by an identical or conformed copy.

Amended by Chapter 227, 2015 General Session

**48-3a-206 Effective time and date.**

Except as otherwise provided in Section 48-3a-207 and subject to Subsection 48-3a-208(3), a record filed under this chapter is effective:

- (1) on the date and at the time of its filing by the division, as provided in Section 48-3a-209;
- (2) on the date of filing and at the time specified in the record as its effective time, if later than the time under Subsection (1);
- (3) at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or
- (4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

Enacted by Chapter 412, 2013 General Session

**48-3a-207 Withdrawal of filed record before effectiveness.**

- (1) Except as otherwise provided in Sections 48-3a-1024, 48-3a-1034, 48-3a-1044, and 48-3a-1054, a record delivered to the division for filing may be withdrawn before it takes effect by delivering to the division for filing a statement of withdrawal.
- (2) A statement of withdrawal must:
  - (a) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;
  - (b) identify the record to be withdrawn; and
  - (c) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.
- (3) On filing by the division of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

Enacted by Chapter 412, 2013 General Session

**48-3a-208 Correcting filed record.**

- (1) A person on whose behalf a filed record was delivered to the division for filing may correct the record if:
  - (a) the record at the time of filing was inaccurate;
  - (b) the record was defectively signed; or

- (c) the electronic transmission of the record to the division was defective.
- (2) To correct a filed record, a person on whose behalf the record was delivered to the division must deliver to the division for filing a statement of correction.
- (3) A statement of correction:
  - (a) may not state a delayed effective date;
  - (b) must be signed by the person correcting the filed record;
  - (c) must identify the filed record to be corrected;
  - (d) must specify the inaccuracy or defect to be corrected; and
  - (e) must correct the inaccuracy or defect.
- (4) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Subsection 48-3a-103(4) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

Enacted by Chapter 412, 2013 General Session

**48-3a-209 Duty of division to file -- Review of refusal to file -- Transmission of information by division.**

- (1) The division shall file a record delivered to the division for filing which satisfies this chapter. The duty of the division under this section is ministerial.
- (2) When the division files a record, the division shall record it as filed on the date and at the time of its delivery. After filing a record, the division shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.
- (3) If the division refuses to file a record, the division shall, not later than 15 business days after the record is delivered:
  - (a) return the record or notify the person that submitted the record of the refusal; and
  - (b) provide a brief explanation in a record of the reason for the refusal.
- (4)
  - (a) If the division refuses to file a record, the person that submitted the record may petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to compel filing of the record.
  - (b) The record and the explanation of the division of the refusal to file must be attached to the petition.
  - (c) The court may decide the matter in a summary proceeding.
- (5) The filing of or refusal to file a record does not create a presumption that the information contained in the record is correct or incorrect.
- (6) Except as otherwise provided by Section 16-17-301 or by law other than this chapter, the division may deliver any record to a person by delivering it:
  - (a) in person to the person that submitted it;
  - (b) to the address of the person's registered agent;
  - (c) to the principal office of the person; or
  - (d) to another address the person provides to the division for delivery.

Amended by Chapter 401, 2023 General Session

**48-3a-210 Liability for inaccurate information in filed record.**

- (1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:
  - (a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and
  - (b) subject to Subsection (2), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:
    - (i) the record was delivered for filing on behalf of the limited liability company; and
    - (ii) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:
      - (A) effected an amendment under Section 48-3a-202;
      - (B) filed a petition under Section 48-3a-204; or
      - (C) delivered to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3a-208.
- (2) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the limited liability company to the division for filing under this chapter and imposes that responsibility on one or more other members, the liability stated in Subsection (1)(b) applies to those other members and not to the member that the operating agreement relieves of the responsibility.
- (3) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

Enacted by Chapter 412, 2013 General Session

**48-3a-211 Certificate of existence or registration.**

- (1) On request of any person, the division shall issue a certificate of existence for a limited liability company or a certificate of registration for a registered foreign limited liability company.
- (2) A certificate under Subsection (1) must state:
  - (a) the limited liability company's name or the registered foreign limited liability company's name used in this state;
  - (b) in the case of a limited liability company:
    - (i) that a certificate of organization has been filed and has taken effect;
    - (ii) the date the certificate of organization became effective;
    - (iii) the period of the limited liability company's duration if the records of the division reflect that its period of duration is less than perpetual; and
    - (iv) that:
      - (A) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;
      - (B) the records of the division do not otherwise reflect that the company has been dissolved or terminated; and
      - (C) a proceeding is not pending under Section 48-3a-708;
  - (c) in the case of a registered foreign limited liability company, that it is registered to do business in this state;
  - (d) that all fees, taxes, interest, and penalties owed to this state by the limited liability company or foreign limited liability company and collected through the division have been paid, if:
    - (i) payment is reflected in the records of the division; and

- (ii) nonpayment affects the status of the limited liability company or foreign limited liability company with the division;
  - (e) that the most recent annual report required by Section 48-3a-212 has been delivered to the division for filing; and
  - (f) other facts reflected in the records of the division pertaining to the limited liability company or foreign limited liability company which the person requesting the certificate reasonably requests.
- (3) Subject to any qualification stated in the certificate, a certificate issued by the division under Subsection (1) may be relied upon as conclusive evidence of the facts stated in the certificate.

Amended by Chapter 149, 2018 General Session

**48-3a-212 Annual report for division.**

- (1) A limited liability company or a registered foreign limited liability company shall deliver to the division for filing an annual report that states:
- (a) the name of the limited liability company or registered foreign limited liability company;
  - (b) the information required by Subsection 16-17-203(1);
  - (c) the street and mailing addresses of its principal office;
  - (d) the name of at least one governing person; and
  - (e) in the case of a foreign limited liability company, its jurisdiction of formation and any alternate name adopted under Subsection 48-3a-906(1).
- (2) Information in the annual report must be current as of the date the report is signed by the limited liability company or registered foreign limited liability company.
- (3) A report must be delivered to the division for each year following the calendar year in which the limited liability company's certificate of organization became effective or the registered foreign limited liability company registered to do business in this state:
- (a) in the case of a limited liability company, the annual report must be delivered to the division during the month in which is the anniversary date on which the limited liability company's certificate of formation became effective; and
  - (b) in the case of a registered foreign limited liability company, the annual report must be delivered to the division during the month in which is the anniversary date on which the registered foreign limited liability company registered to do business in this state.
- (4) If an annual report does not contain the information required by this section, the division promptly shall notify the reporting limited liability company or registered foreign limited liability company in a record and return the report for correction.
- (5) If an annual report contains the name or address of a registered agent which differs from the information shown in the records of the division immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.

Enacted by Chapter 412, 2013 General Session